

XENORACIAL CAPITALISM AND THE STATUS-EXCLUSION OF CANADA'S
DREAMERS

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Abstract

This dissertation examines how and why status-excluded (undocumented) migrant youth in Canada – Canada's “Dreamers” – are systematically precluded from accessing postsecondary education and pathways to permanent residency. Its central thesis is that status-excluded youth are not people who have simply “fallen through the cracks”. Rather, they are produced, regulated, exploited, and expelled through what I term a regime of “xenoracial capitalism” – a system of accumulation in which immigration law functions as a primary constitutive site of intersecting colonialisms, racialization, and capitalist labour extraction.

The dissertation develops a tripartite methodological framework. Legal-historical analysis traces the evolution of Canadian migration law from its origins in imperial mobility rights through the era of white settler nationalism and into the neoliberal present, revealing status-exclusion as a persistent and largely intentional shadow policy. A law and political economy framework, grounded in xenoracial capitalism and decolonial theory, situates contemporary immigration law as structurally organized around profit-making (through exploitation, expropriation, and expulsion) and race-making (through stratification, segregation, and sacrifice zones). Qualitative empirical research, drawing on semi-structured interviews with twenty-two current and former status-excluded youth aged 18–35 and five expert stakeholders, grounds abstract claims in lived collective experience.

The empirical findings reveal how status-excluded youth navigate an immigration status pyramid defined by pervasive chutes (mechanisms where people lose status) and few, fragile status ladders. These in turn normalize conditions of discriminatory tuition fees, wage theft and labour exploitation, precarious housing, criminalization, and deportability. Early 21st century regulatory developments, including the Canadian Experience Class and Post-Graduate Work Permit, transformed ostensible pathways into gauntlets towards PR that hyperexploit migrant workers and students by concentrating power in the hands of employers and schools. Recent legislation such as *Bill C-12* indicate that status-excluded people is now firmly entrenched as a shadow policy that organizes the mass production of an invisibilized, racially stratified lower-caste population.

The dissertation concludes by charting three normative legal-political horizons that undermine xenoracial capitalism: regularization and status for all; internationalist worker organizing; and decolonizing migration through engagement with Indigenous legal orders and sovereignty. Together, these challenge liberal human rights framings and demand structural transformation of the xenoracial capitalist order.

Dedication

This work is dedicated to people on the move, cast to the borderlands of humanity, who seek not to replace, but to live in good relations.

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Chapter One – Introduction

Borders are assumed to be part of the normal functioning of a country, but that has not always been the case.

Reece Jones, author of *White Borders*¹

I. Chinese railroad workers, racial aphasia, and xenoracism

On July 1st, 2015, as a delegate of the Federation of Asian Canadian Lawyers (FACL), I attended the annual commemorative ceremony for injured and dead Chinese railroad workers, organized by the Foundation to Commemorate the Chinese Railroad Workers in Canada (FCCRWC). For many decades, the Chinese diasporic community in Canada referred to July 1st as “Humiliation Day”², in reference to July 1st, 1923, when the *Chinese Exclusion Act*³ was passed, which restricted virtually all Chinese immigration to Canada with narrow exemptions⁴ and undermined the very ability of the Chinese diaspora to persist over time as a distinct community.

As I took my seat in the blazing sun that morning, I struggled to pay attention to the speeches as I gazed up at the imposing, life-sized, Chinese Railroad Memorial Monument situated just west of the Rogers Centre in Downtown Toronto. The event paid tribute to the 17,000 Chinese labourers brought to the Western part of the new Dominion of Canada in the 1880s to work the most difficult, dangerous, and deadly jobs on the final section of the transcontinental railway – including the hundreds of workers who lost their lives in the process

¹ Reece Jones, *White Borders: The History of Race and Immigration in the United States from Chinese Exclusion to the Border Wall* (Boston: Beacon Press, 2021) at 6 [*White Borders*].

² Teresa Woo-Paw, “Opinion: Why Canada Day was once Humiliation Day for Chinese Canadians” (28 July 2023), *Edmonton Journal*, online: <https://perma.cc/4N4D-XZ3E>.

³ *Chinese Immigration Act*, 1923, SC 1923, c 38 [*Chinese Exclusion Act*].

⁴ Those narrow exemptions were for: diplomats and government representatives; children born in Canada who had left for educational or other purposes; merchants as defined by the Minister of Immigration and Colonization; and students while attending university or college; *ibid* at s 5(a)-(c).

and the many more who were left severely maimed and injured.⁵ Glancing down at the event's promotional materials, I began to read:

Since the formal apology by the Government of Canada in Parliament on June 22, 2006 for the unjust legislation of the Chinese Exclusion Act in July 1, 1923, the Chinese Community in Canada can now celebrate Canada Day with dignity. As remarked by the Prime Minister on numerous occasions, the Chinese Railroad Workers and the many generations of Chinese Canadians are great nation builders, uniting Canada politically, geographically and economically.⁶

After reading this blurb, I started feeling uneasy, then viscerally upset. Perhaps it was exacerbated by the harsh heat that day, but I left the ceremony prematurely. On the streetcar back home, I tried to untangle and make sense of my feelings. It became apparent to me that I did not have the vocabulary to fully articulate my frustrations at the time. After some years of reflection, I concluded that my lingering disquiet was primarily for three reasons – all of which informed my decision to write this dissertation from my social location as a Chinese Canadian lawyer turned academic.

The first problem was the idea that a “formal apology” from the Prime Minister would suddenly allow Chinese people in Canada to “celebrate Canada Day with dignity” by recognizing that the Chinese were “great nation builders, uniting Canada politically, geographically and economically.” But was inclusion into the ceremonial celebration of Canadian settler nationalism really the end goal? Was it justice for the workers? What did this assimilative nation-building narrative obscure in our collective remembrance? Did not the completion of the transcontinental railroad accelerate Canada's colonization of Indigenous and Métis nations in the West by facilitating settler occupation, land theft, and Canadian military crackdown? Was state recognition of migrant workers' contributions to colonial nation-building sufficient (or even the right kind of) redress for the mass death and injury attending anti-Chinese

⁵ Edgar Wickberg, et al, *From China to Canada: A history of the Chinese communities in Canada* (Toronto: McClelland and Stewart, 1982) at 22-23.

⁶ Email from FCCRWC (30 June 2015), archived with the author.

racism, migrant labour exploitation⁷, and political disenfranchisement? In other words, I was uneasy that memory of anti-Chinese racial violence and exploitation was being repurposed to expunge the historical and contemporary impact of colonialism and the continued racist treatment of migrants in Canada. After all, it seemed highly problematic to hive off racism from the ongoing structure of settler colonialism that the transcontinental railway made possible in much of Canada.⁸

Understandably, for communities who have faced discriminatory treatment and exclusion in Canada, the struggle for equality and inclusion is crucial. Yet there is a material difference between understanding Canada as “our home *and* native land” versus “our home *on* native land”.⁹ Indeed, this oft-forgotten contradiction is symbolized within the very name of the 1917-1936 Department of Immigration and Colonization.¹⁰ As Glen Coulthard warns, Canadian liberal politics of recognition and reconciliation of racial injustice often reproduce “the very configurations of colonialist, racist, patriarchal state power” in lieu of an oppositional, anti-colonial politics that aims to subvert these oppressive structures and prefigure political alternatives.¹¹ Under this nationalist apology and recognition framework, the hardships and racism endured by Chinese migrant labourers had been alchemistically co-opted into a settler nation-building narrative that legitimized and indeed valorized the historic and ongoing colonization of Indigenous peoples and lands as part of a now multicultural colonial project.¹²

⁷ By exploitation, I am referring to something more than a classic labour economics view of the extraction of surplus value from workers under capitalist wage relations. Exploitation involves this basic surplus extraction plus additional coercive conditions undergirding the systematic extraction of surplus value, labour power, or social reproductive capacities from workers who are positioned by legally and socially segmented labour regimes into relations of unequal exchange that severely undermine their ability to refuse or negotiate. In the racial and migrant exploitation context, this can refer to deportability and criminalization, precarious/non-status, racialization of labour market, and various state policies that actively create differentiated labour markets.

⁸ As genocide scholar Patrick Wolfe puts it, settler colonialism “is a structure not an event”. Patrick Wolfe, “Settler colonialism and the elimination of the native” (2006) 8:4 *Journal of Genocide Research* 387 at 388.

⁹ This phrasing refers to the alternation of the lyrics of O Canada by R&B singer Jullie Black at the 2023 NBA All Star Game in Salt Lake City, Utah. See Holly Honerich and Eloise Alanna, “Why singer Jullie Black changed one word in Canada’s national anthem” (21 February 2023), BBC News, online: <https://perma.cc/RL9K-WP5E>.

¹⁰ Parliament of Canada, “Immigration and Colonization (1917-10-12 – 1936-11-30)” (last accessed 23 May 2025), online: <https://perma.cc/KQ36-7JSV>.

¹¹ Glen Coulthard, *Red Skin, White Masks* (Minneapolis: University of Minnesota Press, 2014) at 3, 18.

¹² Mary Anne Vallianatos, “When redress is being here: myth, history, and bias in *Mack v Canada*” (2025) *Work-In-Progress* at 18.

The second problem related to migrant labour, specifically the assumption that structural conditions creating hyper-exploitation, neglect, abuse, and mass deaths of racialized migrant labourers for work deemed essential to the Canadian nation were safely confined to the past. This assumption stood in stark contrast to the fact that contemporary migrant workers in Canada languished in restricted temporary work programs described by UN experts as a “breeding ground for contemporary forms of slavery”.¹³ These programs institutionalized unfree, unsafe, and discriminatory working conditions not unlike those experienced by Chinese railroad workers in the late 19th century.

Racialized workers from the Global South who are brought to Canada *en masse* through these migrant work programs frequently find themselves immobilized within the Global North, “treated like mules”¹⁴, denied equal rights and protections, excluded from collective bargaining and labour laws¹⁵, and disposed of when they become ill, injured, or are otherwise no longer useful for their labour.¹⁶ At once praised for their essential work while simultaneously rendered disposable¹⁷, migrant workers from the Global South continue to “provide a transitory, cheap, exploitable workforce [to Global North countries] that is responsive to economic vicissitudes and supremacist anti-migration discourse.”¹⁸

As of the time of writing, approximately three million migrants on non-immigrant temporary visas – including many of whom the Canadian state has exploited in the workplace and extracted billions in discriminatory tuition fees from – are now facing shuttered pathways to PR and the prospect of either ending their ‘Canadian dream’ prematurely or entering the ranks of

¹³ *Visit to Canada: Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Tomoya Obokata*, UNHRC, 57th Sess, Annex, Agenda Item 3, UN Doc A/HRC/57/46/Add.1 (2024) at 22, online: <https://perma.cc/27SR-N2QU>.

¹⁴ Star Editorial Board, “We need to end the abuse of temporary foreign workers” (29 August 2022), The Toronto Star, online: <https://perma.cc/8DXM-BRHS>.

¹⁵ Fay Faraday, Judy Fudge, and Eric Tucker, eds, *Constitutional Labour Rights in Canada: Farm Workers and the Fraser Case* (Toronto: Irwin Law, 2012).

¹⁶ Desmond Cole, “The shame of our disposable workers” (19 May 2016), The Toronto Star, online: <https://perma.cc/P2YS-ABBS>.

¹⁷ See Mostafa Henaway, *Essential Work, Disposable Workers: Migration, Capitalism and Class* (Halifax and Winnipeg: Fernwood Publishing, 2023).

¹⁸ Vasanthi Venkatesh, “Radical Resistance in the Penumbra of the Law: Legal Mobilization for Migrant Farmworkers under Neo-colonial Racial Capitalism” (2025) 37:1 Journal of Law and Social Policy 22 at 23.

the undocumented status-excluded labour force.¹⁹ A new bill, Bill C-12, proposes amendments that would grant the government unprecedented power to cancel immigration applications for groups of people without due process if deemed in the “public interest”, deny fair adjudication for asylum seekers in their first year of crossing into Canada, enable the government to share private information held by the immigration department with other governments, and expand police and intelligence agencies’ ability to access personal data for immigration enforcement.²⁰ Meanwhile, Canada Border Services Agency (CBSA) has ramped up immigration raids alongside police in key urban centres such as Calgary and Vancouver, including at work sites – stoking fear and panic among predominantly racialized precarious status communities.²¹

Problematically then, by locating racist legislation and practice against Chinese migrant workers as an undignified set of one-off historical events, the nationalist apology narrative creates the powerful presumption that Canada’s liberal legal and political order has overcome a shameful illiberal past. This obscures a reckoning with the connections between xenoracist orders of the past and present. It also obscures the ways in which anti-Chinese and anti-migrant laws were fundamental for the ascendance of liberal ideologies of political freedoms and settler self-rule as Canada and other white settler nations broke away from the British empire.²² Indeed, in their study of immigration and nationality laws throughout the Americas from 1850 to 2000, David Cook-Martín and David FitzGerald conclude that “liberal states have had more racially based policies [vis-à-vis illiberal states in the Americas] precisely because of their liberalism”.²³

¹⁹ Statistics Canada, “Table 17-10-0121-01: Estimates of the number of non-permanent residents by type, quarterly” (last accessed 11 November 2025), online: <https://tinyurl.com/tawv2dcp>.

²⁰ Tamir Israel, “CCLA submission warns Bill C-12 will create fundamental unfairness in our immigration system” (21 November 2025), online: <https://perma.cc/D7M7-EV8R>.

²¹ Leah Hennig, “Is Canada Adopting ICE Anti-Migrant Tactics?” (24 November 2025), The Tyee, online: <https://tinyurl.com/a749dcr9>.

²² Vallianatos, *supra* note 12 at 8.

²³ David Cook-Martín and David FitzGerald, “Liberalism and the Limits of Inclusion: Race and Immigration Law in the Americas, 1850-2000” (2010) 41 *Journal of Interdisciplinary History* 7 at 8-9. By liberalism, I am referring to the normative commitment towards “securing individual liberty and human dignity through a political cast that typically involves democratic and representative institutions, the guaranty of individual rights of property, and freedom of expression, association, and conscience, all of which are taken to limit the legitimate use of the authority of the state” and to reform the world in this cast. See Uday Singh Mehta, *Liberalism and Empire: A Study in Nineteenth-Century British Liberal Thought* (Chicago: University of Chicago Press, 1999) at 3, 78–79.

Despite the common assumption that liberal states' emphasis on equality and rights would be less racially exclusionary than illiberal states, the authors found the opposite – that commitment to popular sovereignty allowed ideas of citizenship and immigration restriction to develop along white nationalist lines while law-based governance meant exclusion took the form of explicit statutes rather than informal practice.²⁴ Similarly, the progressive liberal story of Canadian immigration and citizenship law overlooks the country's longstanding racial contract²⁵ by obscuring the connections between the injustices of Chinese exploitation and exclusion, the ascendance of liberal forms of settler colonial popular sovereignty, and contemporary regimes of racialized border control and migrant labour management.²⁶

Third and finally, as most of the railroad workers were young men (sometimes only in their early teens)²⁷, I couldn't help but be reminded of the many undocumented young people that I had the opportunity to represent during my years as a Staff Lawyer at the Chinese and Southeast Asian Legal Clinic in Toronto.²⁸ Many of my clients were undocumented workers who were denied legal rights and protections, constantly evading law enforcement, working under the table at half the minimum wage, suffering injuries that they could not afford the hospital bill for, with their similarly status-excluded children unable to go on to college to achieve their dreams. Where were *they* in this supposed Chinese diasporic redemption arc that we were celebrating that

²⁴ On the other hand, illiberal regimes were less pressured by popular racial prejudices among dominant racial electorates to amplify exclusion by transforming racialized preferences into binding immigration law. As Cook-Martin and FitzGerald argue, "[i]n autocratic contexts, policymaking is dominated by elites, who often perceive greater economic and demographic benefits from immigration than the general public does." See Cook-Martin and FitzGerald, *supra* note 23 at 9.

²⁵ In contrast to traditional liberal theories of social contract which assume a universal, equal agreement among all members of society, Charles Mills developed the idea of the racial contract to refer to an implicit or explicit social contract that structures society in a way that upholds white supremacy and racial hierarchy, shaping political systems, economic structures, and even conceptions of morality and justice. See Charles W Mills, *The Racial Contract* (Ithaca: Cornell University Press, 1997).

²⁶ Vallianatos, *supra* note 12 at 13.

²⁷ Foundation to Commemorate the Chinese Railroad Workers in Canada, "The Ties That Bind: Chinese Railroad Workers: The Workers" (last accessed 23 May 2025), online: <https://perma.cc/263H-XXF5>.

²⁸ Established in 1987, the Chinese and Southeast Asian Legal Clinic (CSALC) is a community based legal clinic funded by Legal Aid Ontario which provides free legal services (direct services, public legal education, and systemic advocacy) to low income, non-English speaking clients from the Chinese, Vietnamese, Laotian and Cambodian communities in Ontario. Chinese and Southeast Asian Legal Clinic, "Our Clinic" (last accessed 23 May 2025), online: <https://perma.cc/25XG-66BQ>.

morning? Where was the life of dignity that was promised to them by the former Prime Minister's apology?

These contradictions and the distress they engendered eventually led to this dissertation. Originally, I had planned to write this dissertation on the topic of the right to education for Canada's 'Dreamers' – predominantly racialized young people from the Global South living in Canada, whose precarious legal status (frequently entirely undocumented) precluded them from pursuing their dreams of going to college and getting a good job.²⁹ However, after familiarizing myself with the literature and talking to more young people and migrant justice activists, it became clear to me that it did not make sense to simply construct a static snapshot of the condition of undocumented youth and education in Canada. Rather, what seemed to be missing from the literature on undocumented communities was scholarship that connected the *how* (viz. the different modalities by which undocumented status is produced, maintained, and justified) with the *why* (viz. the material interests that benefit from producing undocumented communities and keeping them in a state of systemic dispossession and disenfranchisement).³⁰

Additionally, in the Canadian context, undocumented and precarious-status 'Dreamers' are situated within a massive education-immigration complex where international student policy acts as a central mechanism in producing disenfranchised migrant labour and not just a discrete population engaged primarily in education.³¹ This education-immigration complex (explored at length in Chapter Four) functions as a coordinated policy assemblage in which educational institutions, immigration rules, and labour-market needs are mutually constitutive in xenoracial

²⁹ See Elise Mercier, Sean Rehaag, and Francisco Rico-Martinez, "Canadian "Dreamers": Access to Post-Secondary Education" (2023) 60 Osgoode Hall Law Journal 699.

³⁰ Here, I use material interests to refer to the concrete economic needs and benefits tied to a person or groups' class position or put another way, the real, lived interests grounded in control of (or lack of access to) the means of production (e.g. land, resources, infrastructure, tools, productive knowledge, or capital). For a comprehensive treatment of these ideas, see Karl Marx and Frederick Engels, "The German Ideology" in *Marx & Engels Collected Works: Vol. 5 Marx and Engels 1845-47* (London: Lawrence & Wishart, 2010).

³¹ The number of international students and other temporary residents in Canada has skyrocketed since the turn of the century. As of July 1st, 2025, the number migrants on temporary status in Canada totaled 3,024,216 – a massive 114% jump from the beginning of 2022. Out of that number 497,443 were asylum claimants, protected persons, and related groups while 1,519,682 held only work permits, 863,140 were international students, and 143,951 fell into the 'other' category (typically family members living with permit holders or those with special Minister's permits. Statistics Canada, "Table 17-10-0121-01: Estimates of the number of non-permanent residents by type, quarterly" (last accessed 11 November 2025), online: <https://tinyurl.com/tawv2dcp>.

capitalist accumulation. High tuition fees and debt obligations pull students into low-wage work; study-permit conditions and the temporality of post-graduation work permits impose coercive dependence; and PR pathways (or ‘gauntlets’ as I call them) selectively reward only those who can accumulate the ‘right’ kind of Canadian experience while excluding others from status regularization, thereby disciplining labour choices.

In this system, the three policy areas of Canadian immigration, education, and labour are inescapably intertwined. International student policy becomes effectively a front-end recruitment mechanism for precarious labour, while labour-market policy increasingly determines which students can convert their temporary presence into long-term status under immigration law. The boundaries between these areas are greatly blurred. This foregrounds the importance of viewing international students as a *workforce* – one that is rendered legally compliant, structurally indebted, effectively disposable, and whose labour power and wealth is extracted through institutions ideologically organized around learning. Such a framing allows us to see international education not only as a mobility pathway but as a sophisticated modality of labour production: one that privatizes the costs of migrant entry, extracts wealth from Global South families through discriminatory levies, obscures coercion through the rhetoric of opportunity, and reproduces hierarchies of race, class, and nation.³²

What is needed therefore is a new paradigm to understand not only the political economy of undocumented people and their struggles to access education, but to comprehensively theorize the study of immigration law and policy as simultaneously the study of processes of status-segregation, status-exclusion, and status-hierarchy in aid of racial difference-making and capitalist accumulation. After numerous iterations, the final form of this dissertation, *xenoracial*

³² Accordingly, there is a recent turn in the scholarship to understand international student policy as structuring imperialist extraction of value from the Global South. For example, see Ashwin Shantha, “The Dispossession of International Students by Canadian Higher Education as a form of Imperialist Extraction from the Global South” (2025) 15:1 *Potentia: Journal of International Affairs* 1; Dale M McCartney, “Border Imperialism and Exclusion in Canadian Parliamentary Talk about International Students” (2020) 50:4 *Canadian Journal of Higher Education* 37; Vincent Wong and Arman Sohi, “Racial Capitalism, Neocolonial Wealth Transfer, and Canadian International Student Policy” (2025) 48:1 *Dalhousie Law Journal* 103.

capitalism and the status-exclusion of Canada's 'Dreamers', has thus been prepared in a way that attempts to bridge this gap.

Status-exclusion (explored further in Section III of this introductory chapter) refers to the processes by which the state produces varying hierarchal levels of status and pushes certain bodies towards the periphery of full status (though not necessarily out of national territory) in turn disenfranchising these individuals from the vote, political rights, economic resources, and legal protections and entitlements. It is in part a response to limits around the category of 'undocumented' – which has a tendency to obscure the category's sociolegal construction, presume a high level of non-integration of these individuals into bureaucratic systems (for instance, many non-status people have lots of documents, especially immigration-related documents, but are still excluded from valid immigration status), and instill a false sense of value-neutrality and objectivity in immigration law.

Xenoracial capitalism (explored further in Section IV of this chapter) refers to the distinct ways in which racial capitalism³³ influences, and is influenced by, nationalist bordering and xenophobia. This is in part a response to the relative under-theorization of racial capitalism in immigration law³⁴ – despite the increasing power and prominence of anti-migrant politics and racist nationalisms all around the world³⁵ – which operates through highly raced ideas of national interest, foreigner/citizen, propertied relationships to land, and state sovereignty. Yet these ideas and the status hierarchy-building that is the foundational purpose of modern Canadian immigration law have *always* been key to the project of racial hierarchy-building. This is true not

³³ Racial capitalism is a framework used to describe how racial exploitation and capital accumulation are deeply intertwined and mutual constitutive. Historically, it helps explain how racial inequalities are not accidental or external to capitalism but built into its very structure. As capitalism requires inequality, the creation and reconstruction of racialized divisions and segregations help maintain hierarchies in society including in labour markets. See Cedric J Robinson, *Black Marxism: The Making of the Black Radical Tradition* (Chapel Hill: University of North Carolina Press, 2000) [*Black Marxism*].

³⁴ Which is not to say that there is no work in this area. For some nascent examples of scholarship which has analyzed Canadian migration regimes explicitly through the framework of racial capitalism, see Levi Gahman & Elise Hjalmarson, "Border Imperialism, Racial Capitalism, and Geographies of Deracination" (2019) 18:1 ACME: An International Journal for Critical Geographies 107; Julie Ann McCausland, "Racial Capitalism, Slavery, Labour Regimes and Exploitation in the Canadian Seasonal Agricultural Workers Program" (2020) 5 Caribbean Quilt 55; Inés Valdez, "Socialism and Empire: Labor Mobility, Racial Capitalism, and the Political Theory of Migration" (2021) 49:6 Political Theory 902.

³⁵ See generally Harsha Walia, *Border and Rule: Global Migration, Capitalism, and the Rise of Racist Nationalism* (Chicago: Haymarket, 2021) [*Border and Rule*].

only of those negatively racialized by the white settler state, but also those positively racialized by dynamic constructions of whiteness. For instance, as early as 1923, the Canadian government passed orders-in-council articulating in precise terms which nationalities would be most privileged (and thus sit at the apex of whiteness on the racial hierarchy): US citizens and British subjects from Great Britain, Ireland, Newfoundland, the US, New Zealand, Australia, or South Africa.³⁶ This racially preferred group of white nationalities was later expanded in 1931 through internal immigration guidelines issued pursuant to Order-in-Council PC 1931-695 to include immigrants from Northern and Central Europe, with other groups left scrambling at the peripheries of whiteness.³⁷

To properly understand contemporary formations of status-exclusion under xenoracial capitalism, we must reexamine our understanding of Canadian immigration law writ large since racial power so often preserves itself through the selective forgetting of its historical continuities and evolutions. The strategic Canadian nationalist (mis)remembering of the legacy of the 19th century Chinese railroad workers suffers from what Debra Thompson calls ‘racial aphasia’. As opposed to racial amnesia, racial aphasia points to a “purposeful evasion”, a “calculated forgetting, and an “obstruction of discourse, language, and speech” that could link “our racist pasts to the still racist present”.³⁸ Importantly then, the calculated forgetting on display that commemoration day was *not* an exclusion or forgetting of racism – far from it. After all, it could be fairly said that the entire ceremony focused explicitly on a collective remembrance of the historical harms of anti-Chinese and anti-Asian racism and its concurrent lessons. Rather, racial aphasia manifested as a *domestication* of anti-racist politics, purposefully evading and obfuscating what it means to be included into a settler colonial state as well as the ways in which Canadian immigration law and bordering remain sites of racial (including anti-Asian) and neocolonial ordering that continue to facilitate exploitation, subjugation, and inequality. What we are left with is a sanitized liberal progressive narrative of Canadian immigration legal history,

³⁶ PC 1923-183, (31 January 1923) C Gaz, 4106, online: <https://perma.cc/7KDK-KX43>.

³⁷ PC 1931-695, (21 March 1931), online: <https://perma.cc/TN8D-XXUQ>. See Justin Comartin, “Opening Closed Doors: Revisiting the Canadian Immigration Record (1933-1945)” (2016) 24 Canadian Jewish Studies 79 at 83-84.

³⁸ Debra Thompson, “Through, against and beyond the racial state: the transnational stratum of race” (2013) 26:1 Cambridge Review of International Affairs 133 at 135.

filled with regrettable historical chapters, that limit our understanding of possible forward-looking and dignity-affirming futures.

This aphasia has additional resonance in the case of the Chinese railroad workers memorial since as argued by global migration historian Adam McKeown, “most of the basic principles of border control and techniques for identifying personal status were developed from the 1880s to 1910s through the exclusion of Asians from white settler nations”³⁹ before diffusing to the rest of the world as part of the accepted foundation of sovereignty for all states within the international system. Thus, reflecting on the technologies of discriminatory control and exclusion experienced by those Chinese railroad workers necessarily entails reflecting on the creation of the entire edifice of border and migration control that we take for granted globally today. Put another way, we are forced to reckon with a historical narrative that locates anti-Asian racism not as a regrettable discriminatory chapter in the history of immigration law but rather a core reason why the idea of sovereign migration control was constructed and proselytized by white settler societies in the first place.

To remedy this aphasia that forcefully silos analysis of racism from analysis of national borders, an analytical intervention is necessary. Indeed, what W.E.B. Du Bois called the 20th century “color line”⁴⁰ – the racial ordering between colonial powers and colonized populations – has evolved and persisted into the 21st century, including by embedding itself into international borders and migration control. An increasingly robust transnational scholarship has explored the foundationally constitutive relationship between racism, xenophobia, and bordering law and practice, both historically and in the present day.⁴¹

³⁹ Adam M McKeown, *Melancholy Order: Asian Migration and the Globalization of Borders* (New York: Columbia University Press, 2008) at 2.

⁴⁰ W.E. Burghardt Du Bois, *The Souls of Black Folk: Essays and Sketches* (Chicago: AC McClurg & Co, 1903) at 3.

⁴¹ See, for instance, McKeown, *supra* note 39; Walia, *Border and Rule*, *supra* note 35; Nandita Sharma, *Home Rule: National Sovereignty and the Separation of Natives and Migrants* (Durham: Duke University Press, 2020) [*Home Rule*]; Harsha Walia, *Undoing Border Imperialism* (Oakland: AK Press, 2013) [*Undoing Border Imperialism*]; E Tendayi Achiume, “Migration as Decolonization” (2019) 71 *Stanford Law Review* 1509; Marilyn Lake and Henry Reynolds, *Drawing the Global Colour Line: White Men's Countries and the International Challenge of Racial Equality* (Melbourne: Melbourne University Press, 2008).

One of these interventions can be found in E Tendayi Achiume's concept of 'racial borders', which proposes that (1) contemporary national borders are inherently racial (but inhere in facially neutral legal categories of territorial and political borders) and (2) race itself is a type of bordering infrastructure and operates as a means of enforcing literal territorial and political borders.⁴² Drawing upon Achiume's idea of racial borders, I deploy the term 'xenoracism' to refer to the interconnected ways in which xenophobia and racism converge to construct, justify, and normalize regimes of nationalist political and territorial segregation, structural subordination, and associated hierarchy – a set of logics and processes that are not reducible to either xenophobia or racism *simpliciter*.

In doing so, I diverge from some of the existing ways in which xenoracism has been deployed in scholarship, particularly those who use the concept to refer to the development of a "new racism" which "cannot be colour-coded, directed as it is at poor whites as well, and is therefore passed off as xenophobia"⁴³ and which goes beyond "outdated views and definitions of racism, largely based on skin colour and biological categorization".⁴⁴ In *Poverty is the new Black*, Ambalavaner Sivanandan writes that xenoracism:

is a racism that is not just directed at those with darker skins, from the former colonial countries, but at the newer categories of the displaced and dispossessed whites, who are beating at western Europe's doors, the Europe that displaced them in the first place. It is racism in substance but xeno in form – a racism that is meted out to impoverished strangers even if they are white. It is xeno-racism.

Xeno-racism is a feature of the Manichaean world of global capitalism, where there are only the rich and the poor – and poverty is the new Black. Where the national state works primarily in the interests of multinational corporations, where the national bourgeoisie collaborates with international

⁴² E Tendayi Achiume, "Racial Borders" (2022) 110:3 Georgetown Law Journal 445 ["Racial Borders"].

⁴³ Ambalavaner Sivanandan as quoted in Liz Fekete, "The emergence of xeno-racism" (2001) 43:2 Race & Class 23 at 23-24.

⁴⁴ Shepard Masocha and Murray K Simpson, "Xenoracism: Towards a Critical Understanding of the Construction of Asylum Seekers and its Implications for Social Work Practice" (2011) 23:1 Practice: Social Work in Action 5 at 6.

capital, where the middle class is effete and self-serving and the working class, disaggregated and dispersed by technology, has lost its political clout.⁴⁵

When used in this way, xenoracism implies that nationalist bordering and the socio-legal categories it produces (such as the category of the ‘migrant’ or the ‘refugee’) have developed an inequitable material ordering in which skin colour and physical and cultural attributes commonly associated with racial ordering no longer play a significant role. In other words, Sivanandan argues that foreignness and poverty have effectively superseded race as a key ground of subordination and inequality in a contemporary world ruled by capital and the nation-state form. This pulls against the tenets of racial capitalism which argue that racial difference and domination were both part of the conditions by which capitalism as a global system emerged and continues to have immense productivity in contemporary instances of capitalist formation.⁴⁶

In contrast, I align with the view of scholars like Achiume who argue that socio-legal immigration-related categories are constructed in ways that are inexorably ‘raced’ (sometimes creating new forms of racialized domination). Simply because low-income white people as a group may also be negatively affected by displacement and certain bordering policies does not mean that nationalist bordering has become colour-blind or post-racial. Indeed, poor whites within former European metropolises and settler colonies have, historically and in the present-day, been a critical political driving force in mobilizing populist and transnational white grievance for the enactment of racist bordering policies⁴⁷, sometimes even more so than the “bureaucrats and executive institutions that were responsive to multiple domestic and international pressures.”⁴⁸

In a similar vein, Catrin Lundstrom argues that migration studies suffers from the inaccurate notion that ‘migrant’ refers to an abstract category implicitly presupposing an undifferentiated human subject on the move.⁴⁹ In examining the experiences of female Swedish emigrants in the post-WWII period, she observes that in many countries, the combination of

⁴⁵ Ambalavaner Sivanandan, “Poverty is the new Black” (2001) 43:2 *Race & Class* 1 at 2.

⁴⁶ Gargi Bhattacharyya, *Rethinking Racial Capitalism: Questions of Reproduction and Survival* (London: Rowman & Littlefield International, 2018) at ix.

⁴⁷ See Valdez, *supra* note 34.

⁴⁸ McKeown, *supra* note 39 at 17.

⁴⁹ Catrin Lundstrom, *White Migrations: Gender, Whiteness and Privilege in Transnational Migration* (London: Palgrave MacMillan, 2014) at 1.

whiteness and migration produces “upward social mobility within the transnational social structure, in the legacy of colonial power structures.”⁵⁰ The oxymoron of white migration is thus that “a migrant is rarely thought of as white, and white people tend not to be seen as ‘migrants’”.⁵¹ Hence, “the newer categories of the displaced and dispossessed whites, who are beating at western Europe’s doors” are not in fact new categories outside of the material power of whiteness, but rather fit within a long history of what Cedric Robinson calls “intra-European racialisms”⁵² – a set of logics that sort Europeans into hierarchies of superiority/inferiority and thus desirability/undesirability. We also see these logics built into the ‘preferred nations & peoples’ policies which dominated Canadian immigration law until well into the 1950s.⁵³

The assumption that migrant injustice has entered a post-racial era (or an era of “new racism”) is thus unrepresentative of reality. It bears recalling nationalist bordering and immigration policies have historically perfected their operation “through *facially race-neutral* legal categories, doctrines, and policies – including citizenship, nationality, and even sovereignty doctrine – as it relates to the right to exclude non-nationals” [emphasis added].⁵⁴ Thus, while it is true that nationalist bordering creates particular categories that segregate certain people who are marked as out of place (both politically and territorially), nationalism also “both organizes and helps to mask racialized forms of difference that organize inequalities”.⁵⁵ I argue therefore that xenoracism should be conceptualized through what Nandita Sharma calls “homey type[s] of racism” that allow us to *read race back in* to questions of nationalism, immigration, and bordering – not the opposite.⁵⁶

On the other hand, xenoracism also helps us foreground the important observation that anti-migrant sentiment and racism, though mutually constitutive, cannot simply be reduced to one another. One of the consequences of the formal deracialization of Canadian immigration

⁵⁰ *Ibid* at 8.

⁵¹ *Ibid* at 1.

⁵² Robinson, *supra* note 33 at 36-43, 67.

⁵³ Comartin, *supra* note 37.

⁵⁴ Achiume, “Racial Borders”, *supra* note 42 at 464.

⁵⁵ Nandita Sharma, *Home Economics: The Making of ‘Migrant Workers’ in Canada* (Toronto: University of Toronto Press, 2006) at 11 [*Home Economics*].

⁵⁶ *Ibid*.

policy and the subsequent institution of multiculturalism as state policy in the 1960s and 1970s was to create a strong presumption that immigration policy had nothing to do with racism unless proven otherwise. As a result, migrant justice (including justice for undocumented, status-excluded populations) was excised in the co-optation of mainstream Canadian anti-racist politics towards the paradigm of diversity, inclusion, and equity (DEI), which has been criticized for personalizing structural racism, separating race from colonialism and bordering, and prioritizing representation over transformation.⁵⁷ This fracture has resulted in harmful implications for emancipatory migrant justice politics, including the rise of highly xenophobic conservative bases among racialized communities⁵⁸ and the common use of racialized representatives to ward off claims of anti-racism to uphold the xenoracial order, leave inequities uncontested, and often “augment them with renewed vigour.”⁵⁹

Yet as Chantal Thomas notes, harsher immigration controls “do not deter migration in a world which is both highly unequal and highly interconnected”.⁶⁰ Instead, they make it “more likely that some people’s movements across borders will be unauthorized, and that those people will then be vulnerable to exploitation”.⁶¹ Thus, the issue of status-exclusion should not be seen as ‘cracks in the system’ through which individuals unfortunately fall through, but constitutive of how immigration controls, racialized ideas of the nation, and processes of capitalist accumulation are themselves structured. A xenoracial capitalism lens is thus necessary for a robust analysis of the socio-legal category of undocumented, status-excluded youth in Canada, who are the central focus of this dissertation.

⁵⁷ For a more fulsome critique of the language of diversity and its related synonyms over four decades of Canadian multiculturalism, see Rinaldo Walcott, “The End of Diversity” (2019) 31:2 *Public Culture* 393. Specifically, Walcott argues that “[t]he hard truth of the matter is that the governing and administrative apparatus of whiteness is prepared to appropriate any discourse, any politics, any ideas and ideals that retain the post-Columbus compact — a compact in which Europe and its derivative nations and their peoples now marked as white continue to be given privileged status across the globe. To maintain such status, nation- states like Canada (re)produce themselves and appropriate ideas like diversity, equity, indigenizing, and decolonizing while keeping in place all the institutions that flow from the initial and ongoing colonial condition and context.” *Ibid* at 398.

⁵⁸ See Laura J Kwak, “Asian Conservatives in Canada’s Parliament: A Study in Race and Governmentality” (2016) University of Toronto Thesis, online: <https://perma.cc/Y35G-5XW4>.

⁵⁹ *Ibid* at 36.

⁶⁰ Chantal Thomas, “Race as a Technology of Global Economic Governance” (2021) 67 *UCLA Law Review* 1860 at 1884.

⁶¹ *Ibid*.

Methodologically, this dissertation builds upon work surrounding precarious legal status trajectories⁶² and considers how colonial legacies and histories of migration, colonialism, state policy, jurisprudence, and everyday encounters come together to assemble migrant experiences. It primarily relies on interdisciplinary methods of legal history and sociolegal research, complemented with a series of twenty-two qualitative interviews conducted with status-excluded young people (age 18-35) and five expert stakeholders including academics, service providers, and migrant justice activists. Interviewees were recruited through a call for participation distributed via email and listservs to trusted contacts who frequently work and organize with status-excluded migrant youth in Ontario. Interested participants then contacted the author directly to learn more about the study and to arrange an interview. In addition, some participants were identified through snowball sampling, as initial interviewees referred peers and contacts who met the study criteria.

Since status-excluded youth are a particularly hard-to-reach population whose demographics are not precisely known, the study did not aim for statistical representativeness. However, efforts were made to include interviewees of different genders, ages (within the 18-35 age range), ethnicities, nationalities, migration and work histories, and educational backgrounds. A key limitation of this study is that the large majority of interviewees were based in Ontario at the time of interviews, though some lived and worked in other parts of Canada as well. While Ontario is home to the largest population of status-excluded migrants in Canada and provides a valuable context for studying their experiences, the findings cannot be generalized to other provinces. Generally, interviewees' identifying information has been anonymized for reasons of safety and risk of detection and reprisal.

As a personal note, I found interviewing status-excluded youth through the academic format (in contrast to legally representing them or simply talking to folks in community) particularly challenging in. Part of this was due to the intense workload and scrutiny that was applied to getting Research Ethics Board approval of the interviews in the first place. While I

⁶² See Luin Goldring and Patricia Landolt, *Producing and Negotiating Non-Citizenship: Precarious Legal Status in Canada* (Toronto: University of Toronto Press, 2013); Luin Goldring and Patricia Landolt, "From illegalised migrant toward permanent resident: assembling precarious legal status trajectories and differential inclusion in Canada" (2022) 48:1 *Journal of Ethnic and Migration Studies* 33.

appreciate the need to protect marginalized communities and for academics to think hard about risk mitigation and management, the amount of work required to get approval for a few interviews was equivalent to an entire dissertation chapter itself. Additionally, some of the application material required of me bordered into the absurd; at one point I essentially had to say that I would accept penal consequences to protect the personal information of interviewees should a government or court demand production of that information (say, for immigration enforcement purposes). That ethics board approval would require this undue level of scrutiny and self-sacrifice from academics drives home the oppressive nature of a xenoracist system that disenfranchises, subordinates, detains, and villainizes status-excluded migrants and anyone who may consider researching, supporting, and protecting them.

The dissertation is organized into five chapters. Chapter One begins by introducing the contemporary predicament of precarious status and status-excluded migrants in Canada. It argues for a shift from the popular lexicon of ‘undocumented’, ‘non-status’, and ‘illegal migrant’, to ‘status-excluded’ communities to foreground the strategic legal production and withholding of immigration status and in turn, (in)access to rights, resources, and protections. ‘Undocumented’ is a sociolegal category, which refers to the condition of not having legal standing to be in the country in which one is located.⁶³ Shifting to a discourse of status-exclusion in immigration law helps us more easily draw continuities and influences between the contemporary and historical formations of political status-exclusion and mobility restriction, when terms like ‘undocumented’ or ‘non-status’ were generally not in widespread usage. The introduction then moves on to explaining the primary theoretical lens – xenoracial capitalism – that this dissertation employs to more robustly understand the production of status-excluded migrant labour in Canada within global histories of colonialism and imperialism.

Chapter Two revisits the historical development of Canadian migration law, synergizing insights from the literature on racial capitalism with the *longue durée* history of migration and colonialism in Canada. Beginning with early European imperialism and the invention of a racially stratified right to travel, it argues that the foundational norms of international law around

⁶³ Paulina Segarra and Ajnesh Prasad, “Undocumented immigrants at work: invisibility, hypervisibility, and the making of the modern slave” (2024) 11:1 Humanities and Social Sciences Communications 1.

migration were designed to facilitate colonization and deny Indigenous sovereignty. Seeing Canadian immigration law through a *longue durée* helps us challenge many of the assumptions of contemporary border controls and their legal foundations and helpfully situates their evolving formations within a longer historical legal context. This *longue durée* analysis in turn allows us to radically reconfigure how we understand the category and contemporary experiences of Canadian ‘Dreamers’.

Chapter Three examines the political economy and lived realities of status-excluded migrant youth in Canada, conceptualized through the metaphor of yin and yang to illuminate the interconnectedness of formal immigration systems and the informal, invisible spaces of undocumented life. It explores how Canadian immigration policy produces and manages status-excluded labour through ‘shadow policies’ characterized by administrative invisibility and legal precarity. It argues that despite administrative status-exclusion, migrants are not economically excluded but adversely incorporated into the labour market under structurally exploitative terms. Drawing on original interviews with status-excluded migrant youth, this chapter highlights the legal, social, and economic dynamics that force individuals into, and keep them within, undocumented conditions, including barriers to regularization, labour exploitation, and systemic marginalization under xenoracial capitalism.

Chapter Four critically examines the role of Canadian post-secondary educational institutions as predatory sites of neocolonial wealth transfer from Global South families to Canada primarily through extractive and discriminatory international student tuition fees (education ‘head taxes’), which help bankroll the modern neoliberal Canadian post-secondary education sector. These extractive structures and the indebtedness and insecurity they produce funnel migrant students into precarious (and later status-excluded) labour that is characteristic of the migrant youth experience in Canada. The chapter concludes by interrogating the limits of liberal rights-based approaches to education access, arguing that without confronting the underlying logics of xenoracial capitalism, efforts to expand postsecondary access – such as sanctuary programs – risk reproducing exclusionary hierarchies rather than dismantling them.

Finally, Chapter Five will look at the possibilities ('freedom dreams') that emerge from a xenoracial capitalist and decolonial critique of the subordinated position of status-excluded communities in Canada. It surveys strategies of resistance to bordering that have been organized in the past and present. It also articulates some examples on what intersectional, anti-racist, and anti-capitalist forms of migrant justice that are active and alive to Indigenous sovereignty look like, building on movement knowledge and historical antecedents.

II. Existing literature on status-excluded migrant youth in Canada

There are significant numbers of status-excluded migrants living in Canada, with estimates varying from 200,000 to 500,000 – most of whom live in and around large metropolitan centres.⁶⁴ Accurate numbers are difficult to estimate given the inherent challenges of collecting systematized data on a population that must avoid detection due to being illegalized and targeted by state authorities. In 2020, the Toronto Star reported that an internal federal memo sent to the Assistant Deputy Minister of Immigration, Refugees and Citizenship Canada (IRCC) estimated that up to 250,000 status-excluded residents lived in Canada with around half settling in the Greater Toronto Area (GTA).⁶⁵ As of December 2024, the Canada Border Services Agency (CBSA) identified 477,341 individuals in its "removal inventory" although that number also includes individuals pending refugee determination and convention refugees.⁶⁶ Further, as of late 2025, the Migrant Rights Network estimates that existing numbers of status-excluded people

⁶⁴ Graham Hudson, et al, "(No) Access T.O.: A Pilot Study on Sanctuary City Policy in Toronto, Canada" (2017) RCIS Working Paper No 2017/1 at 5. In the early 2000s, Ontario's construction secretariat estimated that there were about 76,000 undocumented workers in the province's construction industry alone. Marina Jimenez, "200,000 illegal immigrants toiling in Canada's underground economy" (15 November 2003), The Globe and Mail.

⁶⁵ David Bruser, "Canada's 'Dreamers'; Thousands of undocumented youth brought to this country as minors are living in limbo, their education and career hopes on hold" (26 July 2020), Toronto Star.

⁶⁶ Canada Border Services Agency, "Key issues: Ministerial transition 2024" (last accessed 27 May 2025), online: <https://perma.cc/C483-BKWW>.

are expected to increase significantly as some three million temporary visa holders face the risk of undocumented status.⁶⁷

Existing research suggests that status-excluded residents typically work in low-income jobs disproportionately in seasonal and informal sectors, such as food service, construction, manufacturing, packaging, agriculture, janitorial services, caregiving, and housekeeping.⁶⁸ The exclusion of these workers from status and therefore effective access to employment and labour rights as well as employment insurance and pensions means that these jobs are disproportionately low-paying, dangerous, and precarious.⁶⁹ Exclusion from access to valid Social Insurance Numbers confines workers to the underground economy, making them particularly vulnerable to dismissal, abuse, coercive control, and exploitation from employers.⁷⁰

In addition to being compelled into conditions of labour hyper-exploitation, status-excluded workers are also structurally *silenced* and *invisibilized*. This is in large part due to the fear, spectacle, and reality of deportation which functions as a technology of suppression, political disenfranchisement, and in turn labour discipline. Status-excluded residents must frequently engage in evasive behaviour to avoid identification and detection by law enforcement. Some avoid going out at night, getting into others' cars, accessing government services, or putting themselves in any situation that may result in a state official compelling identification.⁷¹ The ever-present danger of surveillance, identification, and state violence for status-excluded residents also create significant challenges with sampling and academic research, as well as collective political organizing and resistance.

Legal research in the field of status-excluded/undocumented migrants in Canada is relatively scant. The limited scholarship that does exist has covered issues such as employment

⁶⁷ Migrant Rights Network, "Migrant Rights Network Response to Budget 2025" (4 November 2025), online: <https://perma.cc/N3Q6-TKCN>.

⁶⁸ Soave Strategy Group (SSG), *The Impact of Undocumented Workers on the Residential Construction Industry in the GTA* (Toronto: Laborers' International Union of North America (LIUNA) Toronto, 2006).

⁶⁹ Laura Simich, Fei Wu, and Sonja Nerad, "Status and Health Security: An Exploratory Study of Irregular Immigrants in Toronto (2007) 98:5 Canadian Journal of Public Health 369-373.

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

insurance and labour law protections⁷², the right to healthcare⁷³, and the increasing role of criminalization in immigration and refugee legal frameworks.⁷⁴ With respect to status-excluded migrants' interaction with educational institutions, there is a burgeoning scholarship *outside* of legal academia that has carefully mapped the cartography of stressors and administrative, legal, and economic barriers to accessing education for migrant children and youth.⁷⁵ This body of scholarship has tended to analyze the condition of status-excluded residents through international human rights law and domestic legislation intended (at least partially) to give effect to these rights.⁷⁶

Status-excluded migrant youth frequently face legal, procedural, and financial barriers in accessing education. Unlike the US, the Canadian government and civil society has paid far less attention to the condition of status-excluded youth living within its territory.⁷⁷ While current policy nominally assures status-excluded students' admission to K-12 educational institutions, its execution has been uneven. Further, new impediments to schooling have emerged at the postsecondary level, particularly with respect to prohibitively expensive and discriminatory "international" student fees (alongside exclusion from financial aid, grants, loans, and scholarships) that price many status-excluded families and their children out of postsecondary education. This higher tuition is on average around five times that of domestic tuition and at

⁷² Luiz Arthur Bihari, "Clashing Laws: Exploring the Employment Rights of Undocumented Migrants" (2011) 69:2 University of Toronto Faculty of Law Review 9; Sarah Marsden, "'Silence Means Yes Here in Canada': Precarious Migrants, Work and the Law" (2014) 18 Canadian Labour and Employment Law Journal 1.

⁷³ Anette Sikka, et al, "Access to Health Care and Workers' Compensation for Precarious Migrants in Québec, Ontario and New Brunswick" (2011) 5:2 McGill Journal of Law and Health 203; Martha Jackman, "Charter Review as a Health Care Accountability Mechanism in Canada" (2010) 18 Health Law in Canada Journal 1; YY Brandon Chen, "Special Issue: Health Law The Future of Precarious Status Migrants' Right to Health Care in Canada" (2017) 54:3 Alberta Law Review 649.

⁷⁴ Audrey Macklin, "Citizenship Revocation, the Privilege to Have Rights and the Production of the Alien" (2014) 40:1 Queen's Law Journal 1; Luke Taylor, "Designated Inhospitability: The Treatment of Asylum Seekers Who Arrive by Boat in Canada and Australia" (2015) 60:2 McGill Law Journal 333.

⁷⁵ See Tanya Aberman and Philip Ackerman, "Isn't the Right to an Education a Human Right?" in Sara Carpenter and Shahrzad Mojab, eds, *Youth as/in Crisis: Young People, Public Policy, and the Politics of Learning* (Rotterdam: Sense Publishers, 2017) at 127.

⁷⁶ E.g. Article 26 of the Universal Declaration of Human Rights and Articles 13-14 of the International Covenant on Economic, Social, and Cultural Rights, 16 December 1966, 993 UNTS 3 at Art 2(2) [ICESCR]; *Immigration and Refugee Protection Act*, SC 2001, c 27 at s 30(2) [IRPA]. See also Graham Hudson and Marietta Armanyous, "Barriers vs. bridges: Undocumented immigrants' access to post-secondary education in Ontario" (2019) RCIS Working Paper No 2019/5.

⁷⁷ Vince Wong, "Canada Has Done Even Less For Its 'Dreamers' Than The U.S." (11 September 2017), Huffington Post Canada, online: <https://perma.cc/2QNS-PD8Y?type=image>.

some universities, such as the University of Toronto, is up to ten times domestic tuition – serving as a *de facto* education prohibition for most status-excluded youth.⁷⁸ These skyrocketing financial barriers extend even to K-12 education, with the Toronto District School Board charging \$17,000 annual tuition to international students for the 2025-2026 school year⁷⁹ (an amount which can potentially be charged to status-excluded students despite ‘don’t ask, don’t tell’ policies that mitigate the risk of immigration raids).⁸⁰

Despite structural difficulties, literature on the history of status-excluded organizing supports the notion that the most effective way to build power and achieve material wins is direct organizing and ongoing support of status-excluded residents and communities. In contrast, campaigns for equitable education outcomes for status-excluded youth have historically run into significant setbacks when moving forward with advocacy without a sufficiently organized and activated political base.⁸¹

When status-excluded youth move (or are pushed) out of school and into the labour force, there is little in the legal literature on the relationship between the inability to access education and the experiences of status-excluded migrants in the labour market. A similar gap in legal literature exists with respect to the experience of international student labourers.⁸² There is also a relative dearth of literature with respect to how status-excluded workers navigate immigration laws in their employment, the experience of status-excluded workers in particular sectors, the role of race in structuring working arrangements and labour market participation, and

⁷⁸ Bruser, *supra* note 65.

⁷⁹ Toronto District School Board, “Fee Schedule and Methods of Payment” (last accessed 27 May 2025), online: <https://perma.cc/SNV5-K2JS>.

⁸⁰ Toronto District School Board, “Admissions Letter” (last accessed 27 May 2025), online: <https://perma.cc/3H3G-AZKY>. According to TDSB policy, in applying for a fee-exemption, status-excluded families have the burden of proof to show the school board that their immigration status has expired.

⁸¹ Rachel Humphris, “A history of the memories of the ‘sanctuary city’ in Toronto, Canada” (2020) RCIS Working Paper No 2020/5 at 18-19.

⁸² Notably however, the federal government itself has commissioned some research on the topic, see Eden Crossman, Youjin Choi, and Feng Hou, “International students as a source of labour supply: Engagement in the labour market during the period of study” (24 November 2021) Statistics Canada: Economic and Social Reports.

examinations of *whose* material interests are benefited by the production and maintenance of a large, cheapened, and flexible status-excluded labour pool.⁸³

In Canada, literature that critically examines the situation of migrant workers in ways that account for their rootedness in the legacies of global colonialism, racism, and capitalism, typically focus on Temporary Foreign Worker Programs (TFWPs), particularly the long-standing Seasonal Agricultural Worker Program (SAWP).⁸⁴ Yet this crucially important analysis has not translated as effectively to emergent large and important pools of cheapened and flexible migrant labour, including international student labour, workers brought under International Mobility Program (IMP), and status-excluded labour. In particular, the existing literature on status-excluded/undocumented communities, with some important exceptions⁸⁵, typically adopts state-centric liberal rights and humanitarian lenses⁸⁶ which lack substantive engagement with the historical and contemporary role of immigration law and mobility governance as key tools in labour suppression and racial capitalist accumulation.

III. Precarious legal status trajectories, status-exclusion, and unfree migrant labour

⁸³ With important exceptions, such as Henaway, *supra* note 17.

⁸⁴ See for example, Vic Satzewich, “The Canadian state and the racialization of Caribbean migrant farm labour 1947–1966” (1988) 11:3 *Ethnic and Racial Studies* 282; Daiva Stasiulis and Abigail B Bakan, “Negotiating Citizenship: The Case of Foreign Domestic Workers in Canada” (1997) 57:1 *Feminist Review* 112; Sharma, *Home Economics*, *supra* note 55; Aziz Choudry and Adrian A Smith, eds, *Unfree Labour? Struggles of Migrant and Immigrant Workers in Canada* (Oakland: PM Press, 2016) [*Unfree Labour?*]; Fay Faraday, “Profiting from the Precarious: How recruitment practices exploit migrant workers” (2014), Metcalf Foundation, online: <https://perma.cc/4FN5-G89R>.

⁸⁵ See for example, Francisco J Villegas and Janelle Brady, eds, *Critical Schooling: Transformative Theory and Practice* (Cham: Palgrave Macmillan, 2019); Craig Fortier, “No One Is Illegal Movements in Canada and the Negotiation of Counter-national and Anti-colonial Struggles from within the Nation-State” in Luin Goldring and Patricia Landolt, *Producing and Negotiating Non-Citizenship: Precarious Legal Status in Canada* (Toronto: University of Toronto Press, 2013) at 274-290.

⁸⁶ For instance, see Mercier, et al, *supra* note 29 as well as scoping literature reviews in the field such as Lilian Magalhaes, Christine Carrasco, and Denise Gastaldo, “Undocumented Migrants in Canada: A Scope Literature Review on Health, Access to Services, and Working Conditions” (2010) 12 *Journal of Immigrant and Minority Health* 132; Lisa Seto Nielsen, et al, “A Scoping Review of Undocumented Immigrants and Palliative Care: Implications for the Canadian Context” (2019) 21 *Journal of Immigrant and Minority Health* 1394.

Shifting from a static descriptor of ‘undocumented’ to a process descriptor of ‘status-exclusion’ assists us in developing a clearer framework for how people navigate different immigration statuses to secure or avoid losing rights and protections. Under the doctrine of sovereign migration control that emerged in the late 19th and early 20th century⁸⁷ (in which the nation-state grants itself nearly unfettered power to determine who is allowed into nationalized territory and on what terms as a fundamental element of national sovereignty) immigration status has become the key determinant to what Hannah Arendt characterizes as “the right to have rights”⁸⁸ – a meta-right that gatekeeps other legal rights and freedoms within nationalized territory.

Immigration and citizenship status within nation-state polities are sharply hierarchal and inequitably distributed – a key technology in producing differential personhood and rights. Figure 1 below graphically represents this hierarchal system as an immigration status pyramid:

⁸⁷ Karin de Vries and Thomas Spijkerboer, “Race and the regulation of international migration. The ongoing impact of colonialism in the case law of The European Court of Human Rights” (2021) 39:4 Netherlands Quarterly of Human Rights 291.

⁸⁸ Hannah Arendt, *The Origins of Totalitarianism* (New York: Schocken Books, 1951) at 296.

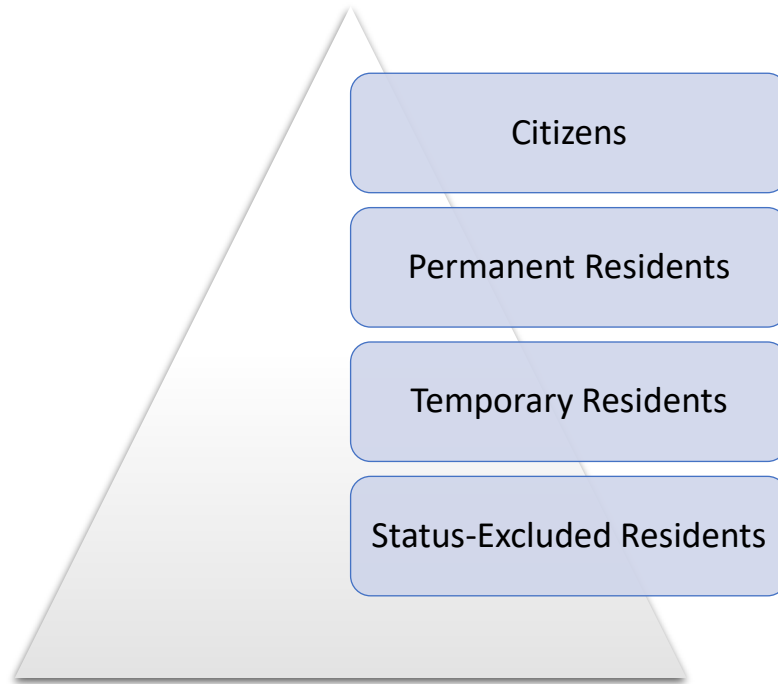


Figure 1: Immigration Status Pyramid

At the apex of the hierarchy are citizens, who are given the largest set of rights, entitlements, and protections by the Canadian state. Citizenship secures eligibility for social welfare, income supports, public services, and political rights that shape one's bargaining power in the labour market. Further, citizenship functions as a labour-market boundary that protects the wages and working conditions of insider workers vis-à-vis outsider workers.⁸⁹ Finally, citizenship behaves as a type of inherited property⁹⁰ that helps stabilize access to territory, mobility, and economic opportunity as opposed to non-citizens who typically lack similar security and must navigate areas of social life under heightened duress.

The second tier consists of permanent residents (PRs). They are given most of the rights, entitlements, and protections that citizens have, with important exclusions from the right to vote,

⁸⁹ Sharma, *Home Economics*, *supra* note 55 at 58, 131-132, 162.

⁹⁰ See Ayelet Shachar, *The Birthright Lottery: Citizenship and Global Inequality* (Cambridge: Harvard University Press, 2009).

hold political office, and eligibility for a Canadian passport. The disenfranchisement of PRs (and below) despite their physical presence in nationalized territory is not merely a democratic deficit, but a structural mechanism that reproduces marginalization and exploitation. Their exclusion from the electorate ensures that laws governing them are made without them and often against their interests. PR status is also very contingent and can be lost in a variety of ways including, *inter alia*: criminal convictions, not fulfilling physical residency requirements, misrepresentation, and cessation of refugee protection.⁹¹

The third tier of the pyramid is occupied by temporary residents (TRs), which has expanded significantly in both absolute numbers and complexity of programs since the 1970s as the prior default of PR on arrival has been steadily displaced by prolonged (and in some cases permanent) stints of temporary status⁹² in what some scholars call “two-step immigration”.⁹³ Temporary status is even more precarious than permanent residency and encompasses a wide range of different programs (e.g. study visas, temporary work permits, temporary residency visas, visitor visas, refugee claimant status) with distinct bundles of rights and conditions, including the rights – or lack thereof – to work, study, move, or avail oneself of social and health services. The recurring struggle to acquire, renew, and not lose TR often creates a tremendous administrative and psychological burden that can compound into bureaucratic violence, particularly for those who are in prolonged periods of precarity.⁹⁴ Though there are socioeconomically well-off TRs who experience material security, mobility, and easier access to PR and family reunification (such as investor, managerial, diplomatic, and ‘high-skilled’ worker permit holders – many of whom have employment packages that also cover healthcare and other add-ons), for working class TRs, prolonged temporary status results in intersecting legal, economic, and political precarity.

Statistics Canada has administratively defined migrants with temporary status as ‘Non-Permanent Residents’ (NPRs). By summer 2025, the number of NPRs in Canada exceeded three

⁹¹ *IRPA*, *supra* note 76 at ss 28, 33-41.

⁹² Sarah Marsden, “The New Precariousness: Temporary Migrants and the Law in Canada” (2012) 27:2 *Canadian Journal of Law and Society* 209.

⁹³ Catherine Schmidt, et al, “Navigating bureaucratic violence in Canada’s two-step immigration system” (2023) 49:19 *Journal of Ethnic and Migration Studies* 4887.

⁹⁴ *Ibid* at 4889.

million.⁹⁵ These NPRs align most closely to the racialized idea of the ‘sojourner’ – a temporary resident who is out of place and is expected to leave within due course. When the sojourner has this label imposed on them (whether socially or legally) but does not conform to expectations of leaving, it justifies state intervention and if necessary, state violence, to enforce these expectations. As Robert S Chang writes:

This is especially the case if she does not leave, because the sojourner turns out not to be so temporary. Of course, she is no longer a sojourner then, but what marks the point at which a sojourner becomes an immigrant? The label sojourner may mark the intention of the person who plans to return to her country of origin; or it may reflect the wishful thinking of the host country who wishes such a return. Perhaps the host country uses the label as a way to diminish or deflect claims that the sojourner may make upon it.⁹⁶

Finally, at the very bottom of the status pyramid are status-excluded individuals, who in addition to being almost completely excluded from legal rights, entitlements, and protections, are constantly navigating through the risk of identification and deportation by border enforcement authorities. Status-excluded individuals may fall in and out of a variety of different statuses vis-à-vis the Canadian state. As theorized by Luin Goldring and Patricia Landolt, the concept of precarious legal status trajectories (PLSTs) recognizes “changes in legal status as complex social processes that involve redrawing contested boundaries of membership and access through bordering.”⁹⁷ This trajectory-based approach can be contrasted to common “single legal status transition” approaches to immigration and social inequality research which have been criticized for truncating status histories, focusing narrowly on successful status regularization, homogenizing status and illegalization, and overlooking the importance of non-state actors and the political economy behind immigration policy change.⁹⁸

⁹⁵ Statistics Canada, “Table 17-10-0121-01: Estimates of the number of non-permanent residents by type, quarterly” (last accessed 11 November 2025), online: <https://tinyurl.com/tawv2dcp>.

⁹⁶ Robert S Chang, “Migrations, Citizens and Latinas/os: The Sojourner’s Truth and Other Stories” (2003) 55:1 Florida Law Review 479 at 481.

⁹⁷ Luin Goldring and Patricia Landolt, “From illegalised migrant toward permanent resident: assembling precarious legal status trajectories and differential inclusion in Canada” (2022) 48:1 Journal of Ethnic and Migration Studies 33 at 34.

⁹⁸ *Ibid.*

PLSTs thus take account of the fact that migrant status-exclusion and precarity may vary in terms of timing, modality, and geographic and institutional space. These trajectories may include a multitude of status transitions as individuals “navigate the socio-legal landscape that includes policies, institutions, and actors.”⁹⁹ Status-exclusion (or put another way, the process of being funneled into the bottom rung of the immigration status pyramid) can therefore be understood as one particular condition among many potential experiences of status-precarity that may change in complex and multivariate ways.

Conceptually, PLSTs encompass indefinite and unpredictable periods of living with temporary authorized and/or unauthorized status; discontinuous and variable access to formal and substantive employment, entitlements, social services and protections; the possibility of multiple attempts and the potential rejection of applications to transition to secure status; and the monetary and social costs involved in the trial-and-error strategies of migrants trying to improve, uphold, or defend from losing, their legal status.¹⁰⁰ Indeed all of these experiences are reflected in various ways among the trajectories of current and former status-excluded youth interviewed by the author.

Further, for Goldring and Landolt, the temporal and directional axes of PLSTs can be situated within a ‘chutes-and-ladders’ framework of legal status navigation:

The game metaphor describes a ‘complex, multi-entry and multi-directional set of legal status trajectories and negotiations’ that takes into account state policies in shaping but not determining migrants’ ability to remain present in a jurisdiction or legal status category and to access public resources and protections. Precarious status migrants and a range of institutional and social actors engage in negotiations regarding dynamic conditionalities of presence and access. The chutes-and-ladders framework posits that after entry, migrants may experience a range of chutes and ladders as they navigate the sociolegal landscape that includes policies, institutions, and actors.

⁹⁹ *Ibid* at 36.

¹⁰⁰ *Ibid* at 33-34.

When visitors ‘overstay’, they experience a chute from which there may be more than one ‘ladder’ leading to secure status. To pursue a particular ladder and trajectory, migrants gather information and make applications; they may also receive advice and direction from others. All ladders include the possibility of a chute, thus ladders can legalise and illegalise.¹⁰¹

This chutes-and-ladders model, when integrated with the previous immigration status pyramid (see Figure 2 below), can help steer us towards a law and political economy analysis of the terrain of politics, institutions, and actors that migrants must navigate in Canada to survive with precarious status. Such an orientation is particularly important given the broad proliferation of non-immigrant (TR and status-excluded) legal conditions that characterize contemporary neoliberal immigration law.¹⁰² It also helps us understand and identify the most common chutes and ladders for racialized, working-class migrants from Global South countries who are most likely to be excluded from status, which in turn help us shed light on the specific forces that structure status-excluded labour through immigration law and policy.

¹⁰¹ *Ibid* at 36.

¹⁰² Rupaleem Bhuyan, et al, “Branding ‘Canadian Experience’ in Immigration Policy: Nation Building in a Neoliberal Era” (2017) 18 *International Migration & Integration* 47.

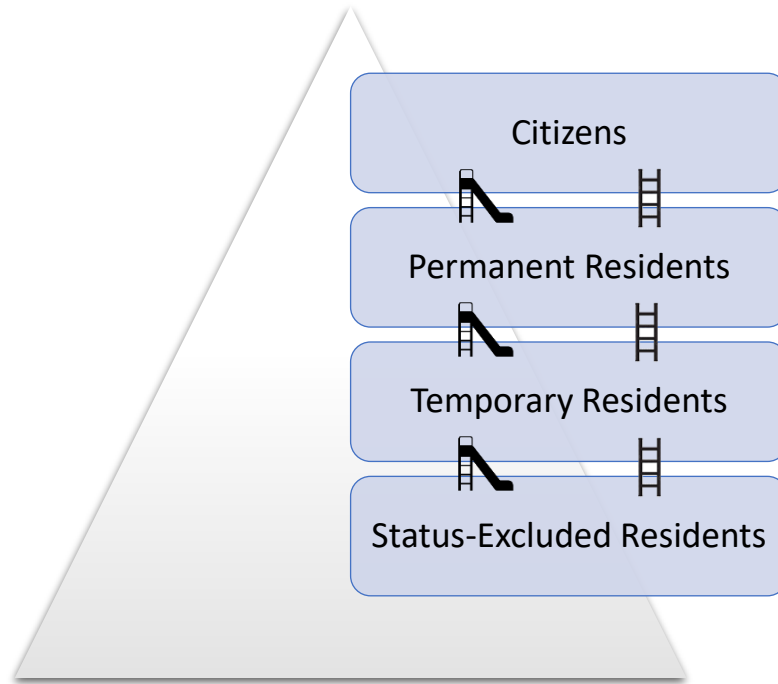


Figure 2: Immigration Status Pyramid with Chutes-and-Ladders

It should be noted at the outset that above figure is oversimplified. For instance, chutes and ladders can skip multiple tiers; there are important differences in rights within tiers that can be subject to proceedings and contestations; there are multiple types of chutes and ladders that may be available at any time, etc. However, many important questions can naturally flow from thinking through PLSTs from a chutes-and-ladders ‘board game’ perspective. Where do migrants who experience status-exclusion *start* on the board? What are the most common chutes by which they may *lose* their status? What are the most common ladders by which they may *gain* status? How easy is it to lose or gain status for particular groups of people? How many common chutes and ladders are there, how far do they take people down or up, and what factors account for changes on the board? Who or what helps or hinders migrants in navigating the board? These are some of the questions that animated my semi-structured interviews with current and prior status-excluded young people (age 18-35), the results of which I have organized into themes throughout Chapter Three to shed narrative detail on the everyday experiences of navigating and resisting the indignities and perils of status-exclusion.

As argued by Nandita Sharma, the nationalization of state sovereignty is institutionalized by controls limiting both *entry* and *rights* of those classified by the state as migrants.¹⁰³ Controls limiting *rights* determine what formal resources and powers the migrant has and whether they can move up or down on the rights hierarchy within nationalized space. In contrast, controls limiting *entry* determine if a migrant can even get on the board (that is, enter nationalized space) in the first place and where they may start on the board. This is an impediment that migrants to Canada face before even entering nationalized territory, which is structured by pre-existing global passport and visa inequalities, the terrain of immigration programs and avenues that are available, the requirements of those programs, the physical (and digital) bordering and surveillance technologies faced by migrants, knowledge of application processes, financial resources, and other factors.

Some privileged migrants can enter nationalized space without a visa or acquire PR on arrival and start moving up the chutes-and-ladders board with ease. For others, even ‘getting on to the board’ is a perilous and potentially life-threatening process. Those who take irregular or unauthorized crossings into Canadian nationalized space usually do so because they are excluded *a priori* from avenues for valid status.¹⁰⁴ Thus, these individuals are status-excluded and start at the bottom of the pyramid *at the very beginning* of their precarious legal status trajectory.

In addition, nation-states themselves are highly unequal in terms of wealth, capital, land, natural resources, infrastructure, social and health services, governance, and environmental quality. These international inequalities between nation-states are heavily shaped by histories of imperialism and colonialism. As scholars such as Nadine El-Enany have argued, one key object of immigration law for wealthy Global North countries is to obscure the way in which their wealth was made possible through transnational colonial and imperial economic relations while obstructing the vast majority of racialized Global South peoples from accessing the fruits of Global North resources and labour markets.¹⁰⁵

¹⁰³ Sharma, *Home Rule*, *supra* note 103 at 5.

¹⁰⁴ For a treatment of Black migrants making unauthorized border crossings between the US-Canada border, see Robyn Maynard, “Black Life and Death across the U.S.-Canada Border: Border Violence, Black Fugitive Belonging, and a Turtle Island View of Black Liberation” (2019) 5:1-2 *Critical Ethnic Studies* 124.

¹⁰⁵ Nadine El-Enany, *(b)ordering Britain: Law, Race and Empire* (Manchester: Manchester University Press, 2020).

These colonial and imperial processes of wealth accumulation, which result in disparity between workers in wealthier countries vis-à-vis workers in the periphery, ‘bribes’ Global North workers into cross-class nationalist anti-migrant politics.¹⁰⁶ As such, Global South migrant workers fleeing poverty and seeking livelihood and security in Global North countries end up trapped in “regimes of statist recognition seeking the benevolent bestowal of neocolonial inclusion” in countries that conditionally tolerate their presence for labour needs or evict them when they are deemed disposable and/or culturally undesirable.¹⁰⁷ These wealth and power disparities are also reflected in disparities in (un)freedom of movement between national passports; with passports from powerful Global North countries (such as Canada) allowing travel to 190+ other countries visa-free whereas poorer Global South passports (such as Pakistan or Afghanistan) only allowing travel to less than 40 countries visa-free (and of those, exclusively other Global South countries).¹⁰⁸

In terms of conceptualization then, the chutes-and-ladders status pyramid must be adjusted to account for the fact that migrants are potentially navigating multiple pyramids at once (or trying to ‘jump’ between different national game boards) and that different national status pyramids represent highly disparate social, political, economic, and labour conditions. Migrants are also highly unequal in power when navigating these interrelated status pyramids. On one end of the spectrum are wealthy cosmopolitan jetsetters, who may carry multiple citizenships and residency statuses in different countries (including many wealthy Global North countries) all at once.¹⁰⁹ On the other end of the spectrum are stateless individuals, who do not have citizenship in any country whatsoever¹¹⁰ and may find themselves desperately trying to grab on to any recognition on any pyramid of nationalized space that they find themselves in. Figure 3 below graphically represents a migrant who may be a citizen in their home country (left pyramid), but

¹⁰⁶ See Immanuel Ness, *Migration as Economic Imperialism: How International Labour Mobility Undermines Economic Development in Poor Countries* (Cambridge: Polity, 2023).

¹⁰⁷ Venkatesh, *supra* note 18 at 23.

¹⁰⁸ Henley & Partners, “The Henley Passport Index: 2025 Global Passport Ranking” (last accessed 28 May 2025), online: <https://perma.cc/B5AF-2EQQ>.

¹⁰⁹ See Ayelet Shachar, “Unequal access: wealth as barrier and accelerator to citizenship” (2021) 25:4 *Citizenship Studies* 543.

¹¹⁰ Jamie Chai Yun Liew, *Ghost Citizens: Decolonial Apparitions of Stateless, Foreign and Wayward Figures in Law* (Halifax and Winnipeg: Fernwood Publishing, 2024) at 3.

in migrating to another country for a better future, finds themselves funneled into status-exclusion (right pyramid).



Figure 3: Multiple Immigration Status Pyramids with Chutes-and-Ladders

Finally, this dissertation conceptualizes status-excluded labour as a particular type of ‘unfree migrant labour’.¹¹¹ I concur with Choudry and Smith’s theorization of unfree migrant labour as involving the use of “political and legal compulsion specifically rooted in heavily restrictive citizenship and migratory status” to “exact labour power”.¹¹² Unfree labour in this sense requires something beyond the “dull compulsion of economic relations” and “serves to recognize

¹¹¹ There are robust theoretical and historical debates around unfree labour more broadly. In terms of legal analysis, Douglas Hay and Paul Craven argue that ‘unfree’ labour within the British Empire is best understood as a legal and practical spectrum produced by the master-and-servant legal regime that employment relations across Britain and its vast colonies. This included not only chattel slavery, convict labour, and apprenticeship, but also wage/contract labour made coercive by criminal law, registration and administrative systems, and indenture systems. In their work they show that English master-and-servant law (and its colonial offshoots) routinely criminalised breaches of employment contracts and empowered magistrates as well as private employers to coerce, punish and immobilise workers the provide for performance – thereby creating many varieties of unfreedom across the empire. In general, the authors argue that the “clear aim of much master and servant legislation was to make labor supply and performance more reliable and, especially in the case of migrant labor, cheaper than it could be obtained otherwise, if it could be obtained at all.” See Douglas Hay and Paul Craven, “Introduction” in *Masters, Servants, and Magistrates in Britain and the Empire, 1562-1955* (Chapel Hill & London: University of North Carolina, 2004) at 26.

¹¹² Aziz Choudry and Adrian A Smith, “Introduction: Struggling Against Unfree Labour” in *Unfree Labour?*, *supra* note 84 at 8.

the historically entrenched use of politico-legal compulsion to hyperexploit and pacify labour”.¹¹³ This concept of unfree migrant labour in Canada has most frequently been applied to TFWPs¹¹⁴, but particularly the SAWP, which is characterized by a host of immobilizing and coercive restrictions, including *inter alia*: limited residency duration leading to forced circulation, permanent denial of PR status, circumscribed labour market and geographic mobility through exclusive ties to a specific employer within a locale, denial of family reunification, and constant threat of repatriation and blacklisting, including for reasons of illness, injury, or collective organizing.¹¹⁵ Scholarship that adopts this framework recognizes “migratory status [as] the fundamental politico-legal mechanism of [migrant] labour unfreedom.”¹¹⁶

I argue then that the precarious legal status and employment conditions of status-excluded workers are actively produced by state and capital in working arrangements that can best be characterized as structurally *unfree*. In this sense, “unfreedom” is not an intrinsic attribute of migrant workers themselves, or of the jobs they do, but rather describes relationships that are produced and institutionalized in part through the operation of the law.¹¹⁷ Notably, a *lack* of (or exclusion from) formal migratory status can also be determinative of the coercive conditions of migrant labour unfreedom. In almost all areas of social life, whether it be employment, education, healthcare, or identification, status-exclusion operates as an impediment that greatly reduces access to services and bargaining power, while increasing risk of detection, detention, and deportation whenever one attempts to access rights and protections. The very act of seeking livelihood through waged labour is illegalized and the constant risk of deportation if reported results in severe politico-legal conditions of hyperexploitation and labour discipline.

Yet status-excluded labour is more challenging to research and theorize because it is not a category produced by a discrete immigration program or set of programs. As a result, there is a

¹¹³ *Ibid.*

¹¹⁴ For a survey of unfree labour literature’s application to temporary migrant worker programs more broadly, see Kendra Strauss and Siobhán McGrath, “Temporary Migration, Precarious Employment and Unfree Labour Relations: Exploring the ‘Continuum of Exploitation’ in Canada’s Temporary Foreign Worker Program” (2017) 78 *Geoforum* 199.

¹¹⁵ Adrian A Smith, “Troubling ‘Project Canada’: the Caribbean and the Making of ‘Unfree Migrant Labor’” (2015) 40:2 *Canadian Journal of Latin American and Caribbean Studies* 274.

¹¹⁶ Choudry and Smith, *supra* note 84 at 9.

¹¹⁷ Strauss and McGrath, *supra* note 114 at 200.

diversity of trajectories that can lead to (and correspondingly, out of) unfree status-excluded labour conditions. Therefore, to understand the processes that produce and structure unfree status-excluded labour, one must study the operation of the immigration system *as a whole*, rather than just training attention on any specific migrant work authorization programs. This can be particularly difficult however, given the tendency of legal liberalism to atomize case-by-case adjudication based on personal assessments of merit¹¹⁸, alongside an enormous proliferation of distinct immigrant and non-immigrant categories and streams which has made the immigration system “increasingly complex to evaluate” and severely obfuscated data collection and analysis.¹¹⁹

IV. Rethinking Canadian migration law: colonial (im)mobilities and xenoracial capitalism

That Canadian migration governance has been primarily concerned with expanding and consolidating the project of white European settler colonialism in the Northern Americas (which requires Indigenous land for territorial expansion and development of extractive economies and settler agriculture) can be gleaned from even a cursory glance at the history of its development. At the same time, it was in 1910 that Canada’s *Immigration Act* first codified ‘race’ in legislation as an explicit category by which to restrict or exclude immigrants.¹²⁰ Yet race was not merely about restriction or exclusion in immigration law but rather a difference-making hierarchy that could inform the gatekeeping of white nationalized space. Between 1910 and 1914, a staggering 600,000 people immigrated to Canada (then a country of about seven million people) from just one source country – the United Kingdom.¹²¹ In anticipation for a similar post-WWI influx, in

¹¹⁸ For a critique of the ‘justice gap’ that emerges with an individualizing of rights assessments that upholds structural precarity for migrant workers, see Sarah Marsden, “Migrant Workers, Rights, and the Rule of Law: Responding to the Justice Gap” (2019) 42:1 Dalhousie Law Journal 123.

¹¹⁹ Ian O’Donnell and Mikal Skuterud, “The Transformation of Canada’s Temporary Foreign Worker Program” (2021) 39 Canadian Labour Economics Forum Working Paper Series at 4. Similar critiques of increasing system complexity and data discontinuity as mechanisms to diminish gains in migrant justice are made by Fay Faraday in respect to the 2014 division of non-immigrant labour migration programs into the TFWP and IMP. Fay Faraday, “Canada’s Choice: Decent work or entrenched exploitation for Canada’s migrant workers” (June 2016) at 10-16, Metcalf Foundation, online: <https://perma.cc/4NJL-6RCT>.

¹²⁰ *An Act respecting Immigration*, 1910, SC 9-10 Edward VII, c 27 at s 38(c) [1910 *Immigration Act*].

¹²¹ Rebecca Mancuso, “‘This is our work’: The Women’s Division of the Canadian Department of Immigration and Colonization, 1919-1938” (1999) McGill Thesis at 62, online: <https://perma.cc/U85L-8BFW>.

1917, the Canadian federal department that had carriage over immigration was aptly renamed the Department of Immigration and Colonization, a name which stuck until 1936. The Department of Immigration and Colonization was organized with three regional Canadian districts and several European offices. It also managed its own publicity bureau, which put out materials, publications, and exhibitions primarily to attract British immigrants to populate the young settler nation-state.¹²²

Despite this clear colonial history, the standard narrative of Canada as a “nation of immigrants” or a “mosaic”¹²³ props up a distorted, yet seductive fairytale of the development of Canadian migration law as a progressive and linear, if sometimes volatile, journey from a racially exclusionary conception of nation to a modern, multicultural liberal democracy. The acceptance of such a framework has the spellbinding effect of diminishing or even rendering entirely invisible the fundamental entanglements of Canadian migration law with settler colonialism, race, imperialism, and capitalism – an epistemological phenomenon of institutional forgetting that postcolonial scholar Gayatri Spivak calls “sanctioned ignorance”.¹²⁴

Reckoning with these entanglements also allows scholars to bring into view more comprehensive histories of Canadian migration governance that attend to bordering processes as key sites for the material and ideological structuring of racialized capital accumulation and labour stratification, as well as key sites of contestation and resistance. Such an approach must start with the fundamental recognition of Canada as a settler colonial nation-state project organized in a way that structurally displaces, divides, and seeks to eliminate Indigenous peoples (as distinct peoples with the right to self-determination) in order to acquire their lands based on exclusive settler sovereignty.¹²⁵ As Angela Riley and Kristen Carpenter write, “[l]egal analysis often disregards the fact that the arrival and expansion of the Europeans displaced Indigenous

¹²² *Ibid* at 62-63.

¹²³ See for instance, Ninette Kelley and Michael Trebilcock, *The Making of the Mosaic: A History of Canadian Immigration Policy* (Toronto: University of Toronto Press, 2010) at 4. In the introduction, the authors remark that “[i]t is trite to observe that Canada is a country of immigrants, as is indeed the case for most of the countries of the so-called New World.”

¹²⁴ Gayatri Spivak, *A Critique of Postcolonial Reason: Toward a History of the Vanishing Present* (Boston: Harvard University Press, 1999).

¹²⁵ Wolfe, *supra* note 8.

Peoples' own laws, customs, and traditions with respect to territory and movement.”¹²⁶ This dissertation thus attempts to challenge sanctioned ignorance and respond to the historical failure of migration studies to “engage with past and ongoing forms of (neo)-colonialism and imperialism which shape mobility today” in order to ensure “that our understanding of contemporary migration is made more historically accurate and analytically rigorous”.¹²⁷

One way to do this is by revisiting the history of Canadian migration law by thinking through ‘colonial (im)mobilities’ to synergize insights from the literature on racial capitalism with the literature on migration and colonialism. ‘Colonial’ in this context captures how settler colonial processes on Turtle Island¹²⁸ are one manifestation of broader *global* colonial processes and laws governing freedom of movement for colonial capital accumulation – processes that ought not to be siloed but rather understood as intimately connected and transnational in scope. The notion of ‘foreignness’ that justifies the doctrine of sovereign migration control looks increasingly untenable when set against centuries of colonial extraction, forced mobility, and global networks of settler and imperial power that long made the world intimately connected and deeply unequal. Claiming some people are inherently ‘alien’ ignores the fact that colonial laws and borders were designed precisely to circulate capital and control land, making the idea of the truly ‘foreign’ a legal and bureaucratic fiction.

‘(Im)mobilities’ point to how migration law is frequently used as a sorting mechanism both to actively facilitate the migration for settlement of certain bodies while fixing other bodies in place (‘mobilizing to immobilize’¹²⁹) for the purposes of control, exploitation, and/or expulsion.¹³⁰ Indeed, once the analytical point of departure begins with the understanding of the

¹²⁶ Angela R Riley and Kristen A Carpenter, “Decolonizing Indigenous Migration” (2021) 109 California Law Review 63 at 74.

¹²⁷ Lucy Mayblin and Joe Turner, *Migration Studies and Colonialism* (Cambridge: Polity Press, 2021) at 195.

¹²⁸ Turtle Island is a name for North America, stemming from a variety of Indigenous oral histories that depict a turtle holding the world on its back. See Amanda Robinson, “Turtle Island” (6 November 2018), The Canadian Encyclopedia, online: <https://perma.cc/8CAW-4HHE>.

¹²⁹ Adrian A Smith, “The Bunk House Rules: Housing Migrant Labour in Ontario” (2015) Osgoode Legal Studies Research Paper Series 98 at 9, citing Prabhu P Mohapatra, “Assam and the West Indies, 1860-1920: Immobilizing Plantation Labour” at 455 in Paul Hay and Douglas Craven, eds, *Masters, Servants, and Magistrates in Britain and the Empire, 1562-1955* (Chapel Hill & London: University of North Carolina, 2004).

¹³⁰ On this point, colonial (im)mobilities bear similarities to the concept of border imperialism, which Harsha Walia defines as “characterized by the entrenchment and reentrenchment of controls against migrants, who are displaced as a result of the violences of capitalism and empire, and subsequently forced into precarious labor as a result of state

Canadian project as a racialized settler colonial nation-state formation, one is better able to situate the historical connections between “patterns of Indigenous decimation and dispossession, racialized labor recruitment and exploitation, immigrant restriction, and internment [as] evolving elements that tie Canada and the United States to a racial destiny shared by Australia, New Zealand, and South Africa.”¹³¹

As introduced earlier, the analytic of xenoracial capitalism pays special attention to the role of racialization in the making and remaking of Canadian national identity and migration law, particularly in the way that racialization is deployed to facilitate access for capital and goods across borders while *simultaneously* producing and disciplining pools of predominately racialized labour from formerly colonized regions in service of capital accumulation. It serves as a reminder that racial dynamics in the context of Canadian migration law are a legacy of centuries of global colonial rule and state-sanctioned wealth extraction from most of the non-European world to colonial (and settler colonial) metropolises.¹³² Tracing these patterns of colonial and neocolonial wealth transfer is crucial for understanding how certain communities (including status-excluded communities) continue to be peripherized both within and outside the territorial delineations of the Global North.

Racial capitalism is a term originating from anti-capitalist struggles against South African apartheid, but subsequently popularized and further theorized through the scholarship of political philosopher Cedric Robinson in his groundbreaking work: *Black Marxism: The Making of the Black Radical Tradition*.¹³³ Robinson’s *Black Marxism* was, in part, a critique of what was perceived to be traditional Marxism’s failure to adequately account for the racial nature of capitalism – particularly how racial ideas were a means by which class identities were imagined and labour differentially coded, managed, and legitimated.¹³⁴ Similarly then, one might think of

illegalization and systemic social hierarchies.” Walia, *Undoing Border Imperialism*, *supra* note 41 at 38. See also work by Choudry and Smith, *supra* note 84; Venkatesh, *supra* note 18.

¹³¹ Iyko Day, *Alien Capital: Asian Racialization and the Logic of Settler Colonial Capitalism* (North Carolina: Duke University Press, 2016) at 17 [*Alien Capital*].

¹³² Walia, *Undoing Border Imperialism*, *supra* note 41.

¹³³ Robinson, *supra* note 33.

¹³⁴ Arun Kundnani, “What is racial capitalism?” (23 October 2020), Kundnani.org, online: <https://perma.cc/MGA2-HQQQ>.

xenoracism as a further intervention to account for the work of race in how ideas of citizen, immigrant, foreigner, and various immigration-related statuses are differentially coded, managed, and legitimated.

The literature of racial capitalism reflects both a *historical* lens as well as a *structural* lens on the role of racialization in capitalist relations. Historically, Robinson argued that capitalism had emerged from feudalism, not as a radical break, but as inheriting many of its pre-existing social and economic practices, including pre-existing forms of intra-European ‘racialisms’ or ‘racial sensibilities’. In this account, “the racialization of the proletariat and the invention of whiteness began within Europe itself, long before Europe's modern encounter with African and New World labor.”¹³⁵ But while intra-European racialisms might have predated the age of European colonialism, Robinson’s analysis makes clear that it was through the brutal colonization of the Americas and the violent and dehumanizing procurement of labouring bodies from Africa during the transition from mercantile to industrial capitalism¹³⁶ which produced “a modern world system of racial capitalism dependent on slavery, violence, imperialism and genocide.”¹³⁷ In fact, Robinson conceived of “at least four distinct moments that must be apprehended in European racialism”:

1. The racial ordering of European society from its formative period, which extends into the medieval and feudal ages as “blood” and racial beliefs and legends.
2. The Islamic (i.e. Arab, Persian, Turkish, and African) domination of Mediterranean civilization and the consequent retarding of European social and cultural life: the Dark Ages.
3. The incorporation of African, Asian, and peoples of the New World into the world system emerging from late feudalism and merchant capitalism.
4. The dialectic of colonialism, plantocratic slavery, and resistance from the sixteenth century forward, and the formations of industrial labor and labor reserves.¹³⁸

¹³⁵ Robin DG Kelley, “Foreword” in Robinson, *supra* note 33 at xii.

¹³⁶ Robinson, *supra* note 33 at 116.

¹³⁷ Robin DG Kelley, “What Did Cedric Robinson Mean by Racial Capitalism?” (12 January 2017), Boston Review, online: <https://perma.cc/Q8C6-G2BC?type=image>.

¹³⁸ Robinson, *supra* note 33 at 67.

As Robinson sets out in the context of pre-industrial revolution Britain, lower classes of workers were usually brought in from territories in Europe outside of the nations in which they worked, with sociocultural differences exaggerated and essentialized. For example, the racial construction of the Irish was produced through their long experience under British colonization and reified by Anglo-Saxon chauvinism, crystallizing into “a racial ideology shared across class lines that allowed the English bourgeoisie to rationalize low wages and mistreatment for the Irish.”¹³⁹ Given that “the Irish worker...descended from an inferior race, so his English employers believed, the cheap market value of his labor was but its most rational form.”¹⁴⁰ Robinson eloquently encapsulated the mobilization and intellectual reification of these differentiating ideologies on the working classes in this way:

The dialectic of proletarianization disciplined the working classes to the importance of distinctions: between ethnics and nationalities; between skilled and unskilled workers; and, as we shall see later in even more dramatic terms, between races. The persistence and creation of such oppositions within the working classes were a critical aspect of the triumph of capitalism in the nineteenth century.¹⁴¹

The historical treatment of intra-European racialisms in *Black Marxism* foregrounds the contingent, fluid, and context-specific nature of racial identity, power, and violence at any particular time and place. Within Canadian immigration history then, these older racial scripts help us explain the sticky associations that led to the discrimination and subordination of ‘othered’ and ‘non-preferred’ European groups under Anglo-Saxon chauvinism (e.g. Irish, Italians, Slavs, European Jews) during periods where non-European immigration was excluded and choked off. It also provides us tools by which to examine subsequent efforts of these groups for recognition into Canadian whiteness and national identity constructed *in opposition* to the reopening of non-white Global South immigration beginning in the 1950s and 60s.

The intervention of xenoracial capitalism is necessary vis-à-vis racial capitalism because immigration law does not simply reproduce racism in ways that align with capitalist social

¹³⁹ Kelley, *supra* note 117 note 26 at xiii.

¹⁴⁰ Robinson, *supra* note 33 at 39.

¹⁴¹ *Ibid* at 42.

relations. Rather, it produces a sociolegally distinct regime (with its own distinct vocabulary) of differential personhood grounded in foreignness, bordering, and conditional belonging that cannot be fully captured by racism alone. While racial capitalism explains how capitalist accumulation relies on the production and exploitation of racialized groups¹⁴², xenoracial capitalism highlights how contemporary nation-states manufacture hierarchies of migrant/non-migrant, citizen/non-citizen, and legal/illegal status that operate alongside and through race but in a way that is not reducible to it. Immigration law also creates its own coercive infrastructure – deportability, temporary status, sponsorship dependence, credential devaluation, exclusion from social rights – which produces specific conditions that transform migrants into a uniquely exploitable labour category.

A historical xenoracial capitalist lens also allows us to attend to important questions such as the role of migration law in facilitating settler expropriation and enclosure of Indigenous lands, its role in creating ideologically and materially separate labour pools that divert ‘Canadian’ workers away from solidarity with ‘migrant’ or ‘foreign’ workers within Canada and towards nationalist protectionism, and the contemporary ways in which the racialized structuring and segmentation of labour through migration law advances the goals of capitalist accumulation while simultaneously justifying current colonially-delineated mobility divides.

On the structural side of the coin, Carmen Gonzalez and Athena Mutua write that the two key elements of racial capitalism are *profit-making* and *race-making*. Profit-making can be defined as “capturing, as well as securing and expanding, surplus value, economic profits or wealth, and political power through processes of *exploitation, expropriation, and expulsion*.”¹⁴³ Race-making can be defined as “the processes by which ‘races’ and racial hierarchies are created and perpetuated, including through practices of differential dispossession, discrimination, segregation, and the creation of ‘sacrifice zones’—spaces where degraded nature, land, and humans deemed unprofitable are abandoned and left to die.”¹⁴⁴ Under racial capitalism, profit-making and race-making are mutually constitutive. Further, racial capitalism suggests that the

¹⁴² Robinson, *supra* note 33 at 82.

¹⁴³ Carmen G Gonzalez and Athena D Mutua, “Mapping Racial Capitalism: Implications for Law” (2022) 2 *Journal of Law and Political Economy* 127 at 128.

¹⁴⁴ *Ibid.*

global system of capitalist relations “requires the ongoing confiscation of the unpaid or underpaid labor of subordinated groups, the ongoing plunder of their resources (including the lands they occupy), and the ongoing pillage of nature...[which] is rationalized through constructs of race and gender, among other social identities.”¹⁴⁵

Combining both the historical and structural lenses reveals the ways in which Canadian migration law and policy was forged in a political and economic context that attempted to facilitate key processes of land expropriation and labour exploitation while using expulsion to maintain demographic stability for the Canadian nationalist project. If *colonial expropriation and dispossession* of land and resources was the primary mechanism by which logics of racial capitalism impacted Indigenous peoples in Canada, then *racialized labour exploitation and legal disenfranchisement* under the threat of *expulsion* was the primary mechanism by which it impacted negatively racialized migrant and status-excluded workers by imposing and naturalizing conditions of legal and material segregation and subordination.

Gonzalez and Mutua also highlight the distinct role that law plays in determining labour market segmentation and unequal access to social goods. The law constructs certain labour markets as having “higher wages, better working conditions, and greater job security” while others have “lower wages, bad working conditions, and high worker turnover”.¹⁴⁶ The law also defines which workers are employees vs. contractors; which workers are excluded from employer health benefits (part-time, temporary, informal); which workers have access to collective bargaining rights, and which ones are covered by equal pay and anti-discrimination laws.¹⁴⁷ In terms of transnational labour market segmentation, Gonzalez and Mutua write:

Labor market segmentation is perhaps even more apparent on the global scale. For example, transnational corporations headquartered in the global North increasingly outsource manufacturing to the global South, often through complex chains of subcontractors and suppliers whose competition to offer the cheapest possible prices drives down the wages of workers racialized as nonwhite. This labor market segmentation maintains wage

¹⁴⁵ *Ibid* at 129.

¹⁴⁶ *Ibid* at 144.

¹⁴⁷ *Ibid*.

inequality, subjecting those at the bottom of race, gender, and other hierarchies to higher levels of exploitation than their white male counterparts in the global North.¹⁴⁸

On this point, arguably no other area of the law is more directly determinative of labour market segmentation and restrictions (or outright exclusions) on workers' rights than immigration law, whether in terms of whether one can work legally at all, wage protections, working conditions, job security, labour mobility, employment insurance, healthcare, or collective bargaining. For Vasanthi Venkatesh, these restrictions and exclusions are "achieved through a deliberate, systemized process of exemption-making"¹⁴⁹ which makes redress in most cases all but impossible. On an ideological level, it is nationalist bordering and the normalization of neo-colonial inequalities which justifies this differential treatment, curtailing solidarity and limiting potential policy changes to curtail abuses.

Colonial (im)mobilities and xenoracial capitalism therefore give us robust conceptual tools to advance our understanding of how colonial racism continues to influence who in Canada is given broad mobility rights, who is given contingent mobility rights, who is excluded entirely from status, and for what reasons and purposes. Revisiting the histories of colonial capitalism through migration control is particularly important in understanding migration law in the current era of Canadian multiculturalism, where racial power can only be legitimately exerted through the law in coded, formally race-neutral language.

For instance, a xenoracial capitalist lens helps reveal how the categories of 'migrants' and 'immigrants' have themselves been raced over time. As Canadian migration policy moved away from explicit white supremacy in the 1960s and 70s towards official policies of multiculturalism, nationalism and bordering has increasingly become the discursive field in which much of the heavy lifting of racial and gender hierarchy-making is organized and legitimated.

The creation and expansion of temporary foreign worker programs shifted the criteria of admittance into Canada from the pre-1967 categories of 'preferred races and nationalities' to

¹⁴⁸ *Ibid* at 144.

¹⁴⁹ Venkatesh, *supra* note 18 at 32.

new categories of the non-immigrant (migrant) worker. As a result, the idea of a sojourner – someone who temporarily resides in place but does not belong permanently there – is imputed as a condition of entry on groups of people to extract labour power and justify discriminatory law.¹⁵⁰ As Sharma argues, these policy shifts rely on *nationalist* practices where nationalist ideas of who belongs and who is out of place “both organizes and helps to mask racialized forms of difference that organize inequalities.”¹⁵¹ As temporary labour migration with limited prospects for permanent belonging “has become the modal means of jurisdictional mobility”¹⁵² in the 21st century, this radically reconfigures how we understand contemporary ‘Dreamers’ and status-excluded communities more broadly in what is now called Canada.

¹⁵⁰ George J Sanchez, “Race, Nation, and Culture in Recent Immigration Studies” (1999) 18:4 Journal of American Ethnic History 66 at 77.

¹⁵¹ Nandita Sharma, *Home Economics*, *supra* note 55 at 12.

¹⁵² David Cook-Martín, “Sojourners, Not Settlers: Temporary Labor Migration Since the Nineteenth Century” (2024) 50 Annual Review of Sociology 627 at 640.

Chapter Two – Xenoracial capitalism and the history of Canadian migration law

The following chapter traces Canadian immigration law across five distinct eras to show how the logics of xenoracial capitalism have developed, evolved, and been resisted over time. This *longue durée* approach provides a platform from which we can better understand contemporary developments in Canadian immigration law, including retrenchment of xenoracial capitalist logics through neoliberal reforms that structure migration in a way that allows for mass production of racialized surplus labour. This has happened most notably through expanded temporary foreign worker programs, international student work programs, and increasing numbers of status-excluded persons that make up an invisibilized, exploitable, and easily disposable labour force in Canada.

When combined with the terminology of status-exclusion, a *longue durée* approach draws into sharp focus the persistent afterlife of colonially delineated mobility – drawing a direct line from past to present uses of migration law and governance in the interest of furthering systems of xenoracial capitalism. This has significant methodological importance since the term ‘undocumented’ was not commonly used in the immigration and mobility parlance for most of Canadian history.¹ Further, it reveals how organizing for migrant justice, including for status-excluded peoples, rather than being primarily an issue of Canadian liberal human rights and humanitarianism, is a continuing manifestation of the proud and long history of transnational anti-racist and decolonial class struggle in Canada and abroad.

First, we examine the period of early colonialism in the Americas (1492-1814) to trace the evolution of the imperial right to travel in international law. As the major European colonial powers, beginning with Portugal and Spain, arrived in the Americas, it became clear that

¹ While emerging earlier in the US immigration literature, “undocumented” as a common term to refer to status-exclude migrants only appears in the Canadian immigration literature around the early 1980s. For example, see David P Hall, “Enforcement Aspects of Canadian Immigration Law: Protection of the basic Human Rights of Undocumented Migrants” (1983) 21:2 International Migration 305.

migration rights were necessary preconditions for colonial conquest, exploitation, and domination. These empires were thus interested in fashioning an incredibly broad set of colonial rights for European migrants under a muscular idea of the ‘right to travel’, violations of which would be considered acts of war and could in turn justify permanent occupation and annexation of Indigenous lands and subjugation of Indigenous peoples.

The second period examined is the pre- and post-Confederation era of Canadian immigration from 1815 to 1880 ‘when immigration was white’ – an era where the Canadian government consolidated and codified its open-door immigration policy for Europeans, particularly those of British stock, extending it to the Western frontier for colonial settlement and to consolidate national territorial expansion over Indigenous peoples and lands. However, this period also saw the beginnings of a shift to proto-bordering within the British Empire, as well as in the Americas, as slavery was gradually abolished, indentured labour regimes ascended, and the need for new technologies arose to discipline and immobilize labour.

Third is the period between 1881 and 1945 – an era characterized by the ‘Asian question’, when the first major wave of non-Europeans (Chinese railroad workers) was brought to Canada, sparking a massive white racial backlash that introduced the protection of white Canada as a core tenet of Canadian immigration policy. This era saw the direct clash between the fundamental rights of mobility and travel against the new doctrine of sovereign migration control, with the latter eventually winning out.

Fourth is the era of immigration set in motion after World War II, as Canada’s explicitly racist immigration exclusions became increasingly untenable in the face of anti-colonial and anti-racist movements around the world, an era that was marked by a transition to ‘multicultural Canada’. Yet even in this moment where anti-racism was ascendent in immigration law reform, the 1960s and 70s also saw the redeployment of sojourner racialization that would justify the construction of temporary foreign worker programs to reconcile Canadian capitalists’ need for a structurally cheapened and flexible labour force alongside formal antidiscrimination protections. Since racial exclusion was no longer politically feasible, Canadian immigration policy would shift to a system of adverse incorporation for the Global South working class.

Finally, the 1980s saw neoliberalism emerge as the dominant force in structuring migration regimes, resulting in an era of ‘racial retrenchment’ involving a significant expansion of unfree migrant labour regimes drawing from Global South countries, medical deportation, a narrowing of permanent status options for working class migrants and their families in favour of wealthy and formally educated migrants, alongside expanded surveillance, immigration detention, and paramilitarized border enforcement regimes. This remains the era of immigration in which this dissertation and its examination of status-excluded youth is currently embedded in.

I. Early colonialism in the Americas and the imperial right to travel (1492-1814)

This section examines how colonial encounters in the Americas produced an ‘imperial right to travel’ that legitimized European conquest and shaped the foundations of international law. By tracing how doctrines of sovereignty and mobility were constructed to privilege European movement while constraining Indigenous autonomy, it reveals migration law as an early technology of empire. Understanding this history helps illuminate how contemporary Canadian migration law, though having adopted nation-state ideas of sovereign migration control, continue to operate within these colonial logics of mobility and immobility.

From a theoretical lens, examining Canadian migration law and mobility control through colonial (im)mobilities and xenoracial capitalism reveals how early encounters between European and non-European peoples during the Age of Discovery shaped the intertwined development of sovereignty, imperialism, and migration governance in international law.² This changes our starting point for understanding migration and mobility to, out of, and within Canada by foregrounding and problematizing Canadian state and territorial sovereignty from the outset. In short, recognizing Canada “as settler colonial rather than immigrant, multiculturalism

² More broadly, Third World Approaches to International Law (TWAIL) scholars such as Antony Anghie have argued that the very notions of sovereignty and international law emerged and took shape out of colonial encounters between European powers and Indigenous peoples of the Americas, who were pushed to the peripheries of legal subjectivity. See Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge: Cambridge University Press, 2005).

as a deeply problematic reconciliation of difference in this context of occupation, and the resistance that is occurring to racial sovereignty is a good starting point for migration researchers.”³ To do this requires us to revisit the originating histories around the link between mobility rights, colonialism, and sovereignty in international law – a link that is rarely critically examined or directly challenged in the field of migration studies.

In particular, the question of who may enter and who may have rights in a particular country is frequently assumed to fall within the wheelhouse of sovereign discretion: that is, the absolute right of states to decide on certain areas of policy. This idea – sometimes called the “doctrine of sovereign migration control”⁴ – is frequently assumed to be a “long-standing and noncontentious element of state sovereignty.”⁵ Under one common Euro-centric origin story, the 1648 Treaty of Westphalia recognized in international law that each state had exclusive sovereignty over its territories and citizens that was to be respected by other state sovereigns. Thus, along this line of reasoning, immigration law and border security (specifically, the power to include and exclude non-citizens and to impose differential conditions on the same) traced itself back to Westphalian sovereignty as among the clearest and most self-evident manifestations of state sovereign power, with few (if any) restrictions.⁶ Accordingly, the presumption is that subsequent mechanisms of migration and border control by nation-states are merely *applications* of long-standing Westphalian doctrines of sovereignty.⁷

However, this origin story runs into clear inconsistencies under closer historical scrutiny. Immigration controls which limited the entry and rights of those classified as migrants did not emerge as a common legal phenomenon until the late 19th century, beginning with emergent white settler nation-states.⁸ This contradiction supports the idea that rather than being a “general

³ Lucy Mayblin and Joe Turner, *Migration Studies and Colonialism* (Cambridge: Polity Press, 2021) at 97.

⁴ Karin de Vries and Thomas Spijkerboer, “Race and the regulation of international migration. The ongoing impact of colonialism in the case law of The European Court of Human Rights” (2021) 39:4 *Netherlands Quarterly of Human Rights* 291.

⁵ Radhika Mongia, *Indian Migration and Empire: A Colonial Genealogy of the Modern State* (Durham and London: Duke University Press, 2018) at 6 [*Indian Migration and Empire*].

⁶ Vincent Chetail, “Sovereignty and Migration in the Doctrine of the Law of Nations: An Intellectual History of Hospitality from Vitoria to Vattel” (2017) 27:4 *The European Journal of International Law* 901.

⁷ Mongia, *Indian Migration and Empire*, *supra* note 5 at 7.

⁸ Nandita Sharma, *Home Rule: National Sovereignty and the Separation of Natives and Migrants* (Durham: Duke University Press, 2020) at 5 [*Home Rule*].

characteristic of state sovereignty, supposedly in place since the 1648 Treaty of Westphalia, immigration controls became a hallmark of state sovereignty only with the advent of the nation form of state power.”⁹ According to Radhika Mongia, in the nineteenth century, despite the Treaty of Westphalia having been in existence for nearly two centuries, “the British empire-state was beset with problems in legitimizing state control over Indian indentured migration that followed the abolition of slavery” and state migration control’s *deviation* from well-established principles of free movement was widely recognized.¹⁰

While sovereignty is usually accepted as a fundamental axiom in international and domestic law, the shifting content *within* the doctrine of sovereignty (that is, the complex of rules deciding what entities are sovereign, and the powers and limits of sovereignty)¹¹ undergirding our current international political and legal system is often overlooked, particularly when it comes to migration controls. This omission seems particularly striking given the centrality of mobility rights for Europeans during the very inception of international law, as jurists in the 16th century sought to articulate legal doctrines to justify and further manage early European imperial projects in the Americas.¹² As Karin de Vries and Thomas Spijkerboer argue:

The right to travel into foreign territories was conceived by European lawyers in the early modern period to enable colonial expansion. Freedom of movement remained the dominant legal framework for international migration for roughly three and a half centuries, until the end of slavery and decolonisation resulted in a reversal of (voluntary) migration flows.¹³

Sharma characterizes this early wide-ranging doctrine of free travel as representative of the imperial “logic of facilitation”, in which imperial states were “largely intent on bringing as many people *into* imperial territory as possible.”¹⁴ However, the lack of focus on entry controls into state territory did not mean that imperial states shunned migration controls altogether.

⁹ *Ibid.*

¹⁰ Mongia, *Indian Migration and Empire*, *supra* note 5 at 8.

¹¹ Anghie, *supra* note 1 at 16.

¹² Nan M Seuffert, “Vitoria’s *On the Indians*, Legal Subjectivity and the Right to Travel” (2021) 30:1 Social & Legal Studies 14.

¹³ De Vries and Spijkerboer, *supra* note 4 at 292.

¹⁴ Sharma, *Home Rule*, *supra* note 8 at 4-5.

Rather, many empires were interested in preventing people *from* escaping imperial territories or transferring and immobilizing large numbers of people for enslaved or otherwise unfree labour.¹⁵ The imperial right to travel on its surface bears some relation to contemporary ideas of ‘open borders’.¹⁶ However, in European colonial intellectual history, this did not mean an egalitarian freedom of movement for all. Rather, it referred to an unfettered right of entry for Europeans grounded in natural law, commerce, and Christian universalism which, if violated, could be enforced by the sharpest use of force including military invasion and enslavement.

The imperial right to travel dominated articulations of mobility rights in early international law, featuring prominently in the famous work of 15th century Spanish theologian and jurist Francisco de Vitoria, whose famous lecture *On the Indians Lately Discovered* greatly influenced both the development of the modern law of nations as well as modern settler colonial law as applied to Indigenous peoples in the Americas.¹⁷ Vitoria was a complex figure in legal history, considered by some as a champion of the rights of Indians in his time, and creating an extensive jurisprudence that effectively rejected the legal-theological justifications for conquest of non-Christian lands and people that were articulated by a series of 15th century Papal Bulls.

These included the 1452¹⁸ and 1455¹⁹ Bulls of Pope Nicolas V, which established the dominion of Christian nations (specifically Portugal) to conquer and enslave Saracens and pagans and any other unbelievers and enemies of Christ. They also included the famous 1493 Bull of Pope Alexander VI, *Inter Caetera*, which authorized the ownership and sovereignty claims of Christian nations specifically to land and resources of Native Americans²⁰ based on the

¹⁵ *Ibid* at 5.

¹⁶ See Joseph H Carens, “Aliens and Citizens: The Case for Open Borders” (1987) 49:2 *The Review of Politics* 251. This position can also be distinguished from the ‘No Borders’ position, which argues that genuine freedom of movement requires abolishing nationalist frameworks that naturalize territorial propertied relations, labour exploitation, and racial inequality. See Bridget Anderson, Nandita Sharma, and Cynthia Wright, “Editorial: Why No Borders?” (2011) 26:2 *Refuge: Canada’s Journal on Refugees* 5.

¹⁷ Anthony Pagden and Jeremy Lawrance (eds), *Vitoria: Political Writings* (Cambridge: Cambridge University Press, 1991).

¹⁸ Pope Nicholas V, “Papal Bull Dum Diversas” (18 June 1452), online: <https://perma.cc/2QSH-BSRF>.

¹⁹ Pope Nicholas V, “Romanus Pontifex (Granting the Portuguese a Perpetual Monopoly in Trade with Africa)” (8 January 1455), online: <https://perma.cc/86U4-99WK>.

²⁰ Terminology regarding the pre-existing peoples and polities of the Americas at the time of European colonial encounters and their descendants has shifted over time. Earlier scholarship often used terms such as ‘Natives’, ‘Native Americans’, ‘Aboriginal’, ‘Amerindian’, or ‘Indians’ whereas contemporary practice in Canada and the United States increasingly adopts terms such as ‘Indigenous’, ‘First Nations’, ‘Inuit’, or also ‘Native American’

legal fiction of the doctrine of discovery. These widespread claims were deemed effective so long as “none of the islands and mainlands, found and to be found, discovered and to be discovered, beyond that said line towards the west and south, be in the actual possession of any Christian king or prince.”²¹

Instead, Vitoria rejected the Vatican’s understandings of the law of Christian empire as reflected in the Papal Bulls in order to clear the way for “his own elaboration of a new, secular, international law” that effectively reflected Spanish cultural norms as the benchmark for civilization and legal recognition and where, on this standard, Indigenous peoples inevitably fell short.²² Crucially, for Vitoria’s new secular law of nations, the very first axiom was the unincumbered right (of Europeans) to travel to, and reside in, foreign lands: “the Spaniards have the right to travel and dwell in those countries [of the Americas], so long as they do no harm to the barbarians, and *cannot be prevented by them from doing so*” [emphasis added].²³ The Spanish right to travel and reside was, for Vitoria, to be found within natural law – a self-evident general rule which “natural reason has established among all nations”.²⁴

These colonial mobility rights ostensibly arising from natural law were very broadly conceived and included many of the rights attributable in modern times to full citizenship within a polity (and arguably some beyond ordinary citizenship rights): the right to enter and exit freely, the right to reside indefinitely, the right to trade, the right to preach and proselytize, the right to be given citizenship in towns and cities, and perhaps most importantly for colonial ventures, the right to claim, own, and exploit natural resources.²⁵

Despite Vitoria’s arguments that they could be derived through natural law, this broad and ambitious set of mobility rights enunciated in the Americas seemed to be largely made up to

depending on context and community preference. This dissertation in general uses these terms interchangeably while acknowledging that these labels reflect evolving political, legal, and self-identification practices rather than fixed or neutral descriptors.

²¹ Pope Alexander VI, “Inter Caetera: Division of the Undiscovered World between Spain and Portugal” (4 May 1493), online: <https://perma.cc/7B78-JHCN>.

²² Anghie, *supra* note 1 at 28.

²³ Seuffert, *supra* note 12 at 25.

²⁴ Pagden and Lawrance, *supra* note 17 at 278.

²⁵ *Ibid* at 270-283.

facilitate Spanish imperialism in the New World. At the very least, they certainly did not pre-exist in such a fashion within the countries of Europe. Even Vitoria's contemporaries disagreed that the law of nations could outright prohibit any sovereign from regulating movement into and within their territory, allow foreign states to claim natural resources not yet appropriated, force a sovereign to give citizenship to a travelling citizen of another country, or most egregiously, justify the waging of war against another country for violations of these rights.²⁶

Nevertheless, Vitoria's articulation of the transnational right to travel and trade was positively cited by Hugo Grotius as a "most specific and unimpeachable axiom of the Law of Nations, called a primary rule or first principle...self-evident and immutable, to wit: Every nation is free to travel to every other nation, and to trade with it".²⁷ However, this supposedly cardinal right in international law to travel, do business, reside in, and exploit the resources of foreign lands was from the very beginning conceived to vest in Europeans and not other peoples – in other words, a colonially delineated right. As Nan Seuffert explains, Vitoria's law of nations "positions the Spanish as full legal subjects bearing the primary right to travel, while the Native Americans, as partial legal subjects, bear corresponding duties of hospitality."²⁸ Hence, the European imperial right to travel and trade – ostensibly found in natural law according to Vitoria – was articulated as universally binding but in practice asymmetrically applied along colonial lines.

What then justifies the relegation of Indigenous Americans to partial legal subjectivity under this supposedly universal and secular law of nations? Answering this is particularly important since this relegation is what underpins the asymmetric production of the right to travel for Europeans and the duty of hospitality for Indigenous Americans. While Vitoria rejected previous Spanish legal justifications for invading Mesoamerica (such as the Pope's universal jurisdiction to deal with heathens or the idea of Indigenous Americans as incapable of reason and thus natural slaves), he justified partial legal recognition by examining social and cultural

²⁶ Seuffert, *supra* note 12 at 25.

²⁷ Hugo Grotius, *The Freedom of the Seas: or the right which belongs to the Dutch to take part in the East Indian Trade* (translated by Ralph Van Deman Magoffin, New York: Oxford University Press, 1916) at 7 [Original work published 1609].

²⁸ Seuffert, *supra* note 12 at 24.

practices – focusing on the uncivilized ‘deficiencies’ that he perceived in comparing Indigenous peoples to Spanish norms. Thus for Vitoria, it was not that Indigenous Americans did not have reason or culture or governance structures altogether, but that they might have a “natural deficiency”²⁹ as observed by their diet of “food no more civilized and little better than that of beasts”³⁰, “nefarious customs” such as “human sacrifice” and “cannibalism”³¹, and being “by nature cowardly, foolish, and ignorant besides”.³² Hence, under Vitoria’s law of nations, Indigenous peoples were just human enough to be vested with duties that they had to satisfy (such as the duty of hospitality to Spanish migrants) but not human enough to be full legal subjects under the law with corresponding collective and individual rights (such as their own imperial rights to travel and claim natural resources on foreign territory).

If Vitoria’s broad right to travel for Spaniards encompassed an impressive bundle of mobility, settlement, religious, and economic rights in foreign lands, it follows that a correspondingly broad duty of hospitality was imposed on the Indigenous American peoples who had the misfortune of encountering Spanish colonizers – a duty constructed so onerously as to provide “a green light to colonisation”.³³ This duty was not only logically deduced from corresponding Spanish mobility rights but also actively justified by Vitoria through Biblical invocations to “love their neighbors as themselves” and that “to refuse to welcome strangers and foreigners is inherently evil.”³⁴ Accordingly, the consequences for failing obligations associated with this imposed duty of hospitality were dire. For instance, if the Indigenous Americans were to fail to welcome the Spanish (even when they presented in full military regalia) and were to continue to refuse after negotiations, according to Vitoria’s law of nations, the Spanish would be justified in waging war, ostensibly in self-defense.³⁵

²⁹ Pagden and Lawrance, *supra* note 17 at 251.

³⁰ *Ibid* at 290.

³¹ *Ibid* at 287-288.

³² *Ibid* at 282.

³³ Annabel S Brett, *Changes of State: Nature and the Limits of the City in Early Modern Natural Law* (Princeton: Princeton University Press, 2011) at 19.

³⁴ *Ibid* at 279-281.

³⁵ Seuffert, *supra* note 12 at 27.

Additionally, the partial legal subjectivity imposed on Indigenous peoples within the early international law of mobility meant that the requisite legal sovereignty that was afforded to ‘civilized’ European nations to govern mobility was *refused out of hand*, a legal condition which well-accorded with the dictates of European imperialism and processes of wealth transfer from New World peripheries to Old World metropolises. As Antony Anghie summarizes in his analysis of Vitoria’s lectures on sovereignty, war, and Indigenous Americans:

[T]here are two essential ways in which sovereignty relates to the Indian: in the first place, the Indian is excluded from the sphere of sovereignty; in the second place, it is the Indian who acts as the object against which the powers of sovereignty may be exercised in the most extreme ways. Perhaps even more profoundly, it is through its application to the Indian that new aspects, powers and techniques of sovereignty can be discovered. The most characteristic and unique powers of the sovereign, the powers to wage war and acquire title over territory and over alien peoples are defined in their fullest form by their application to the non-sovereign Indian.³⁶

In sum, Vitoria concluded that there was a fundamental right to travel and live in other countries and, if one did not harm the natives, the natives could not prevent travelers from doing so. Undermining these rights to travel was considered so egregious as to constitute *an act of war* for which Spanish colonists were justified in defending themselves through warfare by seizing territory through military conquest. The determination of harm was, of course, reserved to the judgment of the colonizers.³⁷ This doctrine of imperial mobility rights was a circular win-win for the Spanish: either the natives submitted themselves to this subordinated legal-political state of hospitality in the face of plunder and open borders to colonizers or they risked war and direct military imperialism.

What this analysis demonstrates then is that migration law in the early colonial era (that is, the colonially delineated system of rights and duties associated with migration and sovereignty) was a necessary technology of imperial conquest. Indeed, European imperial mobilities that subsequently facilitated European settler migration flows and the denial and

³⁶ Anghie, *supra* note 1 at 27-28.

³⁷ De Vries and Spijkerboer, *supra* note 4 at 293-294.

erasure of Indigenous sovereignty were thus concurrent and mutually reinforcing legal projects, which influenced and shaped the nature of migrant flows around the world in the following centuries. As Lucy Mayblin and Joe Turner write:

Between 1600 and 1950, the vast majority of mobile subjects (what some might now call ‘economic migrants’) originated in Europe and sought their fortunes on other continents. An estimated 62 million people – settlers, labourers, colonials, imperialists, invaders – moved around European empires in the period 1800-1950 (Miège 1993).

...

From the massive forced migrations of the triangular slave trade and circuits of indenture to the almost unfettered mobility of many (but not all) white Europeans within their various empires, from the large-scale population displacements which the turbulence of decolonization gave rise to [sic] the migration of people from the former colonies to the former metropolises in the mid-to-late twentieth century, the history of migration globally is very much entangled with colonialism. It should be unsurprising to us, then, that patterns of mobility and immobility today follow these colonial-era logics in what Steffen Mau and colleagues call ‘the global mobility divide’ (Mau et al 2015).³⁸

Mobility was thus a central feature of empire, leading to colonial (including settler colonial) formations, displacement, enclosure, and mass procurement and transfer of unfree labour including through enslavement and debt bondage.³⁹ The invocation of the doctrine of discovery and *terra nullius*⁴⁰ in settler colonies asserted an exclusive settler sovereignty while denying Indigenous sovereignty, assuming “ Indigenous peoples occupied the land not in a

³⁸ Mayblin and Turner, *supra* note 3 at 1, citing JL Miège, “Migration and Decolonization” (1993) 1:1 European Review 81 at 81-86 and Steffen Mau, et al, “The Global Mobility Divide: How Visa Policies Have Evolved over Time” (2015) 41:8 Journal of Ethnic and Migration Studies 1192.

³⁹ Inés Valdez, “Socialism and Empire: Labor Mobility, Racial Capitalism, and the Political Theory of Migration” (2021) 49:6 Political Theory 902.

⁴⁰ Referring to the legal concept used to justify claiming ownership of land deemed unoccupied or uninhabited by other “civilized” nations. See Andrew Fitzmaurice, “The genealogy of *Terra Nullius*” (2007) 38:129 Australian Historical Studies 1.

European sense (ownership) but rather in a way like fish occupy water or birds occupy air.”⁴¹ These legal principles remain fundamental to understanding colonially delineated mobility, as they positioned settler colonial governments as landlords and Indigenous peoples as tenants, paving the way for eviction, forced displacement, and genocide.⁴²

Paying attention to these patterns of mobility and immobility is thus a way of reading colonialism back into our understanding and assessment of the development of Canadian migration law from pre-Confederation onwards. In what is now Canada, the shift from the fur trade to broader policies of colonial mercantilism was crucial to establishing permanent settler migration of Europeans (particularly the French and English). As historian Valerie Knowles writes in terms of the political and economic changes that created the conditions for permanent settlements in the early 17th century:

Large-scale colonization was destined to remain a dream as long as settlement was tied to the fur trade, for bands of Indians supplied all the labour necessary for its operations and there was no other economic activity in New France to attract immigrants from overseas. The impetus for colonization had to be provided by a change in thinking, and this occurred with the rise of seventeenth-century mercantilism, the theory that called for a state to increase its monetary wealth by severely restricting imports of manufactured goods and obtaining as many of its raw materials from abroad as possible. Colonies were an indispensable ingredient in the equation; they could supply the necessary raw materials for the mother country's manufacturing industry and theoretically they could also furnish a market for some of its exports.⁴³

The switch to colonial mercantilism as a driving policy by 1627 resulted in the French creating the Company of New France to (1) establish agricultural settlements, (2) encourage missionary activity, and (3) exploit New France's resources. This trifecta of colonial goals underlined the Company's purpose in being granted a Chartered monopoly on the fur trade,

⁴¹ Christian Reformed Church Doctrine of Discovery Task Force, “Creating a New Family: A Circle of Conversation on the Doctrine of Christian Discovery” (2016) at 7, online: <https://perma.cc/87CH-9AX4>.

⁴² *Ibid* at 11.

⁴³ Valerie Knowles, *Strangers at our Gates: Canadian Immigration and Immigration Policy, 1540-2015* (Toronto: Dundurn Press, 2016) at 10.

which at the time was primarily focused on the St. Lawrence River Valley and Gulf of St. Lawrence. Not only were there no entry controls for the new settler colonies, the Company tried to incentivize French immigration by granting large tracts of land to organizations or private individuals who agreed to establish settlers on them (the seigneurial system).⁴⁴ Though it was dissolved in 1663 and incorporated into New France as a province, the Company of New France set the blueprint for the following centuries of permanent settler colonial migration to Canada.⁴⁵

Subsequent imperialist rivalries and tensions in North America between English and French, American and British, and their rush to claim and divide Indigenous lands to pre-empt the other, significantly affected Indigenous peoples' migration and movements. In partial recognition of this problem, *Jay's Treaty* of 1794 was signed between the United States and Great Britain, which promised free and uninterrupted passage between the border of Canada and the United States for "Indians dwelling on either side of the said boundary" as well as the right to engage in certain cross-border trade free of import duties.⁴⁶ But while the United States has recognized its obligations (though not unproblematically)⁴⁷ under *Jay's Treaty* to provide unrestricted travel for certain Canadian-born Indigenous peoples, the Canadian government continues to refuse recognition of these rights of passage for Indigenous peoples living South of the border – a position that was reaffirmed by the Supreme Court of Canada in 2001.⁴⁸

It is also important to note that encounters with Europeans and emergent settler colonial states did not fully displace existing and diverse Indigenous legal orders with respect to migration and citizenship. Unlike European settlers, Indigenous peoples did not view land as

⁴⁴ *Ibid* at 12.

⁴⁵ *Ibid* at 11.

⁴⁶ *Treaty of Amity, Commerce and Navigation, Between His Britannic Majesty and the United States of America, by their President, with the Advice and Consent of Their Senate* (19 November 1794), 8 Stat 116, UNTS No 105 at Art III [*Jay's Treaty*]. The Treaty's cross-border trade rights were qualified by the exclusion of "goods in bales, or other large packages, unusual among Indians". The negotiations for *Jay's Treaty* also saw US slaveholders demanding either repatriation or compensation for enslaved Black people who escaped or otherwise assumed British protection during the American revolutionary period (including thousands of Black Loyalists who escaped to Nova Scotia). However, the issue was ultimately left unresolved. See Wendy Wong Schirmer, "Slavery as Metaphor and the Politics of Slavery in the Jay Treaty Debate" (12 April 2021) Society for US Intellectual History, online: <https://tinyurl.com/5cacbkvs>.

⁴⁷ For instance, asserting this right to cross into the United States requires proof of "50 per centum of blood of the American Indian race." *Immigration and Nationality Act*, §289, 8 USC § 1359 (2018).

⁴⁸ *Mitchell v MNR*, 2001 SCC 33.

property which could be enclosed, ceded, and claimed for exclusive ownership, which had implications for the legitimacy and development (or lack thereof) of Indigenous national bordering and immigration law. For instance, legal treaties such as the 1613 Two Row Wampum and the 1764 Wampum at Niagara emphasized respectful treaty relations geared towards mutual care and sharing of the land – especially important given that Indigenous peoples often moved across vast areas for seasonal activities, trade, marriage, alliances, and ceremonies.⁴⁹ Therefore the idea of a right of a group to forcibly expel or deport others from land they exclusively ‘owned’ to the exclusion of others was generally foreign to most Indigenous legal orders.

II. When immigration was white (1815-1880): migration law and settler colonialism

Who is a “migrant”, a “traveler”, or an “expatriate”? As Sharma observes, the modern paradigm of national immigration programs tends to treat those from former imperial metropolises, white settler colonies, or other wealthy countries as if they were not even migrants, but rather an inchoate member of the national polity.⁵⁰ This modern paradigm is part of the afterlife of the colonial history of migration rights, which continues to colour the ways in which immigration history is understood. Surfacing whiteness and the legacies of entitlement to move freely as a fundamental tenet of global colonialism is therefore an important corrective in addressing the racial aphasia of Canadian immigration law and border controls.

The era beginning in 1815 saw massive tectonic changes in the global political economy, most notably the abolition of slavery, which was formalized in the British Empire by the *Slavery Abolition Act* of 1833⁵¹ and went into effect in 1834. Although Canada did not have industrial-scale slave plantation economies like many other parts of the Americas, European enslavement of Indigenous peoples (Panis) and those of African descent were not uncommon in New France,

⁴⁹ Amar Bhatia, “Re-peopling in a settler-colonial context: the intersection of Indigenous laws of adoption with Canadian immigration law” (2018) 14:4 *AlterNative: An International Journal of Indigenous Peoples* 343 at 347.

⁵⁰ Sharma, *Home Rule*, *supra* note 8 at 6.

⁵¹ *Slavery Abolition Act*, 1833 (UK), 3 & 4 Will 4, c 73.

Acadia, and under British rule.⁵² Given that between 1492 and 1820, approximately 10 to 15 million Africans were enslaved and forcibly transferred to the Americas (as compared to approximately 2 million migrants from Europe to the New World)⁵³, it was perhaps predictable that the abolition of slavery would entirely change the international law of migration.

Abolition kicked off a scramble within the British Empire and other colonial spaces to find new technologies of discipline, punishment, and unfree labour control in the absence of institutionalized chattel slavery including regimes such as “indenture, apprenticeship, pawnship (debt bondage) and impressment.”⁵⁴ However, as Robert Miles writes, “[t]he effective power of the state is [in all of these cases] a crucial independent variable in the determination of unfree relations of production, as is the balance of class struggle in so far as it determines the mode and consequences of state intervention.”⁵⁵

Curtailing freedom of movement across imperial space – beginning with the 1835 Mauritius Ordinances – was one such approach that would eventually lead to a full-frontal attack on the previously axiomatic right to travel, and to the development of the first legalized (and highly racialized) legal immigration controls in settler colonial spaces such as the United States and Canada. The 1835 Mauritius Ordinances coincided with the early ascendancy of ‘coolie’ labour – a derogatory construct that refers primarily to South Asian and Chinese contract workers who laboured in indentured conditions in the colonies alongside or in lieu of slaves of African descent.⁵⁶ In 1835, as slaves primarily working the sugar plantations of Mauritius were freed in accordance with the British *Slavery Abolition Act*, two immigration ordinances were

⁵² See Marcel Trudel, *Canada's Forgotten Slaves: Two Centuries of Bondage* (Montreal: Véhicule Press, 2013).

⁵³ Nandita Sharma, “The ‘People Out of Place’: State Limits On Free Mobility and the Making of (Im)Migrants” in Sarah B Horton and Josiah Heyman, *Paper Trails: Migrants, Documents, and Legal Insecurity* (Durham: Duke University Press, 2020) 31 at 34.

⁵⁴ See Paul E Lovejoy and Nicolas Rogers, “Introduction” in *Unfree Labour in the Development of the Atlantic World* (Frank Cass, 1994) at 1. I note however that a detailed examination of the multitude of different regimes of unfree labour post-abolition is beyond the scope of the dissertation.

⁵⁵ Robert Miles, *Capitalism and unfree labour: anomaly or necessity?* (London & New York: Tavistock Publications, 1987) at 208.

⁵⁶ Nandita Sharma, “‘The New Order of Things’: Immobility as protection in the regime of immigration controls” (2017) 9 Anti-Trafficking Review 31 at 32 [“The New Order of Things”].

passed restricting the mobility of ‘coolie’ labour from British India, marking an unprecedented break from formal imperial equality concerning freedom of movement.⁵⁷

To distinguish coolie labour from slavery, the hallmark of this new regime of migration control within the British Empire was the requirement that each migrant worker sign a state-authorized indentured labour contract – ironically to evidence their ‘freedom’ (to contract). Typical terms were remarkably similar to modern closed work permits, providing that workers: had to work for a (renewable) period of five years, were tied to their contracting employer, were not allowed to change their employer or place of work, and had to return to the port of departure by the end of the term.⁵⁸ If workers were found to be violating contract provisions, employers could mobilize harsh sanctions through Masters and Servants Acts as well as criminal sanctions.⁵⁹ Additionally, employers were allowed to legally use corporal and other forms of punishment to enforce contract compliance.⁶⁰ This approach can be thought of as the ‘immigration law as labour discipline’ approach.

Mauritian colonial officials were also explicit in their disciplinary ambitions when justifying these unprecedented migration restrictions on migrant labour from India. The Protector General of Mauritius, Prosper D’Epinay, argued that the restrictions, “at the first step towards civilization”, would help impose “order, labour, discipline” and ensure that migrant ‘coolie’ workers would not fraternize or organize with the predominantly African newly freed slaves, whom colonial authorities were attempting to (re)discipline and immobilize through ‘apprenticeship’ programs that forced them to work several more years under indentured conditions.⁶¹ At the same time, the requirement of a contract provided a veneer of voluntariness which allowed migration restriction proponents to both argue that indentured migrant labour was *not* slavery while simultaneously arguing for the legitimacy and necessity of mobility controls to

⁵⁷ Radhika V Mongia, “Historicizing State Sovereignty: Inequality and the Form of Equivalence” (2007) 49:2 *Comparative Studies in Society and History* 384 at 399 [“Historicizing State Sovereignty”].

⁵⁸ Sharma, “The New Order of Things”, *supra* note 56 at 40.

⁵⁹ Alessandro Stanziani, “Labor, Rights, and Immigration: A Comparison between Mauritius and Réunion, 1840-1880” (2012) 241:4 *Le Mouvement Social* 47 at 61.

⁶⁰ *Ibid* at 58.

⁶¹ Mongia, “Historicizing State Sovereignty”, *supra* note 57 at 401-402.

protect workers *from* slavery – what Sharma calls “immobility as protection”.⁶² This duplicitous line of argumentation would be crucial for future efforts to enact formal bordering statutes to subjugate and discipline racialized migrant labour.

Meanwhile in the British West Indies, similar scrambles were occurring to secure and discipline labour for plantation economies in the vacuum created by the freeing of slaves. As Douglas Hay and Paul Craven write:

Following abolition, freed slaves were subject to the compulsory bound labor of “apprenticeship.” When it ended in 1838, new penal statutes were enacted to govern the ex-apprentices. But these laws failed to keep ex-slaves and their descendants on the plantations, so British Guiana and Trinidad (and, to a much lesser extent, Jamaica) began in the mid-nineteenth century to import indentured Indian labor, generating in the process a thick statute book and stunningly high rates of penal enforcement.⁶³

Concurrently, ‘pass-law’ systems were perfected in the colonies of the British Empire to control and immobilize indentured workers. In his historical treatment of 19th and early 20th century Chinese and Indian indentured labour in the British West Indies, Walton Look Lai details the importance of indenture contracts of typically five years, alongside elaborate local immigration ordinances which authorized criminal penalties (fines, imprisonment, terms of forced labour) automatically applicable for breaches of work duties, such as desertion.⁶⁴ This particular hybrid legal form for early immigration law – a civil contract enforceable mainly with criminal sanctions – became the bedrock of indentured labour regimes and point to a ‘crimmigration’ nexus in migration restriction over a century before the term would be (re)popularized in contemporary migration studies.⁶⁵ Moreover, “[t]he common element in most

⁶² Sharma, “The New Order of Things”, *supra* note 56.

⁶³ Douglas Hay and Paul Craven, “Introduction” in *Masters, Servants, and Magistrates in Britain and the Empire, 1562-1955* (Chapel Hill & London: University of North Carolina, 2004) at 4.

⁶⁴ Walton Look Lai, *Indentured Labor, Caribbean Sugar: Chinese and Indian Migrants to the British West Indies, 1838-1918* (Baltimore and London: The Johns Hopkins University Press, 1993) at 62-70.

⁶⁵ Juliet Stumpf, “The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power” (2006) 56:2 *American University Law Review* 367.

enforcement regimes was performance – requiring the servant to work out the full term of his contract”, which in turn might require fines, policing, jail, or private employer punishment.⁶⁶

In contrast to the introduction of labour-disciplining migration law across the British Empire for racialized indentured labourers from colonized spaces, the period up to and immediately after the 1867 confederation of the Dominion of Canada and the passing of its first *Immigration Act* in 1869⁶⁷ was characterized by generous mobility rights, legal protections, and material inducements (most notably the promise of acquiring claims to large parcels of land, whether by preemption or more formalized homesteading) for primarily British migrants and other preferred European migrants – an era in Canada “when immigration was white”.⁶⁸ While the 1869 *Immigration Act* authorized the federal cabinet to issue orders prohibiting landing of paupers and destitute immigrants “until such sums of money as may be found necessary are provided”⁶⁹, these largely stood as dead letters given that Canada in fact did not even see the need to grant itself legal powers to detain and deport immigrants until after the turn of the 20th century.⁷⁰ This approach can be thought of as the ‘immigration law for settler colonial demographic engineering’ approach.

A. The ‘Great British Migration’

Beginning with the end of the Napoleonic Wars in 1815, the ‘Great British Migration’ saw the largest continuous immigration wave to British North America up to that point. Many of these were “economic migrants” from the British Isles fleeing displacement and poverty caused

⁶⁶ Hay and Craven, *supra* note 63 at 48-49.

⁶⁷ *An Act respecting Immigration and Immigrants*, 1869, SC 32-33 Victoria, c 10 at s 3, online: <https://perma.cc/TEG6-KXL5> [1869 *Immigration Act*].

⁶⁸ I term this era of Canadian immigration law and policy as a time “when immigration was white” in reference to Ira Katznelson’s provocation to rethink the terms of contemporary affirmative action debates in the US by juxtaposing the racial shift in policy discourse from one that was previously focused on white subjects to one that is focused predominantly on racialized subjects. See Ira Katznelson, *When Affirmative Action Was White: An Untold History of Racial Inequality in Twentieth-Century America* (New York: WW Norton & Company, 2005).

⁶⁹ 1869 *Immigration Act*, *supra* note 67 at s 16.

⁷⁰ See Simon Wallace, “‘Police authority is necessary:’ The Canadian origins of the legal powers to detain and deport, 1893-1902” (2023) 48:2 *Queen’s Law Journal* 101.

by consolidation of agricultural lands and the industrial revolution. Others were enticed to move as part of policies aimed at actively outsourcing poverty and criminal elements in the British imperial core to those in imperial outposts such as Canada.⁷¹ Thus, in addition to being greeted with an open-door immigration policy, these British economic migrants were aggressively recruited by British North American officials with inducements of land grants and provisions to migrate and settle in Upper or Lower Canada, especially near the American border to help consolidate British occupation of borderlands against rival American and First Nations claims following the War of 1812. In addition, a vast number of destitute Irish migrants fleeing the potato famine also emigrated to British North America during this time – over 400,000 between 1846 to 1854.⁷²

Overall, as Knowles details: “[t]hroughout its vast territory newcomers from England, Scotland, and Ireland filled in the settled areas, pushed back the frontier, and...reinforced British customs and values.”⁷³ This migration wave had a great impact on the demographics of British North America, with its population growing “from less than 500,000 in 1812 to approximately 2.4 million in 1850”.⁷⁴

It was also in this pre-confederation period where the very beginnings of Canadian immigration policy began to take shape. The focus of these early efforts at migration governance was not border security and gatekeeping but rather providing some semblance of substantive protection to migrants during the long and generally miserable boat journeys over to British North America. Most notably, the British *Passenger Act* was revised several times throughout the 1820s and 1830s. Amendments included requirements for ship captains to provide passengers with minimum quotas of food and water, have a physician and medicine chest aboard, and ensure a minimum amount of space allotted to each passenger to mitigate overcrowding – provisions

⁷¹ Knowles, *supra* note 43 at 42.

⁷² Bruce S Elliott, “Regionalized Immigration and Settlement Patterns of the Irish in Upper Canada” in Robert O’Driscoll and Lorna Reynolds, eds, *The Untold Story: The Irish in Canada* (Toronto: Celtic Arts of Canada, 1988) at 309.

⁷³ Knowles, *supra* note 43 at 36.

⁷⁴ *Ibid.*

that would later make their way into early immigration acts.⁷⁵ Despite these legislative efforts however, many immigrants continued to suffer and arrive in poor health due to continued overcrowding on vessels, which proved immensely profitable for shipping companies.⁷⁶ Other administrative functions that colonial emigration officers engaged in during this time included a variety of supportive duties to, *inter alia*, receive immigrants on landing, distribute landing money, if available, clothe and feed the indigent, hear complaints, launch proceedings against shipmasters violating passenger vessel laws, direct newcomers to places of employment, help new arrivals to locate their friends, and trans-ship newly arrived immigrants to their destination.⁷⁷

Private land companies also played a key role in facilitating successful British settler colonial migration while providing opportunities for investors in Britain to profit in the Canadian settler project through land expropriation during this period. Companies such as the Canada Company, the British American Land Company, and the New Brunswick and Nova Scotia Land Company entered in lucrative deals with the colonial government to receive massive land grants at discounted bulk prices and then aggressively market the sale of plots and transportation to British North America to prospective settler migrants through company agents in Europe. These companies also assisted migrants in providing implements and tools to better develop their lots. The Canada Company for instance, considered the most successful of the three major land companies of the time, secured over 2 million acres of land from the Upper Canada government in exchange for annual payments.⁷⁸

B. Westward settler colonial expansion and the transfer of Rupert's Land

⁷⁵ Provincial Archives of New Brunswick, "The Passenger Acts" (retrieved 30 May 2025), online: <https://perma.cc/664B-YLNA> [*The Passenger Acts*].

⁷⁶ Robert Vineberg, "Healthy Enough to Get In: The Evolution of Canadian Immigration Policy Related to Immigrant Health" (2015) 16 *International Migration & Integration* 279 at 281.

⁷⁷ *Ibid* at 282-283.

⁷⁸ Knowles, *supra* note 43 at 41.

By the 1850s, plans for settler colonial westward expansion began to dominate immigration priorities as discussion of Canadian confederation ramped up and expansionist sentiments reached a fever pitch. As noted by historian Laura Ishiguro, this marked a noticeable shift in colonial policy, as previously the western territories had been largely “shaped by relationships between Indigenous and non-Indigenous peoples that [were] generally uncharacteristic of settler colonialism”.⁷⁹ These relationships centred around the fur trade, where European traders relied heavily on Indigenous peoples for commercial interests and often intermarried into Indigenous communities, but infrequently sought to directly assert exclusive land claims or colonial political sovereignty.⁸⁰

To realize ambitions to directly annex and colonize the Western territories, the question of the expansive lands claimed by the Hudson’s Bay Company (HBC) had to be answered. Established by British Royal Charter in 1670, the HBC was not only a commercial entity with an economic monopoly over a vast area, but also an important political and legal entity making unilateral land claims. In line with European colonial doctrines of discovery first established by the Papal Bulls, the Royal Charter only qualified the HBC’s trade and land claims with recognition of competing sovereign claims from “any of our Subjects, or by the Subjects of any other Christian Prince or State”, ignoring Indigenous (and all non-Christian) sovereignty of those lands altogether.⁸¹

In terms of economic monopoly, the Royal Charter granted “sole Trade and Commerce of all those Seas, Streights, Bays, Rivers, Lakes, Creeks, and Sounds”⁸² that fed into the Hudson Bay – some 1.5 million square kilometres of land inhabited by Inuit and First Nations peoples.⁸³ Subsequent land claims implicitly derived by the underlying grant of governing control over the

⁷⁹ Laura Ishiguro, “Northwestern North America (Canadian West) to 1900” in Edward Cavanagh and Lorenzo Veracini, *The Routledge Handbook on the History of Settler Colonialism* (London: Routledge, 2017) at 125.

⁸⁰ Though there were key exceptions, such as Earl Selkirk’s settlement at Red River starting in 1811 and the British declaration of Vancouver Island as a colony, appointing the HBC as their colonizing agent beginning in 1849. *Ibid* at 126-127.

⁸¹ Hudson’s Bay Company, “The Royal Charter for incorporating the Hudson’s Bay Company” (2 May 1670) at 1, online: <https://perma.cc/GVT4-426K> [Royal Charter].

⁸² *Ibid*.

⁸³ Melissa Gismondi, “The untold story of the Hudson’s Bay Company” (2 May 2020), Canadian Geographic, online: <https://perma.cc/93NW-UF3T>.

claimed territory. The Charter held that “all Lands, Islands, Territories, Plantations, Forts, Fortifications, Factories, or Colonies, where the said Company's Factories and Trade are or shall be, within any the Ports or Places afore limited, shall be immediately and from henceforth, *under the Power and Command* of the said Governor and Company” [emphasis added].⁸⁴ Finally, the Charter set out “that the said Land be from henceforth reckoned and reputed as one of our Plantations or Colonies in America, called *Rupert's Land*.”⁸⁵

From this one document, numerous Indigenous communities and nations would be, in the eyes of colonial law, effectively converted into tenants with a British imperial landlord. The Royal Charter would be used by the mid-19th century as the legal basis by which forced displacement over the Western territories would occur. By this time, as the HBC's landholdings grew, the region's territory grew to include what is now Northern Quebec and Labrador, Northern and Western Ontario, all of Manitoba, most of Saskatchewan, South and Central Alberta, a portion of the Northwest Territories and Nunavut, and parts of the United States.⁸⁶ This included the lands and territories of, *inter alia*, the Inuit, Cree, Dene, Anishinaabeg, Assiniboine, Métis, Oji-Cree, and Dakota peoples.

During this time, migration and mobility rights even within the HBC's internal laws and policies were colonially delineated. For instance, as noted by writer Melissa Gismondi, “the company banned Indigenous men, women and children from travelling to Britain aboard HBC ships, “without Our Express order in Writing for so doing.”⁸⁷ The policy sent a clear message: the HBC valued Indigenous Peoples in Rupert's Land where they had value to the company's fur trade, but considered them a hindrance any place else. As was the case with early Spanish imperialism in the Americas, British colonial wealth accumulation through the fur trade relied on the immobility of Indigenous peoples to satisfy duties of accommodation – in this case, assisting

⁸⁴ *Royal Charter*, *supra* note 81 at 4.

⁸⁵ *Ibid* at 3.

⁸⁶ Andrew McIntosh and Shirlee Anne Smith, “Rupert's Land” (21 February 2025), The Canadian Encyclopedia, online: <https://perma.cc/MJG5-7G2X>.

⁸⁷ Gismondi, *supra* note 83.

HBC employees in navigating challenging North American geographies and securing large quantities of high-quality fur pelts for processing and sale.

By 1857, agricultural settlement of the western territories emerged as a key priority for British and Canadian imperial ambitions. Profits from the fur trade had vanished, and the settler population of both Canada and the US eyed Rupert's Land hungrily for land annexation. In that year, the Report from the Select Committee of the Hudson's Bay Company, chaired by Colonial Secretary Henry Labouchère, was released. The hearings of the Selection Committee were particularly important as it was the first time that Canadian officials could formally voice their desire that the HBC's monopoly end and Rupert's Land and the North-Western Territory be ceded to Canada for colonial settlement by white migrants.

Arguments advanced at Committee for this policy oscillated between colonial developmentalism (such as the potential for Canada to cultivate land and exploit resources better than the HBC) and the duty to better protect colonial subjects (highlighting the mistreatment of Indigenous peoples under the HBC charter to shore up arguments, not for Indigenous self-determination, but for Canadian annexation).⁸⁸ One witness, Canadian clerk Alfred Robert Roche, implicitly channeling Vitoria's right to travel as the primary axiom of the law of nations, reasoned that all Canadians possessed "the rights of the old French Canadians, who had the right to travel and trade through the country".⁸⁹ The possession of these rights to travel and trade were taken as support for Canada's claim to territory all the way to the Pacific. Notably, Indigenous nations were not invited to these imperial committee hearings and had no political say in the outcome.

In the end, Canadian expansionists got what they wanted. The report spelled out in explicit terms the birth of the British North American settler colonial project for the Northwest. Specifically, the Executive Summary of the report states that "[a]mong the various objects of imperial policy which it is important to attain," an essential one is "to annex to [Canada's]

⁸⁸ Elena Choquette, "The Making of a "Peaceable Kingdom": Land, Peopling and Progress in an Expanding Canada" (2019) UBC Dissertation at 65-72.

⁸⁹ *Ibid* at 69.

territory such portion of the land in her neighbourhood as may be available to her for the purposes of settlement...and for which she will provide the means of local administration.”⁹⁰ After identifying Red River and Saskatchewan as “among those likely to be desired for early occupation”, the Report recommended that arrangements be made between the Crown and the HBC by which the massive territory of Rupert’s Land and the North-Western Territory be ceded to Canada and subsequently annexed.⁹¹

This occurred with the 1868 *Rupert’s Land Act* and the 1870 Deed of Surrender, paving the way for the transfer of Rupert’s Land and the North-Western Territory from the HBC to the Dominion of Canada, despite the legally and politically contested nature of the company’s claims to the lands vis-à-vis the sovereignty of the various First Nations, Métis, and Inuit peoples who occupied the vast territory.⁹² Indeed, the legal legitimacy of the land ‘sale’ rested on the premise that the capacity for ‘sovereignty’ of corporations such as the HBC *superseded* the sovereign capacity of First Nations, Inuit, and Métis nations who inhabited the territories at issue. Predictably, the deal angered many of these nations, who “resisted the HBC’s transfer of their lands to a colonial power who wanted them to relinquish their claims and enter into confusing, often non-consensual treaties.”⁹³ However, the ability of many Indigenous nations in the West to resist settler colonial encroachment and protect their sovereignty and lands was severely hampered by various factors including the destruction of the buffalo throughout the 1860s and 1870s and attendant conditions of famine and starvation, resulting in many tribes and nations responding by selling land to colonizers in exchange for rations and annuities in order to survive and/or engaging in wage labour.⁹⁴

⁹⁰ British House of Commons, Report from the Select Committee on the Hudson’s Bay Company, 260 Parl, 2nd Session (31 July 1857 and 11 August 1857) at iii-iv, online: <https://perma.cc/HLT9-R2RU>.

⁹¹ *Ibid.*

⁹² Kent McNeil, “Sovereignty and the Aboriginal Nations of Rupert’s Land” (1999) 37 Manitoba History, online: <https://perma.cc/3CQZ-2MWF>.

⁹³ Gismondi, *supra* note 83.

⁹⁴ Benjamin Hoy, “A Border without Guards: First Nations and the Enforcement of National Space” (2014) 25:2 Journal of the Canadian Historical Association 89 at 92.

C. National Policy and prioritizing settlement through Canada's first *Immigration Act*

As soon as Canada was confederated on July 1, 1867, immigration was prioritized as part of Prime Minister Macdonald's National Policy – a vision to promote industrial growth and expand markets alongside the completion of the transnational railway to facilitate settler colonial territorial expansion westward.⁹⁵ As a result, the early era of post-Confederation Canadian immigration was characterized by almost exclusively white migrant flows for settler agrarian migration so as to populate and enclose land in the West – the ideal subject being of British stock.⁹⁶

In addition to economic and political nation building objectives, settler immigration of the West also served an important legal objective by shoring up the tenuous claims of the Crown to sovereignty in Rupert's Land and the North-Western Territory. Even given the Eurocentric and colonial nature of international law at the time of the Royal Charter in 1670, claims to sovereignty were extremely precarious. It was a massive stretch even by international law of the time to argue that the HBC Royal Charter could bestow sovereignty over such a vast territory, “most of which had not even been explored, let alone possessed, by British subjects” and where most of that territory was in fact occupied and possessed by Indigenous nations.⁹⁷

Therefore, to make the legal argument that the HBC had title to the lands to sell back to the Crown, the Crown would have needed to establish sovereignty in the first place. As a preliminary matter, as in the case of the English East India Company in Asia, the sale relied upon a controversial idea of “company sovereignty” to actuate. The doctrine recognized that sovereignty could be transferred and held in a corporate form, using the special grants in documents such as Royal Charters by empowered imperial companies to “muscle into a region that had never belonged to the sovereign in the first place.”⁹⁸ The doctrine of company sovereignty in the HBC effectively allowed the corporate form to be a vehicle by which colonial

⁹⁵ Ninette Kelley and Michael Trebilcock, *The Making of the Mosaic: A History of Canadian Immigration Policy* (Toronto: University of Toronto Press, 2010) at 61.

⁹⁶ *Ibid* at 64-65.

⁹⁷ McNeil, “Sovereignty and the Aboriginal Nations of Rupert's Land”, *supra* note 92 at 3.

⁹⁸ Edward Cavanagh, “A Company with Sovereignty and Subjects of Its Own? The Case of the Hudson's Bay Company, 1670-1763” (2011) 26:1 Canadian Journal of Law and Society 25.

sovereignty to a vast area of North America could be shifted from the British Crown to the Canadian government – a key legal technology of racial capitalism during the Mercantilist era.

Under British colonial law, there were only four ways for the Crown to acquire sovereignty: inheritance from another sovereign, conquest, succession by international treaty, and settlement.⁹⁹ Since the first three ways were difficult to argue, settlement – that is, occupying lands with British subjects to establish effective possession and control in the name of the Crown – was the only avenue left. At the time of Charter issuance though, “British claims to Rupert’s Land rested precariously on voyages of discovery made by English seafarers...none of [whom] attempted to establish permanent settlements.”¹⁰⁰

Even by the time of the land transfer to the Crown in 1870, Indigenous nations made up the larger portion of the population and had considerable influence over the activity in the region. HBC officials admitted in testimony at the Select Committee that the Company exercised no authority over Indigenous Peoples in Rupert’s Land.¹⁰¹ Yet regardless of the flimsy nature of the argument that the HBC *could in fact* have land title to sell to the Canadian government, the “sale” of Rupert’s Land and the North-Western Territory and subsequent policies of homesteading and settler occupation went ahead anyway. Regardless of whether the original Royal Charter granted sovereignty and title to the Crown, settler migration would be critical to ‘perfecting’ legal claims post-sale through enclosure, occupation, and possession – something Canadian authorities understood well. In the end, both the *de facto* interpretation of the Royal Charter claims and subsequent settler migration aimed to eradicate the sovereignties of Indigenous competitors in the region – a process that would be further consolidated with the unequal treaties made between the Crown and Indigenous nations in the decades thereafter.

Because of these priorities to quickly settle the West, the first *Immigration Act* of 1869 was designed to promote “a liberal policy for the settlement and colonization of the uncultivated lands”.¹⁰² The Act was open-door and highly permissive with provisions that were protective of

⁹⁹ Kent McNeil, *Common Law Aboriginal Title* (Oxford: Clarendon Press, 1989), at 108-33.

¹⁰⁰ McNeil, “Sovereignty and the Aboriginal Nations of Rupert’s Land”, *supra* note 92 at 3.

¹⁰¹ *Ibid* at 4.

¹⁰² House of Commons, “Report of the Minister of Agriculture” (1869) 1:2 Sessional Papers no 76 at 4.

white immigrants' welfare during the voyage over¹⁰³, provided financial supports for food, clothing, and settlement¹⁰⁴, and created active immigration recruitment offices in London and in Continental Europe to pursue Anglo-European settler migration.¹⁰⁵ The *1869 Immigration Act* additionally instructed Parliament to grant monies to pay for “[a]ll the expenses to be incurred in carrying the provisions of this Act” and “for affording help and advice to Immigrants, aiding Destitute Immigrants, visiting and relieving them [and] procuring medical assistance”¹⁰⁶ – a remarkable contrast to the now common practice of downloading user costs to migrants for bureaucratic processes and the doctrine of “excessive burden” that undergirds medical inadmissibility typical of contemporary neoliberal immigration regimes.¹⁰⁷

While the first Act reflected the open-door, laissez-faire attitude of Canadian immigration at the time and Canadian immigration agents were not seen (nor given powers) in terms of gatekeeping or border enforcement until the turn of the century¹⁰⁸, the codified exclusions that were written in indicated a massive shift from the pre-existing fundamental right to travel. For instance, the 1869 Act created landing exclusions for several categories of individuals, namely “paupers”¹⁰⁹ and unaccompanied “lunatic, idiotic, deaf and dumb, blind or infirm” persons¹¹⁰. Further amendments were made to the *Immigration Act* in the 1870s to proscribe migration of those with criminal records.¹¹¹

These new landing restrictions were mitigated by the working assumption that they were too unwieldy to enforce and thus stood as dead letters. Indeed, as detailed by historian Lisa Chilton, the primary responsibilities of immigration agents during this time were “to check for abuses by transportation companies and various other operators working at the points of departure and arrival that were resulting in malnourished, diseased, and misinformed immigrants.

¹⁰³ *1869 Immigration Act*, *supra* note 67 at s 3.

¹⁰⁴ *Ibid* at Preamble.

¹⁰⁵ *Ibid*.

¹⁰⁶ *Ibid* at s 29.

¹⁰⁷ See Robert Wilton, Stine Hansen, and Edward Hall, “Disabled people, medical inadmissibility, and the differential politics of immigration” (2017) 61:3 *The Canadian Geographer* 389.

¹⁰⁸ Lisa Chilton, *Receiving Canada's Immigrants: The Work of the State before 1930* (Ottawa: Canadian Historical Association, 2016) at 16, online: <https://perma.cc/VSH4-MAFA>.

¹⁰⁹ *Immigration Act 1869*, *supra* note 67 at s 16.

¹¹⁰ *Ibid* at ss 11-15.

¹¹¹ Knowles, *supra* note 43 at 52.

They were expected to facilitate the orderly movement of immigrants out of the port cities towards available farmlands and vicinities in need of labour.”¹¹²

Yet the very passing of immigration legislation with entry prohibitions stood in uncomfortable tension with the longstanding imperial right to travel in international law. Further, exclusion-based immigration legislation was entirely different from the early imperial immigration ordinances that were aimed primarily at disciplining migrant labour through penal threat. Canada’s 1869 *Immigration Act* marked one of the earliest instances of systematic border control by a nation-state, aiming to restrict the entry of groups deemed undesirable. This legislative move paralleled similar developments in other white settler colonies such as the United States, Australia, and South Africa, reflecting a shared logic of exclusion central to settler colonial nation-building.¹¹³

D. The *Dominion Lands Act* and settler migration infrastructure

The construction of hard infrastructure, particularly the transcontinental railway, played a foundational role not only in transporting newly arrived settlers to the Western frontier, but also in enabling an economy structured around primitive accumulation through dispossession of previously collectively-held Indigenous lands.¹¹⁴ Even before Macdonald’s National Policy, the idea for transcontinental rail across British North America was championed by a diverse

¹¹² Chilton, *supra* note 108 at 15.

¹¹³ For a comparative historical treatment, see Marilyn Lake and Henry Reynolds, *Drawing the Global Colour Line: White Men’s Countries and the Question of Racial Equality* (Cambridge: Cambridge University Press, 2008).

¹¹⁴ Building upon the work of Karl Marx, Glen Coulthard explains primitive accumulation in the settler colonial settings as “formative acts of violent dispossession” which “set the stage for the emergence of capitalist accumulation and the reproduction of capitalist relations of production by tearing Indigenous societies, peasants, and other small-scale, self-sufficient agricultural producers from the source of their livelihood—the land.” These acts then allowed for the forceful opening of collectively held territories and resources to dispossession and enclosure while creating a new proletarian class of workers compelled to join the labour market for survival. Glen Coulthard, *Red Skin, White Masks* (Minneapolis: University of Minnesota Press, 2014) at 7.

coalition of British imperial officials, particularly as a “key link between Britain and Asia” designed to increase the significance of Canada’s role in the empire.¹¹⁵

Following the purchase of Rupert’s Land and the North-Western Territory as well as the annexation of Manitoba, the *Dominion Lands Act* of 1872 instituted homestead policies modeled on the US *Homestead Act* of 1862 that provided the legal scaffolding by which lands in Western Canada could be appropriated and granted, following extensive land surveys.¹¹⁶ Plots of land were granted or sold (at the rate of one dollar per acre)¹¹⁷ to a wide swath of settler interests including homesteaders, colonization companies, the Hudson’s Bay Company, the Canadian Pacific Railway (CPR), municipalities, and religious groups. To specifically entice settler migrants, the Act “granted 160 acres of free land to any settler twenty-one years of age or older who paid a ten-dollar registration fee, lived on his quarter section for three years, cultivated thirty acres, and built a permanent dwelling.”¹¹⁸

The legal device of homesteading set out in the *Dominion Lands Act* refashioned an older technique of colonial land appropriation that was already in use in the American South and British Columbia – the doctrine of preemption. As Brenna Bhandar writes: “preemption allowed white settlers to stake out territory and, upon improving the land by cultivation, to obtain ownership of that land.”¹¹⁹ British Columbia first introduced a Pre-emption Act in 1860.¹²⁰ Pre-emption laws differed from homesteading insofar as the former allowed for settlers to make claims to *unsurveyed* land as well.¹²¹ Claims to land from pre-emptors generally required proof of some “improvements” on the land after a certain amount of time. For instance, an 1875 law to consolidate the land laws in British Columbia set out that permanent improvements to the value of at least \$2.50 per acre were needed before the provincial government would grant a Certificate

¹¹⁵ Gordon T Stewart, *The American Response to Canada Since 1776* (East Lansing: MSU Press, 1992).

¹¹⁶ *An Act respecting the Public Lands of the Dominion*, SC 1872, c 23, online: <https://perma.cc/JH3D-G73A> [1872 *Dominion Lands Act*].

¹¹⁷ *Ibid* at s 29.

¹¹⁸ Knowles, *supra* note 43 at 54.

¹¹⁹ Brenna Bhandar, *Colonial Lives of Property: Law, Land, and Racial Regimes of Ownership* (Durham: Duke University Press, 2018) at 58.

¹²⁰ Phyllis Mikkelsen, “Land Settlement Policy on the Mainland of British Columbia, 1858-1874” (1950) University of British Columbia Thesis at 89, online: <https://perma.cc/QSF6-PWAM>.

¹²¹ Bhandar, *supra* note 119 at 59.

of Improvement recognizing fee simple.¹²² Whether through pre-emption or more government-facilitated homesteading, Indigenous peoples were written out of the creation of a new market of private colonial land ownership that effectively secured their dispossession and forced migration. They were barred from homestead grants outside of special permission and no lands would be set aside for them outside of reserves ultimately under the discretion of Crown officials.¹²³

The state's overarching focus on support for recruiting, enticing, and facilitating white settler migration manifested physically in the mass construction of immigration halls throughout the Prairies, British Columbia, as well as key points of arrival such as Quebec City, Montreal, Ottawa, Kingston, and Toronto. These halls provided free accommodation for recently arrived migrants, protection from hustlers, and connections to other immigration administrative services. Immigration halls also hosted Dominion Land Office agents who would counsel immigrants on the availability of land and arrange travel to their final destinations of settlement. All these services, including accommodation, were covered by government expenditure. Over time, more than fifty immigration halls were built in almost every major Prairie city and town. Immigration hall policy and expenditure also betrayed its racialized provision for white migrants' benefit; the immigration halls of Vancouver and Victoria were shut down in 1892 when it became clear that they primarily served Chinese rather than European arrivals.¹²⁴

Canada's marketing campaigns in Britain and Continental Europe during this time aggressively attempted to sell the Canadian northwest as an attractive, welcoming land to European migrants. For instance, the government's 1877 *Canada: A Hand-Book of Information for Intending Emigrants* promised the "people in the overcrowded countries of the old world" that the "new world" of the northwest offered "a home of future independence to millions of our

¹²² *An Act to Amend and Consolidate the Laws Affecting Crown Lands in British Columbia*, 1875, 38 Victoria c 98 at s 33.

¹²³ Bhandar, *supra* note 119 at 60.

¹²⁴ Robert Vineberg, "Manitoba History: Welcoming Immigrants at the Gateway to Canada's West: Immigration Halls in Winnipeg, 1872-1975" (2011) 65 Manitoba Historical Society, online: <https://perma.cc/GG8T-HZUT>.

fellow creatures” – invoking the powerful image of the independent, landowning settler dream.¹²⁵

Initially, despite these significant efforts, early Canadian settler immigration policies saw limited success. While exact figures are unknown, it is estimated that about 1.5 million migrants entered Canada between 1867 and 1892. However, most of these migrants used Canada as a transit point to their ultimate destination in the United States. Even the migrants who did originally settle in the Canadian West frequently had trouble with farming in the harsh climate, gave up, and left for America, resulting in net emigration flows from Canada during this period.¹²⁶

This situation began to change at the turn of the century with improvements in wheat cultivation techniques and equipment, as well as the completion of the transcontinental railroad. It took until the mid-1890s before substantial numbers of settler migrants started coming, Canada’s homestead policy of land subdivision and sale/grant would eventually constitute arguably the largest land appropriation anywhere in the world: some 1.25 million homesteads were made available by the *Dominion Lands Act* over an expanse of about 80 million hectares. In total, 625,000 land patents were issued by the Dominion Lands Office until the Act’s repeal in 1930.¹²⁷ Like in the US, Canadian homestead policies became an early and unambiguous reflection of the transformation of whiteness as a racial identity into a privileged and legally discernable set of property rights over land – a stark example of critical race scholar Cheryl Harris’ notion of “whiteness as property”.¹²⁸

¹²⁵ Dominion of Canada, *Canada: A Hand-Book of Information for Intending Emigrants* (Ottawa: Department of Agriculture, 1877).

¹²⁶ Kelley and Trebilcock, *supra* note 95 at 63-65.

¹²⁷ Eli Yarhi and T D Regehr, “Dominion Lands Act” (6 February 2006), The Canadian Encyclopedia, online: <https://perma.cc/8G27-NRRW>.

¹²⁸ Cheryl Harris, “Whiteness as Property” (1993) 106:8 Harvard Law Review 1707.

III. The Asian labour question (1881-1945): railroad labour and the consolidation of white nationalism

A. Chinese railroad labour, sex work panic, and the ‘anti-slavery’ origins of modern bordering

As the need for cheapened labour became evident to achieve the dreams of Canada’s National Policy, Chinese railroad labour became central to both the construction of Canada’s settler colonial infrastructure and the racial formation of migration law. This section traces how anti-slavery rhetoric and sex work panic as applied to the Chinese were weaponized to justify exclusionary policies, transforming exploited labourers into racialized threats to the nation. Through this lens, Canada’s early immigration laws emerge as moral and economic technologies for managing empire and preserving white sovereignty.

From the 1880s to the end of World War II, the governmentality of xenoracial capitalism loomed large in the development of Canadian migration policy, demonstrating what would be a recurring oscillation between (1) harshly excluding non-whites to preserve the purity of white Canada and reduce competition for the white working class versus (2) reluctantly tolerating non-white migration for use as cheap, docile, and exploitable labour, typically championed by business interests. I characterize the era of immigration policy starting in 1881 as “the Asian labour question” as it marked the first instance in the post-Confederation years that a large wave of non-white migrants came to Canada.¹²⁹ In the words of Iyko Day, “[a]s migrants to North America, Asian’s primary relationship to settler colonizers was historically based on labor...Asians represented an alien labor force that mixed with Indigenous land to transform it

¹²⁹ Although 1858 marked the start of consistent, ongoing Chinese immigration to the regions of British North America that would later form the present-day Canada, including in the colonies of Vancouver Island and British Columbia. These migrations were significantly influenced by gold prospecting in North America’s West Coast as well as a variety of economic shockwaves, widespread instability, famine, and the destabilizing impacts of fiscal and trade concessions to the British colonial government which displaced Southern Chinese peasants and workers back home. At the time, neither Vancouver Island nor British Columbia had immigration restrictions. Paul Yee, “History of Canada’s early Chinese immigrants” (19 April 2017) Library and Archives Canada, online: <https://tinyurl.com/yc5fm882>.

into white property and capital.”¹³⁰ The transcontinental railway would serve as both the infrastructural and symbolic representation of that racialized economic relationship.

During the first half of the decade, over 17,000 Chinese labourers were brought from China or California to work on the western section of the transcontinental railway¹³¹ – a migration wave that would produce the framework of Asian racialization in North America as inexorably related to hyper-efficient, perpetually foreign (sojourner) labour.¹³² These Chinese workers came to Canada West on a particular type of debt model – the Credit Ticket system – in which workers borrowed the money for their travel from future earnings and other collateral from a guarantor.¹³³ The Credit Ticket contract was between the worker and an agent, but the agent often sold the final contract to the railway contractor. Once in Canada, Chinese workers had to labour under the supervision of the company, regaining their freedom only once they fulfilled their contractual duties for length of contract period, which was usually several years.¹³⁴ While these workers faced intense racism and abuse, their situation differed from indentured ‘coolie’ labour in other parts of the Empire insofar as breach of contract could not be directly enforced (at least legally) by penal sanctions and/or corporal punishment.

In terms of push factors for Chinese emigrant labour, British imperialism in China throughout the mid-1800s, most notably through the First and Second Opium Wars and a series of unequal treaties, forced an already crisis-ridden Qing government into significant commercial and political concessions, exacerbating widespread unrest and civil conflict within China which created mass poverty and famine.¹³⁵ In particular, the Taiping Rebellion (1850-1864) between the Qing and the Hakka-led Taiping Heavenly Kingdom operating out of Southern China

¹³⁰ Iyko Day, *Alien Capital: Asian Racialization and the Logic of Settler Colonial Capitalism* (North Carolina: Duke University Press, 2016) at 31.

¹³¹ Multicultural History Society of Ontario, “Chinese Railroad Workers” (2010), online: <https://perma.cc/F4V8-SBAJ>.

¹³² Day, *supra* note 130 at 16.

¹³³ Jincheng Zhi, “Chinese Immigration and the Canadian Pacific Railway: 1880-1885” (2011) Queen’s University MA Thesis, online: <https://perma.cc/M8P4-5U3A> at 9.

¹³⁴ *Ibid* at 9-12.

¹³⁵ See Stephen R Platt, *Imperial Twilight: The Opium War and the End of China’s Last Golden Age* (New York: Vintage, 2019).

“engulfed fourteen provinces, destroyed about six hundred cities, and took about twenty-five million lives before it was finally crushed with the aid of the Western powers.”¹³⁶

This created the conditions by which Chinese migrant labour could be procured *en masse*, racially segregated in the labour pool, and brought to work for colonial projects such as railroad construction in North America.¹³⁷ Over the 19th century, an estimated 7 million Chinese (the majority from the Southern provinces of Fujian and Guangdong) emigrated to various overseas destinations, with about 600,000 bound for the Americas.¹³⁸ Much of that migration flow went to Latin America and the Caribbean (often as indentured labour) while a smaller number moved to North America.

The widespread use of ‘coolie’ labour within the British Empire became prominent after the formal abolition of slavery in 1834. As Inés Valdez writes of this time: “white emigrants, Indian and Chinese subjects circulated within and beyond the British Empire since the early nineteenth century and joined freed slaves and native labor within the empire.”¹³⁹ Between 1834 and 1920, millions of indentured workers from Asia were sent to various European colonies to labour.¹⁴⁰ Thus, imperial mass migration of Asian labour developed within the racial and economic context of European imperialism in Asia and the steady demise of plantation-based slave economies. Historian Mae Ngai theorizes this reliance on cheapened migrant labour as “imported colonialism” – where migrant labour schemes in Western metropolises and settler colonies relied on the inequality produced by colonial relations not only to supply cheapened labour, but to recreate colonial power dynamics of power and servitude at destination.¹⁴¹

With the abolition of slavery, a massive shift in the law of migration was underway. While the 1835 Mauritius Ordinances pierced the armor of the imperial right to movement across

¹³⁶ Look Lai, *supra* note 64 at 40.

¹³⁷ Scott Alan Carson, “Chinese Sojourn Labor and the American Transcontinental Railroad” (2005) 161:1 *Journal of Institutional and Theoretical Economics* 80.

¹³⁸ Look Lai, *supra* note 64 at 40.

¹³⁹ Valdez, *supra* note 39 at 908.

¹⁴⁰ Virginie Chaillou-Atrious, “Indentured Labour in European Colonies during the 19th Century” (22 June 2020), Digital Encyclopedia of European History, online: <https://tinyurl.com/2krd48rk>.

¹⁴¹ Mae Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America* (Princeton: Princeton University Press, 2004) at 127-165.

borders, it would take much more to replace it with a full-throated articulation of the doctrine of sovereign migration control. These developments would be spearheaded by white settler colonial nations, particularly the United States. Originally, the 1787 US constitution included a clause which explicitly prohibited the Federal government from imposing any restrictions on the “migration or importation” of “persons” (understood at the time to refer primarily to enslaved Africans) – a clause with a sunset expiration in 1808.¹⁴² This constitutional “freedom of movement” protection was thus understood to be “slave trade clause” protecting unfettered movement of enslaved people to market where the mobility of slaves would *then* be curtailed (but primarily through Slave Codes, not by immigration controls).

In the US, by the mid-19th century, a few individual states, such as Massachusetts and the new state of California, were already attempting to institute their own immigration restrictions to discourage landing of those deemed undesirable – often under a thin veneer of opposing slavery or coolie-ism.¹⁴³ In the 1850s-60s, California passed *An Act to Discourage the Immigration to This State of Persons Who Cannot Become Citizens*¹⁴⁴ and *An Act to Protect Free White Labor against Competition with Chinese Coolie Labor, and Discourage the Immigration of the Chinese into the State of California*.¹⁴⁵ However, the California Supreme Court struck these laws down as unconstitutional, not because they were racist (particularly against Chinese migrants), but because they unjustly interfered with the exclusive right of the Federal government to regulate interstate commerce, which was deemed to include immigration issues.¹⁴⁶

Even after the US Civil War (1861-1865) and the abolition of slavery with the 13th amendment¹⁴⁷, the US did not immediately move to adopt immigration controls nation-wide. Indeed, Article V of the 1868 *Burlingame Treaty* between the US and the Qing Empire remarkably recognized “the inherent and inalienable right of man to change his home and

¹⁴² US Const (1787), art I, § 9, online: <https://perma.cc/3TEL-LC7M>.

¹⁴³ Reece Jones, *White Borders: The History of Race and Immigration in the United States from Chinese Exclusion to the Border Wall* (Boston: Beacon Press, 2021) at 28.

¹⁴⁴ *An Act to Discourage the Immigration to This State of Persons Who Cannot Become Citizens*, Cal Stat No 153 (1855).

¹⁴⁵ *An Act to Protect Free White Labor against Competition with Chinese Coolie Labor, and Discourage the Immigration of the Chinese into the State of California*, Cal Stat No 462 (1862).

¹⁴⁶ *People v Downer et al*, 7 Cal 169 (1857); *Sing v Washburn*, 20 Cal 534 (1862).

¹⁴⁷ US Const amend XIII.

allegiance, and also the mutual advantage of the free migration and emigration of their citizens and subjects respectively from the one country to the other, for purposes of curiosity, of trade, or as permanent residents.”¹⁴⁸ The fact that such a strong articulation of the “inherent and inalienable” right of free migration could be found in an international treaty between the US and another major power as late as 1868 underscores the relative *newness* of the doctrine of sovereign migration control.

Yet the very same Article also contained the seeds by which the US would, in just a matter of a few years, scrap the right of free migration in favour of its very first national immigration restrictions: “[t]he high contracting parties [...] join in reprobating any other than an entirely voluntary emigration [and] consequently agree to pass laws making it a penal offence...”¹⁴⁹ In other words, racialized immigration exclusion was now being presented as necessary protection from coerced labour (whether in the form of slavery or coolie-ism).

Anti-slavery politics dominated the discourse surrounding America’s initial adoption of national immigration restrictions and the doctrine of sovereign migration control. Both abolitionists and pro-slavery advocates agreed that coolie-ism substituted slavery of one form for another. But whereas abolitionists argued that coolie-ism had to also be abolished if emancipation were to mean anything, pro-slavery advocates worried that importation of coolie labour would reduce the property value of slaves and hurt profitability.¹⁵⁰ While the migrant railroad workers in the US during the 1860s were all subject to terrible working conditions, the fact that Chinese workers were uniquely subject to 5-year contracts, lower wages, and harsher conditions than for instance, their Irish counterparts, was re-interpreted as Chinese migrant labour being *inherently* unfree as compared to European migrant labour.¹⁵¹ Thus, the racialization of the Chinese railroad worker as unfree sojourner labour meant that greater

¹⁴⁸ *Additional Articles to the Treaty Between the United States of America and the Ta-Tsing Empire of the 18th of June, 1858*, 28 July 1868, 16 Stat 793; TS 48, art V [*Burlingame Treaty*].

¹⁴⁹ *Ibid.*

¹⁵⁰ Kevin Kenny, *The Problem of Immigration in a Slaveholding Republic: Policing Mobility in the Nineteenth-Century United States* (New York: Oxford University Press, 2023) at 147.

¹⁵¹ *Ibid* at 156.

awareness of their exploitation and abuse would not lead to collective organizing, stronger labour standards, or anti-racist action, but rather their outright exclusion from the United States.¹⁵²

This ‘anti-slavery’ moral panic was amplified with the charge that Chinese immigrants “had reintroduced slavery into the U.S. through “coolie labor” and prostitution”.¹⁵³ Stereotypes about Chinese women working in prostitution were molded by anti-Chinese “yellow slavery” tropes in which ideas about Oriental despotism and immorality forged racial imaginaries of Chinese men as slavers and Chinese women as enslaved.¹⁵⁴ This conveniently displaced the original American sin of slavery onto a ‘foreign’ population that had to be contained and restricted by the civilized American public. Thus, the political conditions were set for America’s first national law limiting immigration: the 1875 *Page Act*.

The purposes of the 1875 *Page Act* were to end the supposed dangers of “cheap Chinese labor and immoral Chinese women”.¹⁵⁵ Specifically, section 5 prohibits landing for women “imported for the purposes of prostitution”¹⁵⁶ while other sections create criminal offenses for people transporting “Oriental” migrants “without their free and voluntary consent, for the purpose of holding them to a term of service”¹⁵⁷, importing “women for the purposes of prostitution”¹⁵⁸, or importing “the labor of any cooly”.¹⁵⁹ What this meant in practice was that Chinese women who wished to enter the US had to submit themselves to “extensive interrogations and cross-examinations, bribes, and requirements that women submit declarations of ‘personal morality’” in order to obtain certificates of character to board boats.¹⁶⁰ As a new technology of racialized and gendered exclusion, the *Page Act* was remarkably successful: between 1876 and 1882 (when the *Chinese Exclusion Act*¹⁶¹ was passed), the already low

¹⁵² *Ibid.*

¹⁵³ Lorelei Lee, “The Roots of ‘Modern Day Slavery’: The Page Act and the Mann Act” (2021) 42 Immigration and Nationality Law Review 55 at 76.

¹⁵⁴ *Ibid* at 71-81.

¹⁵⁵ George Anthony Pfeffer, “Forbidden Families: Emigration Experiences of Chinese Women under the Page Law, 1875-1882” (1986) 6:1 Journal of America Ethnic History 28.

¹⁵⁶ *The Page Act of 1875 (Immigration Act)*, c 141, § 5 [*Page Act*].

¹⁵⁷ *Ibid* at § 2.

¹⁵⁸ *Ibid* at § 3.

¹⁵⁹ *Ibid* at § 4.

¹⁶⁰ Pfeffer, *supra* note 148 at 32.

¹⁶¹ *Chinese Exclusion Act of 1882*, Pub L No 47-126, 22 Stat 58.

number of Chinese women entering the US dropped by 68%.¹⁶² These developments would prove crucial precedents for white nationalists in Canada looking to push their own anti-Asian immigration restrictions.

In Canada, by the 1880s, it was abundantly clear that the transcontinental railway would be the key lynchpin for the Dominion's nascent settler colonial project in the northwest. For one, British Columbia made joining Canada in 1871 contingent on finishing the railway. In addition, the railway provided the means to transport settlers to the West for homesteading, supply burgeoning cities and towns on the Prairies, move goods and commodities to market, and enforce colonial authority and economies of accumulation by dispossession – violently if necessary.

The contrast before and after the railway for the newly confederated government's capacity for colonial repression was stark. For instance, in 1869 when the Métis at Red River resisted Canada's claims following the unilateral transfer of Rupert's Land and announced a provisional government independent from the Canadian government, it took British Imperial and Canadian military personnel three arduous months to make their way from Fort York in Toronto to Manitoba to quash the resistance. In contrast, during the subsequent 1885 Northwest Rebellion, the newly finished transcontinental railway enabled the colonial government to deploy thousands of troops against the insurgent Métis, Cree, and Assiniboine in Saskatchewan within a matter of a few weeks.¹⁶³

Despite the national importance tied to the completion of the railroad, the financial viability of the expensive and dangerous Western section through the treacherous Rocky Mountains was always in question. In the end, its completion was underwritten by racial wage disparities and hellacious working conditions imposed on the Chinese migrant labourers – beginning the ongoing legacy of migrant workers from the Global South being forced into dirty, dangerous, and difficult jobs that Canadians did not want to work but were indispensable for settler prosperity. Margot Francis writes that Chinese labour was “indispensable to the CPR's

¹⁶² Peffer, *supra* note 148 at 329.

¹⁶³ Deborah Cowen, “Following the infrastructures of empire: notes on cities, settler colonialism, and method” (2020) 41:4 Urban Geography 469 at 476.

early financial viability as their ‘cheap wages’ saved Andrew Onderdonk, the contractor for the western section of the line, between \$3 and \$5 million and allowed him to escape bankruptcy.”¹⁶⁴

The racial segregation of the Chinese labour force was stark and apparent. Chinese workers were paid \$1.00 a day, and from this wage, had to pay for their own food and gear. White workers were paid \$1.50 to \$2.50 per day and had their provisions covered.¹⁶⁵ In addition to being paid less, Chinese workers were given the most dangerous tasks, such as handling the explosive nitroglycerin used to break up solid rock. Due to the harsh conditions, hundreds of Chinese working on the railway died from accidents, winter cold, illness and malnutrition.¹⁶⁶ Ironically, “the very railroads that Chinese laborers built made it easier and cheaper to transport the settlers who arrived afterwards and demanded that ‘the Chinese must go.’”¹⁶⁷

Despite contributing labour to construction of infrastructure that would further the colonial project of Indigenous displacement and dispossession, evidence from the time suggests that some Indigenous nations ended up caring for injured and exhausted Chinese railroad workers. Others who were not so lucky were left to die along the railway or buried in shallow graves. Some of the Chinese men who were rescued eventually intermarried with Indigenous women. According to Lytton First Nation member Bill Paul:

How our people got intermixed with the Chinese is we were watching them die like flies. They were undernourished, overworked and being poisoned by the canned food they were eating. We opened our arms. We stole some miners, hid them and put them in caves. Eventually, they started falling in love with our ladies.¹⁶⁸

Similarly, when one Vancouver Chinese restaurant owner lay on his deathbed, he relayed to his children how “as a railway worker, he had been left beside the railroad to die. The

¹⁶⁴ Margot Francis, *Creative Subversions: Whiteness, Indigeneity, and the National Imaginary* (Vancouver: UBC Press, 2012) at 77.

¹⁶⁵ Government of British Columbia, “Building the Railway”, online: <https://tinyurl.com/2wx6kz7b>.

¹⁶⁶ *Ibid.*

¹⁶⁷ Henry Yu, “Toward a Pacific History of the Americas” (2007) 33:2 *Amerasia Journal* xi at xvi.

¹⁶⁸ Meg Mittelstedt, “Touring BC’s ‘Hidden’ History Shared by Chinese and Indigenous People” (13 October 2014), *The Tyee*, online: <https://tinyurl.com/8j75u8fn>.

Indigenous people of the area had picked him up, taken him to their home, and nurtured him back to health.”¹⁶⁹ The racial distinction between Chinese labourer arrivants who helped build the railroad and white colonists who were destined to settle in the regions opened up by it was further crystallized into law with British Columbia’s 1884 passing of *An Act to Prevent Chinese from Acquiring Crown Lands*¹⁷⁰, prohibiting Chinese from pre-emption rights and forcing the Chinese community “to lease lands to engage in market gardening or other agricultural pursuits.”¹⁷¹ Once the last spike was put into the railroad on November 7th, 1885, and the need for their labour ceased, Canadian law was immediately deployed to racially restrict Chinese immigration. From the point of view of the Canadian bureaucratic elites, Chinese bodies were now disposable: there was no need for them as their alchemistic function in helping transform Indigenous land into white property had been achieved.

As such, the question arose among white Canadian society as to what to do with the Chinese who did not go back. In the absence of widespread plantation-based African slavery in Canada, “the industrial economy that Asian labor served did not require a permanent, reproducible, exclusive, and violently contained population of alien labor, as was the case under US slavery”.¹⁷² Thus, the racial ascription of Chinese as sojourners, perpetually foreign, unassimilable, and therefore a proper subject for bordering, deportation, and disenfranchisement became a popular policy position. While businesses generally supported keeping Chinese labour because they were seen as cheap, reliable, and a threat to undercut white labour through the strategic deployment of race, many politicians, trade unionists and white residents of British Columbia resented the presence of the Chinese and called for anti-Chinese legislation to restrict their continued immigration. The interaction between these key actors – imperial capitalists,

¹⁶⁹ *Ibid.*

¹⁷⁰ *An Act to prevent Chinese from acquiring Crown Lands*, 1884 SBC c 2.

¹⁷¹ Jonathan Zi En Chan, “Finding the Ideal Nesting Place: Chinese Encounters with Indigenous and Euro-Canadian Peoples in British Columbia, 1858-1947” (2019) University of Waterloo Thesis at 16, online: <https://perma.cc/4QLN-C87L>.

¹⁷² Day, *supra* note 130 at 32. The absence of a widespread slave economy did not mean that there was no slavery in Canada. For instance, enslaved Africans existed in Nova Scotia, Prince Edward Island, Newfoundland, Quebec, and Ontario. Robin W Winks, *The Blacks in Canada: A History*, 2nd ed (Montreal and Kingston: McGill-Queen’s University Press, 2000) at 24-60.

bureaucratic elites, and the white working class – would continue to shape the racial regulation of mobility in Canada for decades to come.¹⁷³

The 1885 *Royal Commission on Chinese Immigration* would provide the justification necessary for Canadian officials to pivot from unenthusiastic tolerance of Chinese for their hyperexploitable labour to racially restrictive migration law.¹⁷⁴ The report of the Royal Commission is a remarkable document, particularly for an official Parliament report, in its detailed and explicit articulation of common racial imaginaries of Chinese in North America at the time. Repeatedly, Chinese workers were portrayed (1) as economic threats by virtue of their racially inherent “laboriousness” and “docility” in accepting lower wages and awful working conditions, and (2) as impediments and poor moral influences for white settlement. It is also interesting in the absence of a large-scale economy of enslavement to note how frequently Canadian officials drew parallels to Black slavery in the South when considering the racialized nature of imported Chinese migrant labour:

We need not show that Chinese labor is cheap labor. That is its *raison d'être*. We need not stop to prove that it is docile; that is one of its admitted attractions [...] The white workmen, not content with the rate to which wages are reduced, will if they have the money, leave the country. Those who remain sink lower even than the Chinaman, because they have to do more with the money out of which he saves a little fortune to enjoy in China. They become more and more degraded. It is in evidence that a man who has bossed Chinamen is not fit to boss white men, because he becomes too arbitrary, contracts in fact something of the bearing of the slave-driver.¹⁷⁵

[...]

Out of Chinese wages white workmen could not save money; on such wages they could hardly support a family [...] The white man was handicapped. He was competing with a man come from the lowest class of a population whose standard of comfort through is low [...] In all unskilled

¹⁷³ Valdez, *supra* note 39.

¹⁷⁴ Report of the Royal Commission on Chinese Immigration: Report and Evidence (1885), Sessional Paper no. 54a, online: <https://perma.cc/9AJV-WAGQ> [1885 Royal Commission].

¹⁷⁵ *Ibid* at xcv.

employments which required only strength, laboriousness, patience, docility, imitateness and steadiness, wages were lowered, and on many of the river bottom farms there was a Chinese quarter, a few huts where dwelt the Chinese who did much of the work of the farm throughout the year. In the same way there used to be negro quarters on the plantations of the South [emphasis added].¹⁷⁶

The Royal Commission's report would directly lead to the drafting and passing of the *Chinese Immigration Act* of 1885, which imposed a duty (otherwise known as a "head tax") of \$50 on every Chinese person seeking entry into Canada and was the first Canadian immigration law to explicitly target groups on a racial basis.¹⁷⁷ Further, vessels carrying Chinese immigrants to Canada were only permitted to transport one Chinese person for every fifty tons of the ship's total weight whereas ships transporting European immigrants were authorized to carry one person for every two tons of the ship's total weight.¹⁷⁸ Under this new Act, all Chinese persons migrating to Canada were treated as juridically and administratively separate, since non-Chinese migrants were dealt with under the regular *Immigration Act*. The Chinese head tax would be subsequently increased to \$100 in 1901 and \$500 in 1903 – around double the average annual salary of a Chinese worker.¹⁷⁹

Like the *Page Act*, the 1885 *Chinese Immigration Act* included the first race-based and gender-based prohibition in Canadian federal immigration law, barring from landing any Chinese woman deemed to be a "prostitute"¹⁸⁰ – a very broad provision given that it was informed by the prevailing idea within the Canadian government that "[Chinese] women as a rule are prostitutes."¹⁸¹ Similar to broader Chinese racialization, this whorephobic ban on Chinese sex worker women was justified through the deployment of common tropes such as Chinese women

¹⁷⁶ *Ibid* at xcvi.

¹⁷⁷ *Chinese Immigration Act*, 1885, c 71 at s 4 [1885 *Chinese Immigration Act*].

¹⁷⁸ *Ibid* at s 5.

¹⁷⁹ Madeline A Kalbach, "Asian Immigration to Western Canada" in Lorry W Felske and Beverly Rasporich, eds, *Challenging Frontiers: The Canadian West* (Calgary: University of Calgary Press, 2004) at 254–256.

¹⁸⁰ 1885 *Chinese Immigration Act*, *supra* note 170 at s 9.

¹⁸¹ 1885 Royal Commission, *supra* note 167 at lxxviii.

being docile in their exploitation¹⁸², a corrupting moral influence on white society¹⁸³, and inherently accepting of lower compensation than white sex workers.¹⁸⁴

The impact of this early gendered ban on Chinese immigration was the creation of an almost all-male bachelor society – “homosocial, nonreproductive spaces” which “reinforced fears of contagion and perversion associated with Chinese men.”¹⁸⁵ The gender skew¹⁸⁶ resulting from the ban of Chinese women over sexual immorality fears was also weaponized in a circular logic to further argue that Chinese labour was an existential threat to white labour: since Chinese labourers did not have to support their wives and children, they had an unfair competitive advantage over the white labourer.¹⁸⁷ This argument obscured the reality of racial subordination, the oppressive operation of racist and misogynistic immigration laws in separating Chinese families, and the centrality of remittances in the lives of many separated Chinese families.

B. White working-class nationalism, creating ‘Asiatics’, and anti-Black exclusion

To understand how the modalities of xenoracial capitalism influenced Canadian migration policy during this period, it is important to scrutinize not only the discourse of colonial officials and capitalist elites, but also the hegemonic discourse of white labour activists and unionists in characterizing non-white workers as a threat. Valdez conceptualizes this discourse – which was both imperialist *and* populist – under the framework of “imperial scripts”.¹⁸⁸ Under these scripts, white workers’ resistance to capitalist control and exploitation merged with the

¹⁸² *Ibid* at 202: “Chinese women have generally submitted passively and helplessly to this imposition, degradation, and slavery, to be sold and bought and transported at the will of their masters.”

¹⁸³ *Ibid* at 222: “[t]he evidence is that Chinese prostitutes are more shameless than white women who follow the same pursuit, as though...educated for it from their cradle.”

¹⁸⁴ *Ibid* at lxxix: “[t]he high value attached to money by the Chinese would make their prostitutes more accessible to boys than white ones.”

¹⁸⁵ Day, *supra* note 130 at 43.

¹⁸⁶ Immigration officers at the time were very suspicious of women, frequently accusing them as being prostitutes, regardless of whether they engaged in sex work or not. By 1923, it was estimated that Chinese men outnumbered women in Canada by a ratio of 28 to 1. Matthew McRae, “The Chinese head tax and the Chinese Exclusion Act” (31 May 2017), online: <https://perma.cc/6NC3-E38A>.

¹⁸⁷ 1885 Royal Commission, *supra* note 167 at xcvi.

¹⁸⁸ Valdez, *supra* note 39 at 903.

settler nationalist imperative that demanded restricting the *parallel* existence of non-white workers and their exclusion from white settler territory.¹⁸⁹

Non-white immigrant exclusion was complemented by efforts such as the *Empire Settlement Act* of 1922 to recruit more British immigrants onto Canadian farms through inducements such as reduced transportation fares, agricultural training and financial aid, thus further consolidating the power of white working-class nationalism in Canada.¹⁹⁰ It is important to note the extensiveness of white immigrant flows during certain periods of the early 20th century. For instance, Canada accepted 400,870 new immigrants in 1914 alone.¹⁹¹ This constituted over 5% of the total population of Canada – a far cry from the roughly 1% of total population that are accepted as immigrants today.

The white working-class discourse towards Chinese workers (and Asian workers more broadly) was imperialist not only because of their deployment of racial logics to deny rather than extend class solidarity under arguments of unfair competition, but also because this discourse was *circulated* and *shared* among a transnational white working class. Hence, these political formations could not be explained as simple cases of emerging nativist nationalist sentiment. This imperial populist formation “linked British trade unionists and socialists with white workers in South Africa and ‘crisscrossed the western U.S.-Canadian frontiers to engage in riots, lobby for immigration restriction, and establish anti-Asiatic organizations,’ animated by a broader pattern of racialization drawing from linkages with racist proletarian movements in the United States, Australia, New Zealand, South Africa, and the British metropole.”¹⁹²

At the same time immigration law was deployed to restrict incoming Chinese migration, other laws were passed to disenfranchise the Chinese already residing in Canada who could not be easily removed. The federal *Electoral Franchise Act* of 1885 barred any persons “of Mongolian or Chinese race” from the right to vote,¹⁹³ extending nationwide what many

¹⁸⁹ *Ibid* at 906.

¹⁹⁰ Kelley and Trebilcock, *supra* note 95 at 189-191.

¹⁹¹ Canada Manpower and Immigration, “Immigration Statistics: 1976” (1977) at 4, online: <https://perma.cc/LE8L-RKMP>.

¹⁹² Valdez, *supra* note 39 at 915.

¹⁹³ *Electoral Franchise Act*, SC 1885, c 40 at s 2.

provinces had already done by passing laws banning Chinese and Asian voting provincially¹⁹⁴, municipally¹⁹⁵, and at school board levels.¹⁹⁶

Mainstream Canadian Labour unions also began prohibiting Chinese and other Asians. In 1899, the Trades and Labour Congress of Canada instituted policies to bar Chinese from membership. Ten years later, the Congress built on this initial Chinese ban by passing an amendment to their Platform of Principles that excluded all “Asiatics” to encompass Japanese and South Asian workers.¹⁹⁷ Similarly, in 1908, the Canadian Brotherhood of Railway Employees inserted into its charter a provision that only white men could join the labour organization. Again, race proved to be a useful bulwark against collective working-class organizing, which excised the recognition of hyper exploited non-whites as fellow comrades in labour struggle.¹⁹⁸ Though racial segregation of unions and collective labour actions was the order of the day, there were isolated, yet powerful, campaigns of cross-racial solidarity interspersed throughout, including the short lived “One Big Union” movement, which demanded racial as well as economic justice under the slogan that there were “no aliens but the capitalists”.¹⁹⁹

The logics that followed racialization of the Chinese migrant labourer in the mid to late 1800s was extended and adapted to other migrant worker groups from Asia brought to Canada. Much like the Chinese, the Japanese *Issei* (first generation immigrants) were barred from the vote and from higher paying professions (through their exclusion from voter rolls), confining them to low-paying, menial work as farmers, fishers, canners, loggers, miners, saw miller workers, and contract gardeners, alongside a few who became small proprietors.²⁰⁰ The extension of anti-Chinese racialization to Japanese at the time was explicit and linear, with the

¹⁹⁴ See *Qualification and Registration of Voters Act*, SBC 1872, c 39 at s 13; *An Act respecting Elections of Members of the Legislative Assembly*, SS 1908, c 2 at s 11.

¹⁹⁵ See *Municipality Amendment Act*, SBC 1876, c 1; *Vancouver City Incorporation Act*, SBC 1886, c 32 at s 8.

¹⁹⁶ See *Public Schools Amendment Act*, SBC 1884, c 27, s 10; *Public Schools Act*, SBC 1885, c 25.

¹⁹⁷ Ajamu Nangwaya, “Race, Resistance and Co-optation in the Canadian Labour Movement: Effecting an Equity Agenda like Race Matters” (2011) University of Toronto Thesis, online: <https://perma.cc/82LE-X6BA> at 31.

¹⁹⁸ *Ibid* at 27.

¹⁹⁹ D J Bercuson, *Fools and Wise Men: the Rise and Fall of the One Big Union Movement* (Toronto: McGraw-Hill Ryerson, 1978).

²⁰⁰ Audrey Kobayashi and Peter Jackson, “Japanese Canadians and the Racialization of Labour in the British Columbia Sawmill Industry” (1994) 103 BC Studies 33.

1902 *Royal Commission on Chinese and Japanese Immigration* stating that, in addition to being “a menace to health”, “a servile class”, and “unfit for citizenship”, the Report stated that “[a]ll that has been said...with reference to the Chinese applies with equal, if not greater force, to the Japanese.”²⁰¹

Sikh migration to Canada was another legacy of British imperial mobility. From the turn of the century until the end of World War II, most South Asian migration to Canada comprised of Sikhs from the Punjab region of then British-occupied India. Part of the impetus for emigration from the Punjab area was a consequence of British-led commercialization of Punjabi agriculture, which resulted “in rising land values and in the escalation of a culture of mortgage and debt.”²⁰² Punjabi families would often mortgage their land to send one member abroad with the hope that they would return remittances. Like other new racialized immigrants, Sikh migrant workers eventually found employment largely as hard labourers in the lumber, railway, and farming industries. By 1907, approximately 4,000 Sikhs lived in British Columbia.²⁰³ The encounters between significant numbers of Chinese, Japanese, Sikhs, and other smaller communities of Asian migrants with white settlers during this time in Western Canada thus conditioned the formulation of the pan-racial constructions of ‘Asiatic’ and ‘Oriental’ people.

The federal 1906 *Immigration Act* ushered in a more restrictive immigration policy, expanding the categories of prohibited migrants, formalizing a deportation process and assigning the executive enhanced powers to make judgements on admission (the cabinet was empowered to prohibit any class of immigrant).²⁰⁴ Yet this was not strong enough of a policy response for many white nativists. Racist white-working class grievance reached its zenith during the 1907 anti-Asian riots in Vancouver. In 1907, British Columbia proposed a new *Immigration Act*, modeled on the South African *Natal Act*, which would have instituted a new immigration language test requirement “in the English language, or any language of Europe”, which would

²⁰¹ Report of the Royal Commission on Chinese and Japanese Immigration (1902), Sessional Paper no. 54 at 277-278, online: <https://perma.cc/8WYL-A8XV?type=standard>.

²⁰² Hugh Johnston, “Group Identity in an Emigrant Worker Community: The Example of Sikhs in early Twentieth-Century British Columbia” (2005) 148 *BC Studies* 3 at 6.

²⁰³ Padmash Jha, “The Tragedy of the Kamagatamaru and Sikh Immigration to British Columbia (1900-1914)” (1997) 58 *Proceedings of the Indian History Congress* 787 at 790-791.

²⁰⁴ *An Act respecting Immigration and Immigrants*, 1906, SC 6 Edward VII, c 19 [1906 *Immigration Act*].

have the effect of excluding most Asian migrants at the time from the province.²⁰⁵ Passed in 1897, the *Natal Act* language requirement came out of a need to find a race-neutral legal solution to restrict South Asian immigration to South Africa without explicitly discriminating on race given imperial guarantees of equality. The requirement was seen at the time as a “benchmark colour screen for British colonies...[o]bscuring racism while securing racist exclusions”.²⁰⁶

The most prominent group that lobbied for this legislation was the Asiatic Exclusion League (AEL), which was mainly backed by the Knights of Labour. Then Lieutenant Governor Robert Dunsmuir actually refused to give royal assent to the Act, citing concerns that it would violate numerous international treaties, including the Anglo-Japanese Treaty of 1894 which protected Japanese immigration to Canada.²⁰⁷ Like with the Chinese railroad workers, colonial business elites benefited greatly from the subordinated position of low-cost Asian migrant labour and racial conflict among workers: Dunsmuir himself owned coal mines while BC’s attorney general, Robert Brosver, was the lawyer for the Nippon Supply Company which was responsible for writing the contracts which supplied Dunsmuir’s mines with cheapened Japanese labour.²⁰⁸

Furious at the failure to finalize the anti-Asian BC *Immigration Act*, AEL members put on a parade the weekend after Labour Day that would air anti-Asian sentiments for the protection of a white Canada. A mob of several thousand burned an effigy of Dunsmuir before turning onto the streets of Chinatown and Japantown in an orgy of looting, violence, and attempted arson. As Michael Barnholden writes of the 1907 anti-Asian riots and their aftermath:

For British Columbia's capitalist class, divide and conquer was the goal. Profit depended on cheap labour. Asian labourers denied all rights and privileges were not only cost-beneficial in themselves, but their acceptance of low wages acted as a restraint on the wages of "citizen" employees. By pitting white labour against Asian labour, the business elite ensured that

²⁰⁵ *An Act to Regulate Immigration into British Columbia*, SBC 1907, c 21a at 4, online: <https://perma.cc/9BVQ-BKN7> [1907 BC *Immigration Act*].

²⁰⁶ John Price, “Canada, white supremacy, and the twinning of empires” (2013) 68:4 *International Journal* 628 at 632.

²⁰⁷ Erika Lee, “Hemispheric Orientalism and the 1907 Pacific Coast Race Riots” (2007) 33:2 *Amerasia Journal* 19 at 21.

²⁰⁸ Michael Barnholden, “The Lessons of the Anti-Asiatic Riot” (7 September 2016), Canada’s History, online: <https://perma.cc/CPN9-CDDE>.

they were not themselves the targets of agitation. Workers who shared racist sentiments, like those of the Knights of Labour, ultimately worked in the capitalists' favour.

It was not the sentiments that fuelled the 1907 riots that were unacceptable to the elites--it was the outbreak of violence, which was bad for business.²⁰⁹

The 1907 riots marked a turning point and ultimately a major political victory for the “imperial scripts” that fought for the allegiance of the white working class in the settler colonial imaginary. The following years would see a consolidation of white nationalism in immigration law. In 1908, as part of his PhD Dissertation on Oriental Immigration to Canada, Prime Minister Mackenzie King argued that it was desirable, natural, and necessary that Canada should remain a “white man’s country” on economic, social, political, and national grounds.²¹⁰

In part based on the King report, that same year saw the passing of the “continuous journey regulation” – an amendment to the *Immigration Act* of 1908 prohibiting the landing of any immigrant that did not come to Canada by continuous journey from home country.²¹¹ Though the language of the provision was facially neutral, it acted as *de facto* prohibition for South Asian and Japanese migrants as the main routes from those countries did not typically offer direct passage to Canada; a continuous journey from India at the time was not possible at all. Like the European language tests, this indirect approach was needed to circumvent the legal protections that Indians formally had as British imperial subjects and that the Japanese had through bilateral treaties with Canada and/or Britain.

This exclusionary law would be dramatically challenged in 1914 when Sikh businessman Gurdit Singh Sirhali chartered the *Komagata Maru* to bring a shipload of 376 mostly Sikh migrants from India to Vancouver. The passengers argued that as British imperial subjects, they were also entitled to enter the imperial dominion of Canada. Yet aside from 20 returning residents, the passengers were denied landing by Canadian officials, who confined the ship and

²⁰⁹ *Ibid.*

²¹⁰ William Lyon Mackenzie King, “Royal Commission Appointed to Inquire into the Methods by Which Oriental Labourers Have Been Induced to Come to Canada” (1908), Harvard Library, online: <https://perma.cc/RNR9-BY8E>.

²¹¹ Canadian Museum of Immigration at Pier 21, “Continuous Journey Regulation, 1908”, online: <https://perma.cc/RAK7-AYD7>.

its passengers at dock for nearly three months, imposing terrible conditions of hunger and thirst.²¹²

The Sikh community eventually hired a lawyer, J Edward Bird, to challenge the decision to refuse landing, but the British Columbia Court of Appeal eventually denied the appeal, on the grounds that the government's restrictive Orders-in-Council, despite being racially discriminatory, were *intra vires*.²¹³ On the point of imperial equality, the Court of Appeal interpreted Canada's sovereign power to include the right to exclude individual migrants which superseded claims to enter based on British subjecthood, spelling the formal end for the imperial right to travel in Canadian law.²¹⁴ McPhillips JA even went as far as explicitly commending the government's wisdom in blocking Asian immigration in order to protect white Canadian society from an ostensibly existential threat:

The Parliament of Canada, the nation's Parliament, may be well said to be safe-guarding the people of Canada from an influx, which it is no chimera to conjure up might annihilate the nation and change its whole potential complexity, introduce Oriental ways as against European ways, Eastern civilization for Western civilization, and all the dire results that would naturally flow therefrom [...]²¹⁵

The Komagata Maru was subsequently deported and upon their forced repatriation to India, at the port of Budge Budge near Kolkata, British Indian police forced passengers to board a train for Punjab rather than allow them into Kolkata. After resistance from the travel-weary passengers, 20 passengers were killed by police forces and the majority of those who survived were rounded up and arrested.²¹⁶

The indirect approach to immigration status exclusion for Japanese and Sikhs was not required when it came to deterring and eventually prohibiting Chinese migration. Although

²¹² Hugh Johnston, "Komagata Maru" (7 February 2006), Canadian Encyclopedia, online: <https://perma.cc/D2S6-B9AU>.

²¹³ *In Re The Immigration Act and Munshi Singh*, 1914 Carswell BC 255, 20 BCR 243 at paras 18, 96 and 131.

²¹⁴ *Ibid* at para 14.

²¹⁵ *Ibid* at para 149.

²¹⁶ Johnston, *supra* note 212.

immigration law during the Chinese head tax era (1885-1923) still allowed for a limited flow of Chinese migration for those who could come up with the required capital as well as for certain categories of head tax exemptions (e.g. for wives and minor children, clergymen, certain business and study exemptions), developments in the 1900s and 1910s introduced legislated powers of immigration enforcement and forced deportation. Some of these specifically targeted Chinese: for instance, 1917 amendments to the *Chinese Immigration Act* greenlighted racial profiling by empowering any immigration officer to apprehend a Chinese person without warrant if he had any reason to believe that the person was illegally in Canada.²¹⁷

On July 1, 1923, a new *Chinese Immigration Act* was introduced which replaced the head tax system in favour of excluding Chinese migration to Canada outright, with limited exceptions such as for diplomats, merchants, Christian missionaries, and students. This new law, sometimes referred to as the *Chinese Exclusion Act*, also banned family sponsorship for Chinese, created provisions in which Chinese residents in Canada would not be allowed to return if they left for 2 years or more²¹⁸, and required all Chinese to register for an identity certificate (IC) regardless of citizenship status.²¹⁹

Supporters of Chinese exclusion included almost all members of Parliament, the national Retail Merchants Association, and the Trades and Labour Congress, among others.²²⁰ Opposition to the Act included almost all sectors of the Chinese diaspora in Canada, including Chinese Benevolent Associations, Chinese trade unions, and business groups such as the Chinese Produce Sellers Group.²²¹ Even Sun Yat-Sen, then President of the Republic of China, wrote to the Canadian government to demand the bill be suspended.²²² However, these grassroots and diplomatic efforts ultimately did not achieve their aims.

²¹⁷ *An Act to amend the Chinese Immigration Act*, SC 1917, c 7 at s 2.

²¹⁸ *Chinese Immigration Act*, 1923, SC 1923, c 38 at ss 23-24 [*Chinese Exclusion Act*].

²¹⁹ *Ibid* at s 18.

²²⁰ Denise Fong, et al, *1923: Challenging Racisms Past and Present* (Canada: Canada-China Focus, 2023) at 47.

²²¹ *Ibid* at 43.

²²² Patricia E Roy, *Oriental question: consolidating a white man's province, 1914-41* (Vancouver: UBC Press, 2003) at 75.

As a result of these racist changes, Chinese migration ground to a halt. Between 1924 and 1946, only about two dozen new Chinese immigration landings were registered.²²³ In its place, a trade in immigration papers developed in which Chinese Canadians sold or otherwise transferred their documents to allow other Chinese migrants to enter Canada using their names and identities – creating “paper sons and daughters” which represented the only route for Chinese migrants to enter Canada during the exclusion era.²²⁴

The passing of the *Chinese Exclusion Act* was in fact predated by several months by a quieter, but even more broadly worded anti-Asian regulatory exclusion – Order-in-Council PC 1923-182 passed in January 1923.²²⁵ This order prevented “any immigrant of any Asiatic race” from landing in the country. The limited exceptions to this Asiatic ban were Asian wives and minors of legal residents of Canada, agriculturalists, farm labourers, and female domestic servants – indicating the contingent inclusions of Asian bodies necessary for the racial capitalist order. These limited exceptions were further curtailed in 1930 with Order-in-Council PC 1930-2115, which eliminated the agriculturalist, farm labourer, and female domestic servant exceptions.²²⁶

This period in Canadian migration history also coincided with the Great Black Migration: large waves of forced migration of African Americans from the US South, driven by a combination of lack of economic opportunity, anti-Black racial terrorism, and the spread of Jim Crow laws and institutions (implementing racial segregation, indentured servitude, and convict leasing regimes).²²⁷ Some of these African Americans would make their way northwards to Canada while Black migrants also arrived from the Caribbean and Latin America as part of

²²³ Statistics Canada, “Oriental immigration to Canada, 1906 to 1946” in *Canada Year Book* (1947), online: <https://perma.cc/N5DC-JDDZ>.

²²⁴ Lily Cho, *Mass Capture: Chinese Head Tax and the Making of Non-Citizens* (Montreal: McGill-Queen’s University Press, 2021) at 5; Melanie K Ng, “Open Secrets: Methods and Archives in Chinese Canadian Histories” (2024) 34:1 *Journal of the Canadian Historical Association* 183.

²²⁵ PC 1923-182, (31 January 1923) *C Gaz*, 4106, online: <https://perma.cc/7KDK-KX43>.

²²⁶ *Immigration Act – Prohibiting the landing in Canada of immigrants of Asiatic race with certain exceptions*, PC 1930-2115, (16 September 1930), online: <https://perma.cc/5QTZ-K28P>.

²²⁷ Steven A Reich, *The Great Black Migration: A Historical Encyclopedia of the American Mosaic* (Santa Barbara: Greenwood, 2014).

emigration resulting from the uneven abolition of slavery and economic turpitude throughout the 19th century in that part of the world.²²⁸

During this era of white nationalist exclusion in Canada, no explicit legislative immigration bans were levied against Blacks, but fierce barriers and restrictions were executed through discriminatory administrative policy and practice. Agnes Calliste argues that this more indirect approach was due to a confluence of political reasons that included protecting diplomatic relationships with the US and Caribbean governments, the risk of antagonizing substantial numbers of Black voters in Ontario and Nova Scotia (who were not barred from franchise), and the effectiveness of informal mechanisms to exclude Black migrants.²²⁹

Relatively active recruitment of Black migrant labour temporarily disrupted what was otherwise a determined policy of migration restriction to preserve white national purity.²³⁰ In order to exclude Blacks under ostensibly race-neutral laws, anti-Black immigration-related racial tropes were constructed, normalized, and deployed by policymakers and administrators. The most common of these anti-Black tropes used to restrict immigration were the ideas that Blacks were: (1) more likely to be a public charge²³¹, (2) climatically unsuited for life in Canada, and (3) incapable of “assimilating” into Canadian society.²³²

In the Western provinces, Black refugees fleeing Jim Crow apartheid in Oklahoma (which officially became a US state in 1907 and immediately passed segregation laws) arrived to avail themselves of the Canadian promise of land ownership through homestead policies that were advertised aggressively by Canadian officials in America under the slogan of the “Last Best

²²⁸ Claudine Bonner, “‘Likely to become a public charge’: Examining Black Migration to Eastern Canada, 1900-1930” in Michele A Johnson and Funké Aladejebi, eds, *Unsettling the Great White North: Black Canadian History* (Toronto: University of Toronto Press, 2022) at 259-260 [*Unsettling the Great White North*].

²²⁹ Agnes Calliste, “Race, Gender and Canadian Immigration Policy: Blacks from the Caribbean, 1900-1932” (1993) 28:4 *Journal of Canadian Studies* 131 at 142-143.

²³⁰ Michele A Johnson, “‘...not likely to do well or be an asset to this country’: Canadian Restrictions of Black Caribbean Female Domestic Workers, 1910-1955” in Johnson and Aladejebi, *Unsettling the Great White North*, *supra* note 228 at 281.

²³¹ Bonner, *supra* note 228.

²³² Johnson, *supra* note 230 at 292.

West”.²³³ While the total number of African American migrants to Western Canada in the early twentieth century amounted to only around 1,000 to 1,500 people²³⁴, it created a massive backlash among white Canadian settlers in the Prairies, many of whom demanded that the government take immediate action to address the “negro problem” and prevent more African American migrants from entering the country and availing themselves of the settlement promises that were thought to be the exclusive entitlements of whites.²³⁵

Even before these complaints, Canadian officials had already been erecting barriers into practice: stopping immigration literature from reaching Blacks in Oklahoma, subjecting Blacks to more vigorous medical examinations than other migrants²³⁶, even offering to incentivize the medical inspector at the border with “a fee for every Black he rejected.”²³⁷ However, even this was not enough for many white settlers as reflected by a 1911 letter from the Edmonton Board of Trade to the Minister of the Interior effectively threatening that racist mob violence would occur if the government did not act to their satisfaction (clearly not an empty threat given the recent racist political violence against Chinese and Japanese communities in Vancouver only four years prior):

White settlers in the homestead districts are becoming alarmed and exasperated and are prepared to go to almost any length. People in the towns and cities ... are beginning to realize the imperative necessity of effective action; and it only needs a slight effort to start up an agitation which would be joined in by practically every white man in the country. There is every indication that unless effective action is taken, such an agitation will be put in motion in the near future.²³⁸

Some pundits suggested the use of s 38(c) of the 1910 *Immigration Act* to target Black migrants, which gave power to the government to pass an Order-in-Council that could exclude

²³³ Rachel M Wolters, “‘We heard Canada was a free country’: African American migration in the Great Plains, 1890-1911” (2017) Southern Illinois University Carbondale Thesis at 2-3.

²³⁴ *Ibid* at 4.

²³⁵ R Bruce Shepard, “Plain Racism: The Reaction Against Oklahoma Black Immigration to the Canadian Plains” in Gregory P Marchildon, ed, *Immigration and Settlement, 1870-1939* (Regina: University of Regina Press, 2009) at 488.

²³⁶ *Ibid*.

²³⁷ *Ibid* at 499.

²³⁸ *Ibid* at 491.

“any race deemed unsuitable for the climate”.²³⁹ On August 12th, 1911, Order-in-Council PC 1911-1324 was passed banning “any immigrants belonging to the Negro race, which is deemed unsuitable to the climate and requirements of Canada” [emphasis added].²⁴⁰ The federal government eventually repealed the Order a year later and Black exclusion was not written into the *Immigration Act*, perhaps due to risk of aforementioned political fallout. However, the Order made it clear that Black immigrants were not welcome in Canada. This ongoing racial prejudice alongside a dwindling in remaining attractive homestead plots would successfully curb large-scale African American settler migration to Canada West, although Black migration would continue in specific occupations such as railroad porters in subsequent decades.²⁴¹

If the Canadian immigration policy response was to stem (and attempt to ban outright) Black migrants from entering settler society in the West, the East would see some conditional inclusion of Black migration, but only within conditions of labour market subservience. Around the turn of the century in Nova Scotia, Caribbean male migrant workers were recruited to work in steel mills performing the “hottest, most physically demanding, and lowest paid jobs”²⁴² while female migrant workers were recruited to Quebec in the first Black Caribbean domestic labour scheme.²⁴³ As anti-Black agitations in the West continued to foment, leading to Order-in-Council PC 1911-1324, the former American consul in Guadeloupe, J.M. Authier, recruited one hundred Black women to work as domestic workers in white, middle-class households in Trois-Rivières, Montreal, and Quebec City between September 1910 and April 1911.²⁴⁴

Working conditions for these migrant women were deplorable however, characterized by “low pay, long hours, hard labour, low status, isolation, and lack of independence... [nevertheless] most Caribbean women remained in domestic service since other areas of employment were closed to them.”²⁴⁵ Whereas white domestic workers were paid monthly

²³⁹ 1910 *Immigration Act*, s 38(c), *supra* note 120.

²⁴⁰ PC 1911-1324, (12 August 1911), online: <https://perma.cc/N39R-SNKN>.

²⁴¹ Sarah-Jane Mathieu, *North of the Color Line: Migration and Black Resistance in Canada, 1870-1955* (Durham: University of North Carolina Press, 2010).

²⁴² Calliste, *supra* note 229 at 140.

²⁴³ Johnson, *supra* note 230 at 281.

²⁴⁴ *Ibid* at 282.

²⁴⁵ Calliste, *supra* note 229 at 140.

wages of \$12-15, Black Caribbean domestic workers were paid around \$5 a month.²⁴⁶ Most of the employers of these women were satisfied in that they perceived the workers as “cheap, intelligent, industrious, devoted, fond of children, docile, polite, submissive, and, unlike some white domestics, ‘they knew their place’”.²⁴⁷ Views of Black domestic workers in Quebec thus aligned with broader intersectional expectations of servility and domestic labour that evolved from the legacy of colonial slave economies in the Americas. At the same time however, the migration of Black female domestic workers was met with resistance by some insofar as they were accused of being “not all of good moral character” (referring to prostitution) and would “certainly be mothers one day” – pointing to racial concerns around the replication of Blackness for white Canadian society.²⁴⁸

After PC 1911-1324 prohibited Black migration (if only temporarily) to Canada, the first Caribbean migrant domestic worker scheme was abruptly terminated. However, this did not stem the continued demand among some Canadian employers for cheapened domestic labour from the Caribbean. Once the Order was repealed, these demands put immigration officers in an awkward situation since there were no legal clauses that specifically prohibited such immigration. Instead, the government’s position was to be deliberately ambiguous as well as requiring that employers seek “permits” for recruiting Black domestics – an unusual administrative requirement for immigration that was not generally required in other cases. The awkwardness of excluding Black migration was somewhat alleviated with 1919 *Immigration Act* amendments that directly referenced race, climate, and assimilability as grounds for restriction, as well as a 1923 Order-in-Council that limited Commonwealth migration to only white-majority countries.²⁴⁹

Yet the legacy of the 1910-1911 Guadeloupe Domestic Worker program and its attempted reconciliation of the demand for a cheapened domestic labour pool with nationalist fears around the reproduction and expansion of Blackness in Canada would provide the

²⁴⁶ Bonner, *supra* note 228 at 263.

²⁴⁷ Calliste, *supra* note 229 at 141.

²⁴⁸ *Ibid* at 140.

²⁴⁹ Johnson, *supra* note 230 at 292.

groundwork for future foreign domestic helper programs in the 1950s and in turn fatefully shape the creation of the broader temporary foreign worker program in the 1970s.

C. The peripheries of whiteness: intra-European racialisms and the emergence of deportation power

This section explores how ideas of racial hierarchies within Europe helped shaped the emergence of deportation power and immigration control in Canada. By tracing how intra-European racialisms categorized some Europeans as less ‘civilized’ and thus less deserving of belonging, it reveals that the policing of whiteness in Canadian immigration policy was tested within Europeanness itself. As noted in Chapter One, the foundational literature of racial capitalism makes a historical claim, summarized by Robin D.G. Kelley in his foreword to the 2000 reprint of Cedric Robinson’s *Black Marxism: The Making of the Black Radical Tradition*:

Capitalism and racism . . . did not break from the old order but rather evolved from it to produce a modern world system of ‘racial capitalism’ dependent on slavery, violence, imperialism, and genocide. Capitalism was ‘racial’ not because of some conspiracy to divide workers or justify slavery and dispossession, but because racialism had already permeated Western feudal society. The first European proletarians were racial subjects (Irish, Jews, Roma or Gypsies, Slavs, etc.) and they were victims of dispossession (enclosure), colonialism, and slavery within Europe. Indeed, Robinson suggested that racialization within Europe was very much a colonial process involving invasion, settlement, expropriation, and racial hierarchy [emphasis added].²⁵⁰

Hence, *Black Marxism* as a work was greatly interested in excavating the “oppression emergent from the immediate determinants of European development in the modern era”²⁵¹ which he identified as ‘intra-European racialism’: a process of “legitimation and corroboration of

²⁵⁰ Robin DG Kelley, “Foreword” in Cedric J Robinson, *Black Marxism: The Making of the Black Radical Tradition* (Chapel Hill: University of North Carolina Press, 2000) at xiii [*Black Marxism*].

²⁵¹ Robinson, *Black Marxism*, *supra* note 250 at 73.

social organization as natural by reference to the ‘racial’ components of its elements.”²⁵² As Minkah Makalani writes, racialism was also a *material* process insofar as it “captures how Western societies have understood and made sense of social stratification and differentiation, a logic that today appears to us as race and racial oppression—the constituting and situating of political groupings within a system of domination that benefits the dominant racial group in that system.”²⁵³

The legacy of intra-European racialism helps those examining Canadian migration history through a xenoracial capitalist lens immensely in understanding the further extension of bordering powers and stratifying immigration laws even in an exclusion era where non-European immigration had essentially been brought to a halt. It also helps us resist the reductionist tendency to see racial capitalism as *only* about European colonization over non-Europeans and an essentialist view of whiteness that is static and homogenous. As Claire Glassco writes in respect to the legacies of intra-European racialism in Canada:

[I]n the eyes of both Canadian citizens and the Canadian government, there was a hierarchy not only in terms of white, Asian, and black immigrants, but also those from different European countries. Thus, while immigrants from Great Britain found a land of opportunity awaiting them, those from Eastern and Southern Europe were not so lucky and were kept marginalized within Canadian society for at least a generation in low paying jobs and ghettoized neighbourhoods.²⁵⁴

From Confederation and the first *Immigration Act* of 1869 onward, Canada had shown a clear preference for white settler immigration from the United States, Britain, and Western Europe. So strong was this preference that, for instance, Canada’s sustained and blatant efforts to

²⁵² *Ibid* at 3.

²⁵³ Minkah Makalani, “Cedric Robinson and the Origins of Race” (2 February 2021), Boston Review, online: <https://tinyurl.com/5s24buhh>.

²⁵⁴ Claire Glassco, “Harvesting Power and Subjugation: Canada’s Seasonable Agricultural Workers Program in Historical Context” (2012) Trent University Thesis at 36.

secure greater immigration from Germany and France were met with emigration controls and emigration advertising prohibitions from those two countries in response.²⁵⁵

Additionally, open-door immigration for white settlers was so normalized that the Canadian government did not even find it necessary to legislate specific legal powers to detain and deport immigrants until the beginning of the twentieth century. This may strike many contemporary observers as curious, since “the power to apprehend and exclude immigrants precisely because they were immigrants [is considered] the *sine qua non* of modern immigration law”.²⁵⁶ Even the 1885 anti-Chinese immigration laws did not make one liable for detention and forced repatriation, though it certainly dissuaded Chinese migration by imposing punitive fees and raising the spectre of criminal prosecution for non-observance.

The first piece of federal legislation explicitly authorizing deportation in Canada was the 1897 *Act to restrict the importation and employment of aliens*.²⁵⁷ The Act was reluctantly passed in retaliation to the US deporting Canadian strike breakers in border towns.²⁵⁸ As a result, the Act was typically not enforced – no funding was earmarked for enforcement and the Act’s provisions were not used until 1900 and only used sporadically afterwards.²⁵⁹ According to Simon Wallace, the first legalized immigration detentions in Canadian history were made in response to Roumanian Jews fleeing massive crop failures and systemic anti-Semitic disenfranchisement and denationalization.²⁶⁰ As there were no legislated powers for immigration detention, these detentions were made pursuant to a hastily passed Order-in-Council which promulgated an indefinite ban on paupers “until such sums of money as are found necessary are provided and paid into the hands of the Canadian Immigration Agent having jurisdiction at the port of landing by the master of the vessel carrying such immigrants for their temporary support and transportation to their place of destination.”²⁶¹

²⁵⁵ Kelley and Trebilcock, *supra* note 95 at 99-100.

²⁵⁶ Wallace, *supra* note 70.

²⁵⁷ SC 1897, c 5.

²⁵⁸ Wallace, *supra* note 70 at 10.

²⁵⁹ Shin Imai, “Canadian Immigration Law and Policy, 1867-1935” (1983) York University Thesis at 42-49.

²⁶⁰ Wallace, *supra* note 70 at 29-44.

²⁶¹ *Pauper Immigrants Proclamation*, PC 1900-1851 (23 July 1900), online: <https://perma.cc/W2U2-G6FR>.

In justifying the detention and deportation of recently arrived Roumanian Jewish refugees, then Minister of the Interior, Clifford Sifton, complained that “Jewish people do not become agriculturalists... and such additions do not in any way whatever contribute to the object which is constantly kept in view by the Government of Canada in encouraging immigration for the development of natural resources and the increase of the production of wealth from those resources,” [emphasis added].²⁶² European anti-Semitism and its resonance in British North America therefore played a key role in justifying the relatively new creation and expansion of legal powers to arrest, detain, and deport migrants. As Wallace argues, before the Roumanian Jewish refugee backlash, “immigration law sought to incentivize migration from Europe; after it, progressively accumulated coercive powers used to police and manage the movement of immigrants.”²⁶³

This trend continued and was accelerated with Sifton’s successor, Frank Oliver, who was Minister of the Interior during the passing of the *Immigration Acts* of 1906 and 1910 which greatly strengthened border enforcement powers and expanded excluded classes. Oliver’s vision of Canadian immigration focused on:

[T]he building up of a Canadian nationality so that our children may form one of the greatest civilized nations of the world, and be one of the greatest forces of in that civilization. This can never be accomplished if the preponderance of the population should be of such class and character as will deteriorate rather than elevate the conditions of our people and our country at large [emphasis added].²⁶⁴

The Canadian nationality was thus translated to immigration policy through a taxonomy of civilization, where modernity was situated in the symbolic geography of the West (“the greatest civilized nations of the world”) while those outside of the most civilized nations and

²⁶² Memorandum from Clifford Sifton to Wilfred Laurier, 15 April 1901, (LAC, MG 26 G, Vols 178-182; Microfilm roll C 781 at 51602).

²⁶³ Wallace, *supra* note 70 at 44.

²⁶⁴ Knowles, *supra* note 43 at 107.

peoples, including those from Central and Eastern Europe, could only mimic the civilized to gain proximity to a white Anglo-American ideal of civilization.

Oliver himself betrayed these leanings when he castigated Slavs for being a “millstone” around the necks of Western Canadians.²⁶⁵ In keeping with upholding racial hierarchy within intra-European civilization, he cancelled the North Atlantic Trading Company contract (which helped facilitate and incentivize agricultural settler immigration from Eastern, Southern, and Central Europe). At the same time, Oliver made significant efforts to further incentivize British immigration: raising the bonuses awarded to British shipping agents and Canadian government agents for every successful British migrant worker recruited, massively increasing hires of immigration recruitment agents, and opening new immigration offices in Exeter, York, and Aberdeen.²⁶⁶ These efforts bore fruit: immigration from the British Isles jumped from 86,796 in the fiscal year ended March 31, 1906 to 142,622 in the fiscal year ended March 31, 1914.²⁶⁷

As the Canadian government first legislated ‘race’ into its explicit immigration selection criteria into its 1910 *Immigration Act*, it also began its practice of creating lists of ‘preferred nationalities’ from which to attract immigrants, which in turn constructed and delineated the remarkably precise contours of Canadian whiteness and white supremacy at the time. For instance, after the passing of the Act, the Immigration Branch set internal policy “to encourage immigration of farmers, farm labourers, and female domestic servants from the United States, the British Isles, and certain Northern European countries, namely, France, Belgium, Holland, Switzerland, Germany, Denmark, Norway, Sweden and Iceland” (those at the top of the whiteness hierarchy) while doing “all in its power to keep out of the country...those belonging to nationalities unlikely to assimilate and who consequently prevent the building up of a united nation of people of similar customs and ideals” – which included non-preferred Europeans.²⁶⁸

Following the First World War, the 1919 *Immigration Act* amendments introduced additional restrictive regulations. After the Winnipeg General Strike of 1919 exacerbated anti-

²⁶⁵ *Ibid.*

²⁶⁶ *Ibid* at 114.

²⁶⁷ *Ibid.*

²⁶⁸ Lisa Marie Jakubowski, *Immigration and the Legalization of Racism* (Halifax: Fernwood Publishing, 1997) at 16.

European sentiment and capitalist fears surrounding the 1917 Russian Revolution. The blame was placed on continental European radicals, framed as “alien enemies” even though nearly all strike leaders were British born and educated.²⁶⁹ The 1919 amendments for instance included new immigration bans based on “peculiar customs, habits, modes of living and methods of holding property”.²⁷⁰

Even as non-European migration was by-and-large banned at this point, racial capitalism evolved to structure and rationalize social and economic relations within this milieu by segregating labour pools. Ironically, the rail industry again led the way. As cheapened Chinese and Asian migrant labour was banned from landing, the question arose as to how to replace this labour source. In 1925, the federal government signed an agreement with the CPR and Canadian National Railways giving them control over immigration and recruitment from previously designated ‘non-preferred’ countries. Thus, cheapened migrant labour from Estonia, Latvia, Lithuania, Poland, Russia, Hungary, Czechoslovakia, Yugoslavia, Romania, Austria, and Germany was brought in to work the most dirty, dangerous, and degrading jobs on the railways.²⁷¹ In an era of non-European migrant exclusion, from the point of view of labour pool stratification, negatively racialized Europeans became the ‘new Asians’.

By 1931, Order-in-Council PC 1931-695 was passed to even more precisely shape white supremacist hierarchy within Canadian immigration law. Under it, internal immigration guidelines were promulgated which divided European immigrants into three distinct groups based on their supposed likelihood of being assimilated and their racial characteristics: the “preferred immigrants”, the “non-preferred group”, and the “special permit” group. The “preferred immigrants” were citizens of Iceland, Norway, Germany, Holland, Denmark, Sweden, Finland, Belgium, Luxemburg, and Switzerland. Immigrants from these countries were thought to have similar racial characteristics to the British; other than having to undergo testing at the point of embarkation, individuals from these countries were admitted under the same conditions as British subjects. The “non-preferred” group consisted of individuals from Central and Eastern

²⁶⁹ University of Manitoba Libraries, “Racialized Communities” (2019), Unbreakable: The Spirit of the Strike, online: <https://tinyurl.com/yv5yt72v>.

²⁷⁰ *An Act to amend The Immigration Act*, SC 1919, c 25 at s 13.

²⁷¹ Knowles, *supra* note 43 at 141.

European countries such as Austria, Hungary, Czechoslovakia, Yugoslavia, Poland, Romania, Lithuania, Latvia, and Estonia. The “special permit” group included all citizens of Greece, Turkey, Armenia, Syria, Italy and all Jews born outside of the United States and the British Empire. All immigrants of the “Asiatic” race were explicitly barred.²⁷²

D. Indigenous (im)mobility and the Indian pass system

One of the dangerous consequences of viewing border control and settler colonialism in Canada as siloed fields of knowledge is the erasure within Canadian migration studies of state efforts to control and govern the movement and migration of Indigenous peoples. We have already examined the role of racialization in the procurement and exploitation of Chinese labour needed to build the transcontinental railroad that facilitated settlement of the West and dispossession of Indigenous nations living on those lands. Following the completion of the transnational railroad, the ‘Indian pass system’ was implemented by the colonial government to regulate the movement of Indigenous peoples to keep them on reserve so that interference with settler homesteading policies would be reduced to a minimum. Importantly, the origins of the Indian pass system and systematized efforts to restrict and control Indigenous migration emerged during the same year as the 1885 *Chinese Immigration Act* – at the moment that Canadian immigration law became increasingly hostile and exclusionary to Asian migration.

This pass system was introduced as an extension and crystallization of temporary war measures during Canada’s military crackdown of the 1885 Northwest rebellion, where the goal was “confining Indigenous nations and individuals to their reserves to allow the Canadian militia to face the ‘disloyal’ and ‘rebellious’ elements more readily.”²⁷³ This was effectuated by a notice issued by Indian Commissioner Dewdney that informed residents of the Northwest that “any Indian being off his Reserve without special permission [...] is liable to be arrested on suspicion

²⁷² See Justin Comartin, “Opening Closed Doors: Revisiting the Canadian Immigration Record (1933-1945)” (2016) 24 *Canadian Jewish Studies* 79 at 83-84.

²⁷³ Choquette, *supra* note 88 at 246.

of being a rebel, and punished as such,” [emphasis added].²⁷⁴ The notice goes further to authorize outright military violence against unauthorized Indigenous movement off-reserve: “when these troops meeting any Indians off their Reserves they may be unable to tell whether they are hostile or friendly, and may attack them,” [emphasis added].²⁷⁵

Following the military subjugation of the 1885 rebellion, the Department of Indian Affairs (DIA) permanently adopted the pass system, requiring that First Nations people had to obtain written permission of a DIA official to leave the borders of their reserve. Yet even then, it was clear that this system was entirely extralegal. Not only were these powers without any air of legislative or regulatory authority, they directly contravened Treaty rights, such as those of Treaty 4 that protected the right of First Nations peoples “to pursue their avocations of hunting, trapping and fishing throughout the tract surrendered, subject to such regulations as may from time to time be made by the Government of the country, acting under the authority of Her Majesty.”²⁷⁶ As Kenton Storey summarizes:

It is understood that the implementation of the pass system in 1885 created a system of racial segregation in the Northwest, with First Nations people sometimes confined to their reserves, their presence in both rural and urban spaces subject to surveillance by white settlers and the North-West Mounted Police (NWMP). It is understood, too, that the DIA utilized the pass system to stamp out Nehiyaw ceremonies like the Sun Dance and to prevent parents from visiting their children at residential schools.²⁷⁷

Recent scholarship has uncovered further detail regarding how the pass system was implemented, enforced, and understood by colonial officials and Indigenous peoples that were subject to it. For instance, in June 1886, DIA interpreter Peter Hourie came across a group of 68 First Nations people from the Touch Hills and Crooked Lakes reserves who were travelling to meet with Neyihaw Chief Ne-can-nete to demand a reserve at Cypress Mountain. When the

²⁷⁴ *Ibid* at 247.

²⁷⁵ *Ibid*.

²⁷⁶ *Treaty No. 4 between Her Majesty the Queen and the Cree and Saulteaux Tribes of Indians at the Qu'appelle and Fort Ellice* (4 November 1876), Government of Canada, online: <https://perma.cc/6U9E-WT57>.

²⁷⁷ Kenton Storey, “The Pass System in Practice: Restricting Indigenous Mobility in the Canadian Northwest, 1885-1915” (April 2022) 69:2 *Ethnohistory* 137 at 138-139.

group refused Hourie's request to go back to them reserves, Hourie called in 12 North West Mounted Police (NWMP) officers to arrest them and forcibly compel their return – thus effecting *border enforcement* and *deportation to reserve* under the Indian pass system.²⁷⁸ Notably, 'deportations' of Indigenous people back to reserve predated the widespread practice of immigration deportations by over a decade.

The lack of transparent legal authority behind the Indian pass system did not prevent border governance bureaucratic infrastructure from developing to administer and enforce it. For example, the Touchwood Hills people also had to obtain a letter of recommendation from their farming instructor before petitioning their Indian agent for a pass to travel outside of reserve.²⁷⁹ Indian agents did not always visit reserves frequently, so even the application for permission would involve a great deal of time and travel. Further, where an application was refused, the appeal process was "contingent on making contact with an inspector of an Indian agency or the Indian commissioner on their annual or semiannual visits."²⁸⁰

Since mobility rights were a precondition for the treaty rights of hunting, trapping, and trade that Indigenous peoples required for their very livelihood, DIA officials quickly learned that the pass system created a powerful administrative tool by which to subjugate Indigenous peoples under their administration. According to Sarah Carter: "[t]he pass system was an effective mechanism for keeping people on their reserves. Along with other informal and formal policies, it limited the mobility and economic opportunities for reserve residents."²⁸¹

The Indian pass system was also used for other purposes related to the project of colonial assimilation and cultural genocide. For example, DIA officials strategically refused to issue passes in order to prevent Nehiyaw peoples from participating in annual Sun Dance ceremonies. Yet it was clear that, especially when Nehiyaw insisted on unauthorized travel to attend ceremonies, enforcement proved challenging. In 1893, when an Indian agent called in the

²⁷⁸ *Ibid* at 141.

²⁷⁹ *Ibid* at 148.

²⁸⁰ *Ibid*.

²⁸¹ Sarah Carter, *Aboriginal People and Colonizers of Western Canada to 1990*, Vol 5 (Toronto: University of Toronto Press, 1999) at 164.

NWMP to arrest and deport 25 Nehiyaw people who had travelled to a dance in the Assiniboine reserves without permission, a NWMP officer reported that “they only laughed at him and would not go [back to reserve].”²⁸² Yet so notorious and widespread was the practice of deploying the pass system to disrupt Indigenous spiritual and cultural activities that when formal amendments were later made to the *Indian Act* to explicitly prohibit “any Indian festival, dance or other ceremony”²⁸³, it was recognized that the pass system already “served to curtail broad participation” in such ceremonies.²⁸⁴

The pass system also played an important role in effecting separation of Indigenous families. For family members who lived on different reserves, it often created impediments to visits and made upkeep of familial bonds subject to the arbitrary whims of Indian agents. Perhaps most devastatingly, the pass system deterred and sometimes prevented altogether parents from visiting their children who were sent to Indian residential schools – a situation that was brought about in the first place by forcible family separation by Canadian officials. This had the impact of severely undermining the protection and intergenerational transmission of Indigenous culture, language, law, governance, and lifeways until the pass system was eventually phased out by the 1930s and 40s.²⁸⁵

IV. Multicultural Canada (1946-1972): post-war transition to race-neutral law

A. Anti-colonial movements and reciprocity with the Philippines

The post-World War II era marked the first time in the history of Canadian immigration law where the interests of xenoracial capitalism were seriously rolled back because of sustained resistance. In 1947, the Canadian *Citizenship Act* came into effect, which formally allowed

²⁸² Storey, *supra* note 277 at 150.

²⁸³ *An Act to further amend the Indian Act*, SC 1895, c 35 at s 6.

²⁸⁴ Cho, *supra* note 224 at 21.

²⁸⁵ *Ibid.*

Canadian residents to obtain citizenship regardless of country of origin.²⁸⁶ That same year, the *Chinese Immigration Act* of 1923 – which prohibited most forms of Chinese migration to Canada – was finally repealed in part due to its inconsistency with the new United Nations’ Charter of Human Rights as well as Chinese contributions to the allied war efforts.²⁸⁷

Yet despite this, the anti-Asian Order-In-Council PC 1930-2115 remained in effect for another 9 years until 1956, continuing to bar all immigration from the “Asiatic race” with the exception of wives and unmarried minor children of Asian Canadian citizens who were “in a position to receive and care for his dependents”.²⁸⁸ The racist Asian immigration ban was sanctioned by the Supreme Court of Canada in 1955 in *R v Narine-Singh*²⁸⁹, where the legality of Immigration Regulation 20(2)²⁹⁰ – which reproduced the language of earlier Asian immigration restrictions – was upheld and an Indian couple from Trinidad ordered deported for being Asian.

After the war, various forces in Canada began to agitate for a more open immigration policy. This included many businesses wishing to recruit migrant labour, ethnic organizations, religious groups, transportation companies, and even federal public servants including diplomats who wish to resettle displaced persons in Europe.²⁹¹ While Prime Minister Mackenzie King had previously been ardently anti-immigration, King altered his stance and declared in 1947 that “the policy of the government is to foster the growth of the population of Canada by the encouragement of immigration”, thus paving the way for another marked increase in European immigration to Canada.²⁹² Between 1946 and 1966, more than 2,500,000 immigrants were admitted to Canada, 900,000 of whom were sponsored by family, with the largest numbers originating from Italy, Portugal, and Greece.²⁹³

²⁸⁶ *An Act respecting Citizenship, Nationality, Naturalization and Status of Aliens*, SC 1946, c 15 [*Citizenship Act*].

²⁸⁷ Arlene Chan, “Chinese Immigration Act” (7 March 2017), The Canadian Encyclopedia, online: <https://perma.cc/6KSS-FWTP>.

²⁸⁸ PC 1930-2115, *supra* note 226.

²⁸⁹ *R v Narine Singh*, [1955] SCR 395.

²⁹⁰ PC 1953-859, SOR 53-220, s 20(2).

²⁹¹ Knowles, *supra* note 43 at 123.

²⁹² *Ibid* at 125.

²⁹³ Xiaobei Chen and Sherry Xiaohan Thorpe, “Temporary Families? The Parent and Grandparent Sponsorship Program and the Neoliberal Regime of Immigration Governance in Canada” (2015) 1:1 Migration, Mobility, & Displacement 81 at 84.

However, the *colour line* of the border would for all intents and purposes remain, filtered under the vague and politically fungible idea of “absorptive capacity”. King, true to his Orientalist background, reiterated his commitment to prevent any “[l]arge-scale immigration from the Orient [that] would change the fundamental composition of the Canadian population”, confirming that aside from repealing Chinese exclusion, “the government has no intention of removing the existing regulations respecting Asiatic immigration unless and until alternative measures of effective control have been worked out.”²⁹⁴ The *Immigration Act* of 1952 did superficially respond to the widespread denunciation of scientific racism by replacing the term “race” with “ethnic group” in section 38(c), yet simultaneously codified existing racist practices, maintaining Canada's discriminatory policies against non-European and non-American immigrants, and vesting in the cabinet tremendous powers to prohibit or limit the admission of persons by reason of such factors as nationality, ethnic group, occupation, lifestyle, unsuitability with regards to climate, homosexuality, engagement in sex work, and/or perceived inability to assimilate.²⁹⁵

Yet despite the racialized exclusion that persisted in the Canadian immigration system in the 1950s, political pressures globally started to break down some of the most glaring inequalities. The 1950s and 60s saw a sometimes conflicting and overlapping hodgepodge of political winds that shaped Canadian immigration policy: the Cold War and communist containment, international liberal humanitarianism, the expansion of overseas markets to Canadian trade and capital, domestic civil rights movements, as well as the spread of decolonization and wars of national liberation in the Global South against external colonial rule.²⁹⁶ Arguably, *all* these seemingly disparate factors were at play during a key event in Canadian immigration history that would force the Canadian government to de-racialize its immigration policies in the 1960s: the 1949-1950 Philippines Reciprocity Row.

After over three centuries of Spanish colonial control and another half century of American occupation, the Philippines finally won its independence in 1946 as part of a wave of

²⁹⁴ Canada, Parliament, *House of Commons Debates*, 20th Parl, 3rd Sess, Vol 3 (1 May 1947) at 2646.

²⁹⁵ Knowles, *supra* note 43 at 130.

²⁹⁶ Paula Hastings, “Distort, Deflect, Deny: Appraising European Colonialism at Empire’s End, 1956-63” 103:2 *The Canadian Historical Review* 201 at 204.

post-war decolonization and national independence movements in Asia and Africa that had transformed international power relations and put anti-racism and decolonization squarely at the top of international political priorities. From the late 1940s to 60s, the Philippines would join the majority-Black countries of the British West Indies (e.g. Jamaica, Barbados, Trinidad and Tobago, and the Bahamas, who would later become independent sovereign states themselves) as among the most vocal international critics of Canada's racist immigration policies.²⁹⁷

The newly independent Philippines government was eager to test its sovereign powers in this brave new world of international relations with Western countries. One of the ways that it did so was by demanding reciprocity in permanent residency policy with Canada, along with other Western nations.²⁹⁸ Their argument was that it was unfair that foreign nationals in the Philippines, particularly from the West, were able to obtain permanent residency visas smoothly, where Filipinos were denied those same rights by white nationalist immigration policy in many Western countries.

According to historian Jon Malek, "the 'Philippine Question' was one of the first indications that Canada could no longer openly pursue a 'white Canada' policy if it wished to rise to prominence in the post-Second World War era."²⁹⁹ These demands for immigration reciprocity were threatened in Philippine Law through the proposed 1949 Reciprocal Immigration Bill (which would have banned foreign nationals from entering or staying in the country unless their government could demonstrate that Filipinos shared the same privileges) and the 1950 passing of amendments to the Immigration Act which reduced the annual immigration quota to foreign countries from 500 to 50 – moves which were in no small part justified as a tit-for-tat response to Canada's severe and asymmetric restrictions on Filipino and other Asian immigration.³⁰⁰

²⁹⁷ Triadafilos Triadafilopoulos, "Dismantling White Canada: Race, Rights, and the Origins of the Points System" in Triadafilos Triadafilopoulos, ed, *Wanted and Welcome?: Policies for Highly Skilled Immigrants in Comparative Perspective* (New York: Springer, 2013) at 21.

²⁹⁸ Jon Malek, "The Pearl of the Prairies: The History of the Winnipeg Filipino Community" (2019) University of Western Ontario Thesis at 71.

²⁹⁹ *Ibid* at 72.

³⁰⁰ Philippine Legislation and Regulations, 13 June 1950 (LAC, RG 25, Vol 1, 515-540).

The Filipino government's demands for immigration equality caused a split within the Canadian bureaucracy between immigration authorities (who largely were in favour of retaining white nationalist protectionist immigration policy) and foreign affairs (who were sensitive to the surging anti-colonial and anti-imperialist sensibilities of the post-war international era and prioritized Canada's postwar international ambitions, particularly in the Asia-Pacific).³⁰¹ As Ninette Kelley and Michael Trebilcock write, when it came to foreign relations during this time, "many of [Canada's] former immigration policies [were seen as] increasingly anachronistic, and indeed an embarrassment".³⁰² Thus, the Canadian government was put to an awkward tradeoff by the Philippines between losing *international* legitimacy during its campaign to position itself as a post-war international human rights defender and losing *domestic* legitimacy if it distanced itself from white nationalism in its immigration policy.

An interest-convergence³⁰³ between Canadian foreign affairs officials and economic elites looking to tap into Asia-Pacific markets in an international era of decolonization resulted in significant and heated debate around whether to introduce a quota system that would allow a certain number of Filipino immigrants into Canada per year. While the Department of Citizenship and Immigration's adamant opposition to allow some immigration from the Philippines ultimately won out, the controversy played no small role in Canada's broader move away from protecting white nationalism through immigration law, beginning with reforms in 1962.³⁰⁴ By 1965, formal recorded immigration directly from the Philippines began, with 1,502 recorded landings that year.³⁰⁵

³⁰¹ Malek, *supra* note 298 at 71-95.

³⁰² Kelley and Trebilcock, *supra* note 95 at 324.

³⁰³ A key tenet in critical race theory, interest-convergence refers to the idea that racial justice or progress for marginalized groups tends to occur only when it aligns with the interests of at least some of the dominant group. See Derrick A Bell Jr, "Brown v. Board of Education and the Interest-Convergence Dilemma" (1980) 93:3 Harvard Law Review 518.

³⁰⁴ Malek, *supra* note 298 at 88.

³⁰⁵ Department of Manpower and Immigration, "Table A385-416: Immigration to Canada by country of last permanent residence, 1956 to 1976" (last accessed 7 June 2025), Immigration Statistics, online: <https://perma.cc/W4MS-8N24>.

B. Dismantling white Canada: undoing explicit racism in immigration law

In addition to national liberation movements of former colonized countries creating a shift in the international order, domestic anti-racist and civil rights movements played an outsized role in forcing the Canadian government's hand on racial exclusion in immigration policy. Of particular note was the political mobilization and demands of the Negro Citizenship Association (NCA), founded in 1951 by Donald Willard Moore, a Barbados-born tailor and former sleeping car porter.³⁰⁶ The NCA was founded specifically to oppose Canada's white nationalist immigration policies.

The NCA joined forces with Black working-class formations in collective struggle. In particular, sleeping car porters played a central role within the Black migrant justice activism of the early and mid 20th century. Although disenfranchised Chinese labourers had built the railway, they were not considered racially appropriate to service the rails. As Deborah Cowen notes, the large number of Black male workers recruited as sleeping car porters despite explicit antagonism to Black immigration was not only due to the value that rail companies could capture from racially discriminatory labour costs. Rather, the mobilization of lingering demand-side racial desire and nostalgia³⁰⁷ from white American passengers who yearned for the comforts of a past era of Black servitude was a key factor. Taking their cue from the Pullman Company in the US, Canadian railway companies found that "the image of broad smiling, white-gloved, crisply uniformed black men proved a money making triumph with Canada's wealthy white railway clientele."³⁰⁸ Cowen describes how private demand for Black workers as rail porters drove Black immigration in an otherwise extremely hostile immigration environment:

Initially they recruited black workers from Canadian cities, but as demand grew they eventually turned to the US and the West Indies, despite Canadian immigration laws banning Black entry. As the headquarters for rail

³⁰⁶ City of Toronto, "Caribbean Connection: One Man's Crusade" (retrieved 4 August 2022), online: <https://perma.cc/QR45-GXM9>.

³⁰⁷ As Gargi Bhattacharyya notes: "[r]acial capitalism operates both through the exercise of coercive power and through the mobilization of desire". See Gargi Bhattacharyya, *Rethinking Racial Capitalism: Questions of Reproduction and Survival* (London: Rowman & Littlefield International, 2018) at ix.

³⁰⁸ Sara Mathieu, "North of the Colour Line: Sleeping Car Porters and the Battle Against Jim Crow on Canadian Rails, 1880-1920" (2001) 47 *Labour/Le Travail* 3.

employment, Montreal became a particularly important site of both Black placemaking and anti-Black racism. In places like Montreal, Calgary and Winnipeg, porters constituted as much of 90% of all Black men's formal employment [emphasis added].³⁰⁹

In response to brutal working conditions, low pay, lack of job security, and ubiquitous racism faced from management as well as customers, Black sleeping car porters made repeated efforts to collectively organize and unionize to better their conditions. However, they were explicitly excluded from larger unions such as the Canadian Brotherhood of Railroad Employees (CBRE) which constitutionally denied non-white workers membership.³¹⁰ As a result, they formed the Order of Sleeping Car Porters (OSCP) in 1917, which was able to secure two collective agreements with the Canadian National Railway (CNR). In 1939, Black porters in Canada were accepted into the membership of the larger US-based Brotherhood of Sleeping Car Porters (BSCP), quickly opening up divisions in Toronto, Winnipeg, Montreal, Edmonton, Calgary, and Vancouver.³¹¹

Black Canadian organizing within the intersections of anti-racism, migrant justice, and labour rights dramatically coalesced in 1954, when the NCA and the Toronto CPR Division of the BSCP led a delegation of advocates on a train from Union Station in Toronto to Ottawa to call on the Minister of Immigration to remove racial restrictions in immigration policy that upheld white nationalism. The coalition argued that this immigration policy threatened civil liberties and discriminated against persons of colour, particularly through arbitrary deportation (especially on the grounds of accepting public welfare), and through unfair discrepancies in rights of family sponsorship.³¹² The demands of the NCA delegation, that primarily consisted of members from the British West Indies, were also couched in the language of equality of inter-imperial movement as British subjects who held ostensible rights to move around the

³⁰⁹ Cowen, *supra* note 163 at 477.

³¹⁰ Mel Toth, "How the Black Sleeping Car Porters Shaped Canada" (last accessed 9 June 2025), Cranbrook History Centre, online: <https://perma.cc/E9M5-9XLL>.

³¹¹ *Ibid.*

³¹² Myseum Toronto, "Derailed: Railway Porters go to Ottawa" (last accessed 9 June 2025), online: <https://perma.cc/M4DE-9PMB>.

commonwealth, but were effectively excluded from mobility, status, and family reunification due to racial hierarchy in the colonially-delineated categories of Canadian immigration law:

The *Immigration Act* since 1923 seems to have been purposely written and revised to deny equal immigration status to those areas of the Commonwealth where coloured peoples constitute a large part of the population. This is done by creating a rigid definition of British Subject: 'British subjects by birth or by naturalization in the United Kingdom, Australia, New Zealand or the Union of South Africa and citizens of Ireland.' This definition excludes from the category of 'British subject' those who are in all other senses British subjects, but who come from such areas as the British West Indies, Bermuda, British Guiana, Ceylon, India, Pakistan, Africa, etc [...] Our delegation claims this definition of British subject is discriminatory and dangerous [emphasis added].³¹³

The NCA delegation and the brief they submitted in Ottawa had an immediate impact: the government took more seriously the idea of overhauling the Canadian immigration system altogether and, in the interim, opened a migration avenue from the Caribbean to Canada in 1955 through the West Indian Domestic Scheme. Yet Black porter organizers were not done pushing back against the xenoracial capitalist order of the day. Despite resistance from the elements of organized labour that wished to protect Canadian immigration policy favouring white and European migration over others, the BSCP successfully fought to get a seat at the 1956 founding convention of the Canadian Labour Congress (CLC) and successfully moved several resolutions asking organized labour to join the fight against white nationalism in Canada's immigration policies. This was a critical development in weakening the strength of white working class 'imperial scripts' that held such political purchase in prior eras.³¹⁴

In the 1940s and 50s, Black immigration to Canada remained highly regulated and exceptional. Canadian immigration authorities shifted primarily to a paternalistic discourse of "protect[ing] migrants from hardship" to justify restrictions on Black migration from the West

³¹³ Negro Citizenship Association, "Brief presented to the Prime Minister, Minister of Citizenship and Immigration, Members of the Government of Canada" (27 April 1954), Toronto, City of Toronto Archives (Fonds 431, File 1, Item 1).

³¹⁴ Myseum Toronto, "Derailed: take on Ontario" (last accessed 9 June 2025), online: <https://perma.cc/Z9SP-KYK2>.

Indies. This sentiment was encapsulated by W. R. Baskerville, Director of Immigration, who stated in a memo to External Affairs that “it is felt [that Black West Indies migration] not only poses both social and economic problems, but would create hardship for both the newcomers themselves and the Canadian community as a whole.”³¹⁵ As many of these countries (e.g. Jamaica, Barbados, and Trinidad) moved towards decolonization and national independence, like the Philippines, their governments became increasingly vocal critics of racially discriminatory Canadian immigration policy.

Although immigration flows from the British West Indies to Canada are often thought of as primarily the movement of Black people, Black migrants to Canada from this region accounted for less than a fifth of the total immigrant flows from the outbreak of the Second World War to the late 1950s.³¹⁶ Rather, white immigration from the region accounted for the vast majority. Yet out the total number of Black immigrants to Canada during this period, the overwhelming preponderance (4,279 out of 5,327)³¹⁷ was from the British West Indies (particularly as compared to the US, UK, or the continent of Africa).³¹⁸

Interestingly however, none of these Black West Indian immigrants were accepted as agricultural workers despite many having experience and skill in the industry. This was in part due to the heavy reliance on notions of unsuitability to climate (e.g. PC 1911-1324) to stem the access of Black immigrants to homesteading policies. These notions had coalesced into entrenched practices of discouraging both African-American and Caribbean workers in agricultural immigration. However, by the mid-1960s, these practices began to change with immigration liberalization alongside Canadian farmers looking to the Caribbean for a solution

³¹⁵ Memo from W. R. Baskerville Director, Immigration Branch to the Under-Secretary of State for External Affairs (14 April 1961), Ottawa, Library and Archives Canada (RG 76, vol 830, file 530-24-644).

³¹⁶ Immigration from the British West Indies (30 June 1957), Ottawa, Library and Archives Canada (RG 76, vol 830, file 552-1-644, pt 2).

³¹⁷ Sheldon Eric Alister Taylor, “Darkening the Complexion of Canadian Society: Black Activism, Policy-Making, and Black Immigration from the Caribbean to Canada, 1940s-1960s” (2019) University of Toronto Thesis at 296.

³¹⁸ *Ibid* at 272-273.

for their chronic labour recruitment and retention problems – a trend that would eventually result in the creation of the Seasonal Agricultural Worker Program (explored later in this section).³¹⁹

By 1958, the Department of Citizenship and Immigration had begun to formally review its immigration policies in response to increasing domestic and international scrutiny of its structural racism. This pressure to address legislated racism increased substantially when then Prime Minister Diefenbaker took the position of publicly opposing the apartheid policies of the South African government alongside non-white majority Commonwealth countries, which in part led to South Africa withdrawing its application to join the Commonwealth in 1961. Some senior bureaucrats were concerned about the growing tension between anti-racism in foreign affairs and charges of racism in domestic immigration policy, warning that “if [Canada] was too outspoken on South Africa, and brought about its exclusion, Canada would invite serious immigration problems - a large flow of nonwhite applicants.”³²⁰

At the same time, post-War Britain faced serious labour shortages and invited many workers from all over the Commonwealth to immigrate and settle in the country without racial prejudice – a policy which was codified with the *British Nationality Act* of 1948 allowing full rights of entry and settlement into Britain for all Commonwealth citizens.³²¹ Notably, these migration and citizenship rights for non-white migrants in the Commonwealth were seen by many, including those in the Canadian bureaucracy, as part of *colonial reparations*: rights which stemmed from “an obligation [for] payment of the exploitation and wrongs committed during the colonial regime”.³²²

As a result, tens of thousands of immigrants of colour from the British West Indies availed themselves of these liberal immigration policies to move to the metropole. However, anti-Black racial animus and white supremacist terrorism (culminating in the 1958 race riots at

³¹⁹ Vic Satzewich, *Racism and the Incorporation of Foreign Labour: Farm Labour Migration to Canada Since 1945* (London: Routledge, 1991) at 149-154.

³²⁰ Henry Basil Robinson, *Diefenbaker's World: A Populist in Foreign Affairs* (Toronto: University of Toronto Press, 1991) at 125.

³²¹ *British Nationality Act 1948*, 11 & 12 Geo 6 c 56.

³²² Taylor, *supra* note 317 at 309.

Notting Hill) moved the British government to begin adopting racially restrictive immigration policies in response:

A series of Commonwealth Immigration Acts in 1962, 1968, and 1971 removed de facto citizenship from all Commonwealth citizens, unless they, their parents or a grandparent had been born, adopted or naturalised in the United Kingdom. This move meant that while many white Americans and Australians would be able to move easily to Britain, people from India, Jamaica or Pakistan would be kept offshore by the new rules. In short, mobilities, particularly, though of course not exclusively, in the context of postcolonial Britain, have always already been shaped by racialised notions of value and belonging.³²³

As the UK government was being pressured by nativists to enact racially restrictive immigration policies in the former imperial core, it looked to divert some of this immigration flow by requesting that Canada accept greater responsibility as a senior member of the Commonwealth.³²⁴ In light of this mounting internal and external pressure, including from London, top Canadian immigration officials were quietly changing their tune on racism in Canadian immigration law by the early 1960s.

1962 proved to be an important year in terms of structural changes to Canadian immigration, the purpose of which was to, in the words of the Director of Immigration, “abolish racial discrimination from policy”.³²⁵ The core of this shift would be the amendment of the much detested Regulation 20, previously upheld by the Supreme Court of Canada in *R v Narine-Singh*³²⁶, which would be excised of “all reference to questions of nationality, geography or regions of the world” and replaced with emphasis “on the skills, ability, and training of the prospective immigrant himself, and on his ability to establish himself successfully in Canada.”³²⁷

³²³ Lucy Mayblin, et al, “Colonial Fantasies of the Offshore” (7 June 2021), History Workshop, online: <https://perma.cc/B2CV-JDQ8>.

³²⁴ Taylor, *supra* note 317 at 312.

³²⁵ Memorandum from the Director of Immigration to the Deputy Minister (10 November 1961), Ottawa, Library and Archives Canada (RG 26, vol 100, file 3-15-1, pt 8).

³²⁶ [1955] SCR 395.

³²⁷ Memorandum to Cabinet Re: Immigration Regulations (16 October 1961), Ottawa, Library and Archives Canada (RG 26, vol 100, File 3-15-1, pt 8).

Yet even on its own stated goal of abolishing formal racial discrimination, the 1962 amended immigration regulations compromised significantly. Most notably, preferential family sponsorship rights for citizens hailing from white-majority countries remained: citizens from Western backgrounds could sponsor children over 21, married children, and siblings and their corresponding families while citizens from non-Western backgrounds were limited to sponsorship of immediate family members and a narrower range of relatives.³²⁸ The government continued to actively recruit immigrants from the US, Western Europe, and the British Isles, while refusing to open immigration offices in non-Western countries and former colonies, starving those areas of administrative resourcing and capacity in order to indirectly limit non-white admission.³²⁹ Further, official internal policy remained that non-white immigration be deprioritized, with racial discrimination in the domestic labour market often used as an excuse to be discriminatorily exacting in standards for non-white immigration admission – a case of systemic racism in one area being used to justify further systemic racism in another.³³⁰

By the time the Pearson administration came to power in 1963, immigration reform had been placed as a priority in the list of election issues. The government set out its vision in its 1966 White Paper on Immigration Policy, but commentators criticized its mixed messaging: calling for a more active and non-discriminatory immigration program on one hand while casting immigration (particularly sponsored immigration from non-white countries) as social and economic threats on the other.³³¹ In response to these criticisms, the Pearson administration appointed a task force led by Deputy Minister Tom Kent to devise new rules which would divide family sponsorship into immediate dependents and “eligible relatives” and employ a standard set of immigration selection criteria based on the principle of universality.³³²

What came out of the task force’s work was a ‘points system’ of immigration admission. In its initial manifestation, prospective immigrants were screened for the two overarching

³²⁸ Triadafilopoulos, *supra* note 288 at 25.

³²⁹ *Ibid* at 25-27.

³³⁰ Memorandum to the Minister from the Deputy Minister (21 January 1963), Ottawa, Library and Archives Canada (RG 76, vol 778, file 537-7, pt 14).

³³¹ Triadafilopoulos, *supra* note 288 at 29-30.

³³² Freda Hawkins, *Canada and immigration: public policy and public concern*, 2nd ed (Montreal and Kingston: McGill-Queen’s University Press, 1988) at 162.

considerations of “prospects of successful establishment” (age, education, training, occupation, personal qualities) and “ease of settlement” (English/French proficiency, relatives in Canada, arranged employment, employment opportunities in intended destination).³³³ Those scoring higher than 50 points could be admitted as independent immigrants. The task force’s proposal was accepted and the policy came into effect with Order-In-Council PC 1967-1616³³⁴, ending the era of overt white nationalism in Canadian immigration policy and creating a brief window in which large-scale immigration (with permanent residency on arrival) from previously colonized nations could occur – a concession that the Canadian government was pressured to make in large part due to the decolonial and anti-racist movements of the time both domestically and internationally.

C. Jekyll and Hyde: the quiet introduction of racialized migrant labour schemes

While the point system did significantly open opportunities for non-white Third World immigration to Canada, it did so in a way that remained systematically structured to privilege wealthy, highly-educated, French or English-speaking professionals – candidates that were more likely to hail from predominantly white settler colonies and former metropolises. On the other side of the coin, non-permanent sojourner migration, particularly through the construction and expansion of temporary foreign worker programs, was increasingly being used to transform and manage pre-existing structures of racial subordination in immigration policy more sharply around class and status distinctions.³³⁵ Since non-white migrants from the Third World could no longer be explicitly excluded without incurring the political charge of racism, changes were needed through ‘differential inclusion’ which allowed for racialized exploitation of labour through bordering and immigration status when these migrants entered national territory to live

³³³ Remarks to the Parliamentary Committee on Immigration by the Honourable Jean Marchand, Minister of Manpower and Immigration (18 April 1967), Ottawa, Library and Archives Canada (RG 76, vol 965, file 5000-14-2, part 13).

³³⁴ PC 1967-1616 (16 August 1967), SOR/67-434.

³³⁵ Jennifer Elrick, “Bureaucratic Implementation Practices and the Making of Canada’s Merit-Based Immigration Policy” (2022) 48:1 *Journal of Ethnic and Migration Studies* 110.

and work.³³⁶ Rather than a new phenomenon however, this signaled a *return* to the early indentured labour era when immigration law acted primarily as a tool of colonial labour discipline after a long era of racialized exclusion for settler demographic control.

Indeed, the post-1967 immigration years can be distinguished in large part by its introduction of a two-tier legal regime which differentially accords status in a manner inflected by race, class, and gender. Creating a permanent sojourner non-immigrant underclass primarily from formerly colonized nations has been a feature, not a bug, of the post-1967 system: since the 1970s, Canada has continually accepted more temporary migrant workers into the country than permanent status immigrants.³³⁷ In this sense, post-1967 Canadian immigration law has not been primarily focused on permanent ‘immigration’ as compared to constructing and managing sojourner migration. Discursively, this shift relied on the justification of recurring domestic labour shortages, though scholars have pointed out that in the immigration context labour shortage often does not refer to *quantity* but rather a “shortage of a particular *kind* of work force, that is, cheap [and] politically repressed”.³³⁸ In order to find and reproduce this kind of labour, immigration policies and practices focus on keeping sojourner workers both *mobile* and *alien*, since a “settled resident workforce would have encouraged both labour organization and more stable communities, and all that they imply - higher wages, education, political participation, growth of a middle class.”³³⁹

Post-war sojourner migration programs went through several iterations. After the end of the Second World War, the Canadian government attempted to address the shortage of domestic caregivers by facilitating the immigration of war-displaced Eastern and Southern European women to work in the sector. However, the supply of domestic labour from these sources began to reduce over time as workers moved out of those jobs for more appealing options and the

³³⁶ For more on differential inclusion, see Leah F Vosko, “Temporary labour migration by any other name: differential inclusion under Canada’s ‘new’ international mobility regime” (2022) 48:1 *Journal of Ethnic and Migration Studies* 129.

³³⁷ Nandita Sharma, *Home Economics: The Making of ‘Migrant Workers’ in Canada* (Toronto: University of Toronto Press, 2006) at 110 [*Home Economics*].

³³⁸ *Ibid* at 67.

³³⁹ Ngai, *supra* note 134 at 131.

political situation in Europe began to stabilize.³⁴⁰ In the meantime, immigration officials continued to receive frequent appeals from Canadian tourists and businesspeople in the West Indies to sponsor women there for domestic service back in Canada. This push was supported by the governments of Jamaica and Barbados and later, by the British government itself.³⁴¹

In response, the 1955 Caribbean (West Indian) Domestic Scheme was formed: the second such program set up to bring Black women from the West Indies to serve in middle to upper-class Canadian households. The first, as mentioned earlier in the chapter, was the 1910-1911 Guadeloupe Domestic Worker program in Quebec, which had attempted to reconcile employer demand for a cheapened female domestic labour pool with colonial fears around the reproduction and expansion of Blackness in Canada. As Sheldon Eric Alister Taylor states:

Ottawa's apparent willingness from the early 1900s until the 1950s to allow in women for domestic work suggests its intention to establish a servant class of black women, an attitude underscored by the initiation of the 1955 West Indian Domestic Scheme.³⁴²

Like the Guadeloupe Domestic Worker program, the first year of the Caribbean Domestic Scheme saw the admission of 100 women on a trial basis, with 25 workers from Barbados and 75 workers from Jamaica.³⁴³ The program quickly expanded with the quota doubling the next year and source countries expanding to include Trinidad, British Guiana, St. Vincent, and other areas of the Caribbean.³⁴⁴

Because the purpose of the scheme was to ensure cheap and reliable migrant labour for female domestic service, Canadian immigration officials made then-novel efforts to condition permanent status of these migrant women to successful job performance in Canadian households. Most importantly, it introduced a contractual employer-tied requirement “to remain in

³⁴⁰ Patricia Daenzer, *Regulating Class Privilege: Immigrant Servants in Canada: 1940-1990s* (Toronto: Canadian Scholars' Press, 1993) at 12.

³⁴¹ Taylor, *supra* note 317 at 214.

³⁴² *Ibid* at 333.

³⁴³ Memo from Laval Fortier to the Director of Immigration (27 June 1955), Ottawa, Library and Archives Canada (RG 76, vol 830, file 552-1-644).

³⁴⁴ Taylor, *supra* note 317 at 230.

employment as domestics for at least one year” to obtain PR.³⁴⁵ Applicants were advised that “[s]ubject to the satisfactory execution of their contract and other obligations, they w[ould] be granted permanent admission upon arrival in Canada.”³⁴⁶ Applicants would still get PR on arrival, but it could be taken away and applicants potentially deported if they did not satisfy employment conditions – a type of *conditional permanent residency*. The imposition of conditions tying immigration status to employer expectations would become a critical precedent for subsequent temporary foreign worker programs. In addition, the Canadian government downloaded the cost of repatriation onto Caribbean governments through a condition that they would “agree to pay the return fare in cases where immigrants [c]ould not meet the conditions of the understanding, or if it became necessary to order the return of some of them.”³⁴⁷

Another novel feature of the Scheme was the imposition of various additional immigration regulations that were absent from previous European domestic workers programs. These were requirements to: have a grade eight education, be single, between the ages of 25-40, and be of good health.³⁴⁸ The racial disparities in requirements speak to the continued underlying white nationalist fears that Black Caribbean women were inherently unsuited and ill-educated for Canadian society and that the immigration and settlement of these women and their families in numbers would significantly threaten the white racial makeup of the nation.

The women who came through the Caribbean Domestic Scheme faced harsh and exploitative working conditions. Domestics were expected to effectively work as a live-in servant, with a broad set of household duties including cleaning, tidying, cooking, and looking after the children and elderly. Wages were on the meagre end of the spectrum for domestic work and the live-in expectation meant that hours were long and grueling, described as being “between breakfast time to dinner time with a break during the day, and [only] a half to a day off each

³⁴⁵ Letter from J.W. Pickersgill to R. G. Mapp, Minister of Trade, Industry and Labour, Barbados (27 June 1955), Ottawa, Library and Archives Canada, (RG 76, vol 830, file 552-1-644).

³⁴⁶ Ministry of Labour (Jamaica) Employment of Female Household Helper to Canada: Applicants Declaration (1955), Ottawa, Library and Archives Canada, (RG 76, vol 830, file 552-1-655).

³⁴⁷ Memo from Fortier to Director of Immigration, op. cit. Letter from Laval Fortier to Jules Leger, Under-Secretary of State for External Affairs (27 June 1955), Ottawa, Library and Archives Canada (RG 76, vol 830, file 552-1-644).

³⁴⁸ Rina Cohen, “A Brief History of Racism in Immigration Policies for Recruiting Domestics” 14:2 Canadian Woman Studies 83 at 84.

week.”³⁴⁹ The long and exhausting hours facilitated by the Domestic Scheme exacerbated workers’ social isolation from community support and family back at home. Given their precarious status, lack of support, and the fear of losing their status if their employer was dissatisfied, workers did not feel safe asserting their rights or making complaints to their employers or to the Department of Labour.³⁵⁰

According to Taylor, the structure of the Caribbean Domestic Worker scheme and its conditional PR status dependent on satisfactory contract fulfillment indicated that the Canadian government’s aim was to “create a permanent and passive black servant class for well-to-do Canadian households.”³⁵¹ Yet the permanence of such a labour pool remained elusive given that those who could do so took advantage of labour market mobility, abandoning domestic work soon after the one-year contractual requirement in favour of better paid and less onerous opportunities. By early 1961, 60% of the Caribbean domestic workers from the 1958 and 1959 cohorts had already left their original employment for other occupational fields.³⁵²

As the 1960s progressed and a series of amendments moved Canadian immigration structures from white nationalist policies of “preferred races and nations” to a race-neutral points system, significant changes were needed to reconcile newly ascendant notions of race-neutral immigration with the recurring needs of Canadian settler colonial capitalism – that is, the need for a permanent supply of disciplined non-citizen bodies whose surplus value could be captured and reproduction costs repatriated.³⁵³ As the Caribbean Domestic Scheme ended in 1967, it became painfully clear that the PR point system’s skew towards formally educated upper-middle class professionals meant that women of colour in domestic work who previously came through the Scheme would not have sufficient points to obtain permanent status.

³⁴⁹ Letter from Laval Fortier, Deputy Minister of Citizenship and Immigration, Ottawa, to the Acting Permanent Secretary, Ministry of Labour, Kingston, Jamaica (19 September 1955), Ottawa, Library and Archives Canada (RG 76, vol 830, file 552-1-64).

³⁵⁰ Taylor, *supra* note 317 at 231.

³⁵¹ *Ibid* at 275.

³⁵² Anthony H Richmond, “The Income of Caribbean immigrants in Canada” in Shiva S Halli, Frank Trovata, and Leo Driedger, eds, *Ethnic Demography: Canadian immigrant, Racial and Cultural Variations* (Ottawa: Carlton University Press, 1990) at 366.

³⁵³ Glassco, *supra* note 254 at 36.

At roughly the same time, 1966 saw the introduction of the Seasonal Agricultural Workers Program (SAWP) which (aside from recruiting workers in different industries) differed from the Caribbean Domestic Scheme in that it removed PR on arrival. The SAWP was set up as a contract migrant labour program characterized by structural exclusion from permanent status (alienage) alongside an imposed seasonality of residency (sojournage). This was not the first attempt by the Canadian agricultural sector to secure a structurally cheapened migrant labour force in the 20th century. For instance, World War II saw Canada experiment with coerced workforces consisting of prisoners of war and interned Japanese Canadians. After being expelled from their homes in British Columbia by the *War Measures Act*, over 4,000 Japanese Canadian internees were put to work on sugar beet farms in Alberta, Manitoba, and Southwestern Ontario through policies instituted by the Department of Labour.³⁵⁴ In the post-war period, most of the migrant labour recruited to provide relief to agribusiness came from Europe and in particular from three distinct groups: displaced persons, Polish war veterans, and Dutch farmers. All three groups were accorded PR on arrival, moved on to better economic opportunities after several years of agricultural work and as such, only provided *temporary* labour relief.³⁵⁵

This period was characterized by the monopolization of farming inputs by multinational corporations alongside low-tariff import policies that significantly lowered domestic food prices. According to Claire Gassco, this put Canadian farmers in a margin squeeze which they wanted to offset with cheaper labour costs. However, agricultural jobs were already highly unattractive: characterized by lack of access to unemployment insurance, low wages, hard and dangerous working conditions, high risk of injury, seasonal frequency, and non-existent job security.³⁵⁶ With costs from uncompetitive agricultural input markets quickly outstripping food prices that were artificially deflated by cheap food import policies, something had to give. Either a massive number of Canadian farmers would go under, the government would have to revisit its cheap

³⁵⁴ Michael O'Hagan, "Beyond the Barbed Wire: POW Labour Projects in Canada during the Second World War" (2020) University of Western Ontario Thesis at 331.

³⁵⁵ Mark Thomas, "Producing and Contesting "Unfree Labour" through the Seasonal Agricultural Worker Program" at 26 in Choudry and Smith, *supra* note 84.

³⁵⁶ Glassco, *supra* note 254 at 52.

food policies, or farmers would have to secure a cheap, reliable, and exploitable seasonal workforce from somewhere to save significantly on labour costs.

In response to these pressures, by 1963 the Ontario Fruit and Vegetable Growers Association (OFVGA) began lobbying for the “[t]emporary entry of farm help from other countries”.³⁵⁷ However, many in the Canadian government continued to oppose these policies for reasons that oscillated between traditional white Canada arguments against non-European immigration and the paternalistic exclusion of not being “party to the exploitation of foreign labour”.³⁵⁸ In the end however, state and business interests aligned with the creation of the SAWP. The Deputy Minister of Citizenship and Immigration recognized the important precedent of the inaugural non-immigrant migrant labour program in this way:

[The SAWP] would not only meet the needs of Canadian employers but it might also have a very real side effect value to this Department. By admitting West Indian workers on a seasonal basis, it might be possible to reduce greatly the pressure on Canada to accept unskilled workers from the West Indies as [permanent] immigrants. Moreover, seasonal farm workers would not have the privilege of sponsoring innumerable close relatives.³⁵⁹

Noting their many similarities, Avis Mysyk posited that the 1966 SAWP took inspiration from the US Bracero program, which ran from 1947 to 1964 and imported nearly 5 million Mexican nationals on temporary status to work on American farms.³⁶⁰ Indeed, like the Bracero program, the SAWP consists of bilateral arrangements that structure non-immigrant sojourner labour flows from sending developing countries to the farms of wealthy developed countries. In the case of the SAWP, the Department of External Affairs changed the nomenclature of the program in the 1970s from “agreement” to “arrangement” when drafting a Memorandum of

³⁵⁷ Report to Citizenship and Immigration from Ontario Fruit and Vegetable Grower's Association (1963), Ottawa, Library and Archives Canada (RG 118, file 3315-5-1, vol 81, pt 1).

³⁵⁸ Letter from CI Minister to Labour Minister (17 November 1964), Ottawa, Library and Archives Canada (RG 118, file 3315-5-1, vol 81, pt 1).

³⁵⁹ Memo: Seasonal Farm Workers from Deputy Minister, CI (13 July 1965), Ottawa, Library and Archives Canada (RG 76, file 553-67, vol 842, pt 1).

³⁶⁰ Avis Mysyk, *Manitoba Commercial Market Gardening, 1945-1997: Class, Race and Ethnic Relations* (Regina, University of Regina Press, 2000).

Understanding (MOU) to include Mexico in the program and to argue that the MOU was exempt from international law and did “not create [corresponding] legal rights and obligations”.³⁶¹

The SAWP is also characterized by structural conditions of labour unfreedom that are imposed on workers through the nexus of contract, immigration law, and border enforcement.³⁶² SAWP work permits only allow workers to stay in the country for a maximum duration of 8 months in a year, ensuring they are not able to permanently settle, reunite with their families, or build strong roots in Canadian society. Work visas also condition status on staying with specific employers, tying the worker to region and occupation, thus denying them the right to freely move and circulate in the labour market like prior European agricultural migrant workers. Since the *public* power of status-revocation, deportation, and future blacklisting is effectively downloaded to *private* Canadian employers, its constant threat can be used to effectively discipline and control the behaviour of workers who complain or attempt to agitate collectively for equality or to better their wages and working conditions. For instance, in 1967, in response to complaints from Trinidadian SAWP workers about unfair working conditions, officials from the Canadian Department of Manpower and Immigration wrote the following:

[Manpower and Immigration] think one possible solution might be early repatriation of the six particularly of the 30-50 who have not repeat not been satisfactory. This might have the sufficiently salutatory effect on remainder.³⁶³

Canadian officials have from the very beginning been acutely aware of the deplorable labour exploitation that the SAWP produces and conditions. The 1973 Federal report “The Seasonal Farm Labour Situation in Southwestern Ontario” detailed the squalor that migrant workers both under the SAWP and unregulated migrant labour endured on Ontario farms – conditions that the report detailed as “intolerable and inhumane”.³⁶⁴ Indeed, the task force

³⁶¹ Memo to the Minister (12 March 1974), Ottawa, Library and Archives Canada (RG 25, file 44-13-1-MEX, vol 14915, pt 1).

³⁶² Tanya Basok, “Free to Be Unfree: Mexican Guest Workers in Canada” (1999) 32:2 Labour, Capital and Society 192.

³⁶³ Seasonal Workers from Trinidad and Tobago (24 August 1967), Ottawa, Library and Archives Canada (RG 118, file 3315-5-1, vol 81, pt 3).

³⁶⁴ Canada Department of Manpower and Immigration, “The Seasonal Farm Labour Situation in Southwestern Ontario” (11 August 1973), Ottawa, Library and Archives Canada (RG 118, File 3300-14, Vol 75, Pt 3).

members who drafted the report characterized these non-immigrant migrant farm labourers as “captive labour” and “people who are a little more than indentured bond-servants”.³⁶⁵

The 1973 report and subsequent media coverage created an initial crisis of confidence for both the government and farmers who employed these workers. While there were those within the Federal government who believed the SAWP and unfree migrant labour programs should have been phased out entirely, or that Canada’s cheap food policy should have been revisited, ultimately the government sided with business interests and *expanded* the SAWP to include Mexico in 1974.³⁶⁶ This move implicitly took the view that the horrendous exploitation, chronic violations of employment and occupational health and safety standards, and substandard housing workers faced was not inherently produced by the conditions of the SAWP, but rather could be mitigated by further extending the existing regulatory conditions of the SAWP to *irregular* migrant flows. In so doing, the government was able to introduce competition between labour sending countries, producing a larger and more exploitable labour force who would – echoing the role of disenfranchised Chinese migrant labourers during the costly and dangerous construction of the transcontinental railroad – ‘save’ what would otherwise have been economically unfeasible cheap food policies through the surplus value extracted from racial subordination and structural unfreedom.

Thus, in a decade of official deracialization in Canadian immigration law, the SAWP concurrently laid the parallel blueprint for a new legal category of sojourner migrant: the permanently non-immigrant worker. Further, many of the same discourses and justifications of undesirability, non-assimilation, and perpetual foreignness associated with pre-1967 categories of “preferred race and nationalities” were downloaded onto the new category of non-immigrant worker to justify the differential *inclusion* of their labour in the Canadian economy and the *exclusion* of their persons from the Canadian polity – accepting the work but not the worker.³⁶⁷

³⁶⁵ *Ibid.*

³⁶⁶ Glassco, *supra* note 254 at 74.

³⁶⁷ Sharma, *Home Economics*, *supra* note 337 at 102.

The SAWP's blueprint for creating and reproducing a non-immigrant workforce has resulted in a system of rotational, unfree contract labour recruitment which bound the worker to a specific job, duration, employer, and certain terms of employment. Workers are fixed in place by these contractual conditions, which are enforced by state powers of immigration detention and deportation. The imposed 'temporariness' of these programs both ensure that workers cannot properly settle in Canada and create a built-in 'sojourner' justification for disparities in rights and working and living conditions vis-à-vis permanent residents and citizens, even though the 'temporary' descriptor frequently obfuscates the permanence of this labour since many sectors rely on non-immigrant unfree labour and many of the same migrant workers participate in these programs year-after-year. This blueprint would eventually move beyond agribusiness with the Non-Immigrant Employment Authorization Program (NIEAP), introduced on January 1, 1973, which was later renamed the Temporary Foreign Worker Program (TFWP).³⁶⁸ The NIEAP became the mechanism by which non-immigrant unfree labour could be procured in a number of different industries, with service, farming, and fabricating, assembly, and repair making up the top three occupational groups in the program's initial years.³⁶⁹

Like the strategic use of racist discourse among workers in previous eras, the 'sojourner' production of non-immigrant workers constructs them as both temporary and foreign, legitimizing the notion that two labour markets should exist within Canada with differential rights and entitlements. The Employment Validation Process, later renamed the Labour Market Impact Assessment (LMIA), crystallized this notion by pitting sojourner workers as potentially stealing the jobs of *real* Canadian workers, thus requiring state intervention to mitigate domestic labour market effects. This helps us in explaining why the legal subordination, exploitation, and disenfranchisement of negatively racialized, non-immigrant workers in Canada continues "with relatively little outcry, even tacit or explicit support, from much of the rest of the population living and working in Canada" and that recognition of these injustices often results in exclusion, not status.³⁷⁰ With the passing of the 1976 *Immigration Act*, fostering economic development

³⁶⁸ Judy Fudge and Fiona MacPhail, "The Temporary Foreign Worker Program in Canada: Low-Skilled Workers as an Extreme Form of Flexible Labour" (2009) 31:5 Comparative Labor Law and Policy Journal 5 at 7.

³⁶⁹ Sharma, *Home Economics*, *supra* note 337 at 122.

³⁷⁰ *Ibid* at 76.

was codified for the first time as an explicit objective of Canadian immigration policy, further normalizing the use of bordering to advance capitalist interests at the expense of labour.³⁷¹

The above-noted characteristics of unfree migrant labour programs usefully reproduce xenoracial capitalism in Canadian immigration law and as we will see, these programs would become the defining feature of Canadian migration in the subsequent era of neoliberal hegemony.

V. Racial retrenchment (1973-Present): xenoracial capitalism under neoliberalism

Neoliberalism is, to put simply, “a return to neoclassical ideals of a self-regulating market with core tenets of deregulation and privatization.”³⁷² On a normative level, it proposes that “human well-being can best be advanced by liberating individual entrepreneurial freedoms and skills within an institutional framework characterized by strong private property rights, free markets, and free trade.”³⁷³ As a practical set of policies, it includes, *inter alia*: deregulation of industries and trade and capital flows; radical reduction in welfare spending provisions and protections for the vulnerable; privatization of public goods; implementation of regressive tax and tariff schemes; user fees that download costs of public goods onto individuals; and commercialization of increasingly broad areas of public and private life.³⁷⁴ Wendy Brown argues that together, neoliberal policies result in four core deleterious effects: intensified inequality; unethical commercialization of things and activities inappropriate for commodification; ever-growing corporate influence in government; and introduction of massive systemic market risk.³⁷⁵

³⁷¹ *An Act Respecting Immigration to Canada*, 1976, SC Elizabeth II 25-26, C 52 at s 3(h) [*Immigration Act 1976*].

³⁷² Rosalind Victoria Gunn, “You’re not welcome here: Examining the intersections of migration and neoliberal immigration policy in Canada” (2013) Ryerson University Thesis at 3.

³⁷³ David Harvey, *A Brief History of Neoliberalism* (New York: Oxford University Press, 2005) at 2.

³⁷⁴ Wendy Brown, *Undoing the Demos: Neoliberalism’s Stealth Revolution* (Brooklyn: The MIT Press, Zone Books, 2015) at 28.

³⁷⁵ *Ibid* at 28-30.

By attaching the emancipatory ideals of human freedom to ideas of ‘free markets’ and ‘free trade’ in pursuit of profit maximization, neoliberalism’s rhetorical shift ironically enables society to tolerate the *unfreedom* of peoples who are exploited, devalued, or excluded by a laissez-faire economic system. This glaring contradiction is particularly evident in migration policy in the neoliberal era, defined by a central paradox where “nation-states and international bodies such as the World Trade Organization are pushing for the elimination of national borders to facilitate the movement of capital, [while] the same entities are restricting the movement of workers across the same borders through subtle and overt instruments of governance.”³⁷⁶ In other words, neoliberal migration has facilitated the free movement of goods, capital, and the purveyors of these systems, alongside the unfreedom of movement (or at least movement that is highly conditioned, disciplined, and surveilled) for the vast majority of global labour – particularly Third World labour.

The disinhibition of capital transnationally set in motion by neoliberal reforms has allowed multinational corporations in industries such as manufacturing, textiles, and information technology to outsource their worksites to the global South “in pursuit of lower wages, laxer labour laws, and a desired workforce.”³⁷⁷ Conversely, in relatively “immobile” worksites where labour cannot be easily outsourced (such as farming, care work, construction, fast food, and other service industries), sojourner worker programs have been crucial to preserving structures of capital accumulation, labour discipline, and racialized and gendered hierarchies – importing the very (neo)colonial relations that these policies help produce offshore.³⁷⁸

While the proliferation of neoliberal policies is commonly associated with the administrations of Ronald Reagan in the US and Margaret Thatcher in the UK in the 1980s, the Canadian government had already begun pursuing neoliberal foreign policy by the early 1970s, a time when domestically, the Canadian welfare state was at a high point.³⁷⁹ For instance, after the

³⁷⁶ Roxana Ng, “Foreward” in Sharma, *Home Economics*, *supra* note 337 at xiii.

³⁷⁷ Geraldina Polanco, “Globalizing “Immobile” Worksites: Fast Food under Canada’s Temporary Foreign Worker Program” in Choudry and Smith, *supra* note 84 at 74.

³⁷⁸ *Ibid* at 74-75.

³⁷⁹ Julia S O’Connor, “Social Justice, Social Citizenship, and the Welfare State, 1965–1995: Canada in Comparative Context” in Rick Helmes-Hayes and James Curtis, eds, *The Vertical Mosaic Revisited* (Toronto: University of Toronto Press, 1998).

creation of the Canada Export Development Corporation (CEDC) in 1969, its very first task was to use public funds to insure Canadian commercial exports to an amount of up to \$750 million. As Sharma notes, by “insuring Canadian investors in the global South for hundreds of millions of dollars against loss of profits, parliamentarians made the Canadian state liable for producing stability for capital investments in these countries.”³⁸⁰

The CEDC’s commitment to guaranteeing Canadian private foreign direct investment in the Global South piggy-backed off of US-led interventions, coup d’etats, and support of right-wing military dictatorships in Latin America, Africa, and Asia throughout the 1960s, 70s, and 80s as a way to force open markets, depose governments intent on using their newfound independence to nationalize industries, and oppose socialist reforms.³⁸¹ Through the imposition of standardized programs of neoliberal economic policy prescriptions (commonly referred to as the ‘Washington Consensus’) the US and other Western countries massively restructured Third World economies by tying international loans and assistance (and/or threatening intervention) to the implementation of capital-friendly policy reforms: privatizing key industries, deregulating capital flows and investments, commodifying resources for export, reducing tariffs, weakening labour and environmental regulation, strengthening private property rights, and hollowing out welfare programs. In doing so, they were largely able to secure favourable environments for transnational capital accumulation and reproduction of colonial power relations primarily through economic control.³⁸²

At the same time, these policies created massive inequality, destruction of subsistence economies through privatization and enclosure, environmental degradation, and (most importantly for migration) the mass displacement of people on an enormous scale.³⁸³ Hence, exported neoliberalism has resulted in mass displacement and precarity among much of the former colonized world which, like colonial appropriation of collective land and resources in prior eras, produced “a ‘class’ of workers compelled to enter the exploitative realm of the labor

³⁸⁰ Sharma, *Home Economics*, *supra* note 337 at 77.

³⁸¹ See Vincent Bevins, *The Jakarta Method: Washington's Anticommunist Crusade and the Mass Murder Program that Shaped Our World* (New York: Public Affairs, 2020).

³⁸² Imad A Mossa, *The Washington Consensus: A Critical Evaluation of the Principles and Implication for Economic Development* (Singapore: World Scientific, 2021).

³⁸³ Harsha Walia, *Undoing Border Imperialism* (Oakland: AK Press, 2013) at 40-52 [*Undoing Border Imperialism*].

market for their survival (proletarianization).”³⁸⁴ It is not surprising therefore that just as these changes created the imperative of the rural dispossessed to migrate to urban centres in search of the means of survival and financial livelihood, they simultaneously create the imperative of the dispossessed in formerly colonized nations to migrate to former metropolises for similar reasons.

As large numbers of people from the Global South are forced to migrate due to economic displacement, military interventions, and climate catastrophe (primarily due to the emissions-heavy economies of the developed world), they are met by “the deliberately limited inclusion of migrant bodies into Western states through processes of criminalization and racialization that justify the commodification of their labor.”³⁸⁵ Some of the darlings of IMF and World Bank structural adjustment, such as the Philippines and Mexico, have become labour brokerage states, increasingly relying on ‘migration as development’ where remittances are then used towards debt servicing – often to Global North financial institutions.³⁸⁶ By the mid-1990s, economic immigration outstripped family immigration as the largest immigrant category³⁸⁷ while 2006 saw temporary economic migrant entries outstrip permanent economic immigration.³⁸⁸ Immigration policy in Canada was now no longer predominantly about settlement of proto-citizens, but about churning a large, disenfranchised pool of sojourner labour for extraction and exploitation – a condition that has only accelerated in the years since.

This section reviews three facets of the neoliberal turn in Canadian immigration policy roughly beginning in the early 1970s and largely carrying on into the present: (1) the expansion of unfree migrant labour regimes; (2) the creep of commodification and neoliberal rationales to non-economic streams of immigration; and (3) the rise of crimmigration, securitization, and paramilitarized border enforcement. I argue that all three of these facets of this neoliberal turn

³⁸⁴ Glen Coulthard, “Place Against Empire: Understanding Indigenous Radicalism” (12 January 2012) Public Lecture at Dalhousie University.

³⁸⁵ Walia, *Undoing Border Imperialism*, *supra* note 383 at 39.

³⁸⁶ Mostafa Henaway, *Essential Work, Disposable Workers: Migration, Capitalism and Class* (Halifax and Winnipeg: Fernwood Publishing, 2023) at 16-23, 30-38.

³⁸⁷ Alexandra Dobrowolsky, “(In)Security and Citizenship: Security, Im/migration and Shrinking Citizenship Regimes” (2007) 8:2 *Theoretical Inquiries in Law* 628 at 639.

³⁸⁸ Fay Faraday, “Made in Canada: How the Law Constructs Migrant Workers’ Insecurity” (September 2012) at 11, Metcalf Foundation, online: <https://perma.cc/4BL8-DADV>.

have retrenched xenoracial capitalism as the primary governing logic in Canadian immigration law during an era of multicultural state policy and formal race-neutrality.

A. Expanding unfree migrant labour regimes: the diaspora and the ‘deportspora’

In Canada, migrant worker programmes involve being tied to the importing employer; low wages, often below the official minimum, and long hours with no overtime pay; dangerous working conditions; crowded and unhealthy accommodation; denial of access to public healthcare and employment insurance, despite paying into the programmes; and being virtually held captive by employers or contractors who seize identification documents.

Harsha Walia, migrant justice activist and author³⁸⁹

The 1973 introduction of the NIEAP (later renamed the TFWP) and the accompanying two-tier system of immigrant and non-immigrant worker status that significantly altered Canadian immigration law was greatly expanded during the neoliberal era. From a political economy lens, mass disenfranchisement through the denial of permanent residency status (and thus citizenship) ensures legal production and administrative control over disposable workers. The development of immigration policy since 1973 demonstrates an increasing addiction to negatively racialized, structurally unfree, “just-in-time” migrant labour. As a result (and not without irony), *non-immigrant status* has evolved to be the most prominent feature of the Canadian immigration system today. According to Sharma, in 1973, the number of unfree migrant workers given temporary employment authorizations was 69,901. This number increased to 87,700 in 1983, 153,988 in 1993, and 228,677 in 2004.³⁹⁰ During the same time, the proportion of non-immigrant workers had

³⁸⁹ Harsha Walia, “Transient servitude: migrant labour in Canada and the apartheid of citizenship” (2010) 52:1 Race & Class 71 at 72.

³⁹⁰ Sharma, *Home Economics*, *supra* note 337 at 113. The numbers included in counts of unfree migrant workers within the NIAEP excludes counts of workers who are admitted for very short periods of time – workers such as sports figures and performing artists whose work inherently “crisscrosses national borders in a high transitory manner.”

increased relative to workers granted permanent residency: only 35% of workers who were given work authorization in Canada in 2004 were given permanent status.³⁹¹

Given that the official policy rationale for introducing temporary non-immigrant labour regimes was to address temporary labour shortages, one would predict that these labour shortages would largely disappear during periods of economic recession when domestic unemployment increases and the labour pool expands. Indeed, during the recession years of the late 1970s into the 80s, the number of landed immigrants granted permanent residency status decreased.³⁹² However counter to these predictions, the proportion of unfree migrant labourers admitted during this time *increased dramatically*. By 1985, workers admitted under the unfree conditions of the NIEAP reached its all-time high of 78% of total workers admitted by Canada in that year.³⁹³ These trends signaled the permanency of non-immigrant sojourner labour (as well as the inaccurate application of ‘temporary’ as a descriptor) even through large economic swings.

The misleading spectre of ‘temporary’ haunts the TFWP, doing much of the work of rationalizing discriminatory allocations of rights and obligations that would not be tolerated among permanent members of the Canadian polity. By insisting that the stay of migrant workers is a temporary sojourn (akin to those of visitors and performers, for instance), the state justifies their structural exclusion from permanent status and thus equal political and economic rights. Evidence of ‘temporariness’ is achieved through a revolving door system of residency authorization where the state recruits people to work for a specified duration after which they are forced to leave and may either return later or be replaced with other ‘temporary’ workers occupying the same occupational roles in the labour market.³⁹⁴ The state not only plays a key role in regulating the conditions of employment and deporting workers who do not satisfy contractual obligations (not unlike the imperial era of ‘coolie’ regulation), but also facilitating employer-labour matching

³⁹¹ *Ibid* at 117.

³⁹² *Ibid* at 120.

³⁹³ *Ibid* at 118-119.

³⁹⁴ *Ibid* at 122.

through the use of government offices abroad and arranging large blocks of non-immigrant labour flows through bilateral agreements.³⁹⁵

Distributional inequalities in state-allotted migration status also consolidate disparities between different occupational sectors and influence class relations. Whereas migrant workers in the professional managerial class³⁹⁶ are far more likely to be granted permanent residency on arrival due to preference in the points system, labour-heavy, low-wage, and high-turnover sectors such as farming, service, and domestic caregiving see far higher percentages of migrant workers being forced to enter as unfree contract labourers.³⁹⁷ These policies have created highly classed segregations within non-white ethnic communities in Canada – a cleavage in the social, political, and economic rights and opportunities between “carefully handpicked (professional elite or investor class) diaspora”³⁹⁸ that exists in parallel to a deliberately constructed “deportspora”.³⁹⁹

Introduced by political scientist Peter Nyers, the deportspora is “the diaspora of the unwanted, the discarded, and the displaced” and for whom deportation and navigating its ever-present threat is a “way of life”.⁴⁰⁰ The deportspora consists of asylum seekers, temporary residents, status-excluded (undocumented) migrants, as well as the unfree contract workers within the TFWP who are unyieldingly disciplined to complete their contractual obligations on pain of status-exclusion, deportation, and future prohibition of movement. By the early 2000s, the TFWP had expanded to include *three* different streams for low-wage, unfree migrant labour programs: (1) the live-in caregiver program (LCP), (2) the Pilot Project for Occupations Requiring Lower Levels of Formal Training (NOC C & D Pilot Project), and (3) the SAWP.⁴⁰¹

The creation and expansion of migrant domestic programs (such as the LCP) requires further exploration. As Rina Cohen notes, traditionally, “domestic helpers have been recruited by

³⁹⁵ *Ibid* at 107.

³⁹⁶ Barbara Ehrenreich and John Ehrenreich, “The Professional-Managerial Class” (1977) 11:2 *Radical America* 7.

³⁹⁷ Sharma, *Home Economics*, *supra* note 337 at 123.

³⁹⁸ Walia, *Undoing Border Imperialism*, *supra* note 383 at 53.

³⁹⁹ Peter Nyers, “Introduction: Citizens of the deportspora” in *Irregular Citizenship, Immigration, and Deportation* (London: Routledge, 2018).

⁴⁰⁰ *Ibid* at 4.

⁴⁰¹ Faraday, *supra* note 388 at 4

the privileged class from the underprivileged sectors of society.”⁴⁰² Female migrant domestic worker programs have often been designed with a view “to import and maintain docile, low-cost labour through severe restrictions of [workers’] choices and mobility.”⁴⁰³ Migrant domestic work in Canada has historically been important in underwriting the social reproduction work necessary for primarily white Canadian women’s entry and upward mobility in the labour market. As women’s labour participation in Canada and other developed countries increased, the need to perform the gendered labour of social reproduction at home had to be replaced either by public provision or private markets. However, with neoliberal policies divesting funds away from public resourcing of social reproduction (e.g. through public/subsidized daycare and eldercare), the responsibility of this work has increasingly fallen on racialized non-immigrant women of colour.⁴⁰⁴

Once Order-In-Council PC 1967-1616 introduced the universalized point system, the 1955 Caribbean Domestic Scheme (with its conditional PR status on arrival) was phased out as it was assumed that there would no longer be a need for it. However, these changes had significant adverse intersectional impacts as overnight “it became almost impossible for women of colour to accumulate the number of education or occupation points needed to obtain landed status. At the same time, domestics continued to be excluded from labour legislation regarding minimum wage, hours of work, vacation, Unemployment Insurance, and Workers Compensation.”⁴⁰⁵ To make up for this gap, the 1973 NIEAP allowed for temporary work visas to be issued to migrant domestic workers for one year, which could be renewed for up to five years, but which foreclosed the permanent status on arrival that was the default for women under the Caribbean Domestic Scheme.⁴⁰⁶ Ironically then, the shift to a race-neutral points system in fact *decreased* the opportunities for migrant women of colour in domestic work to obtain permanent status in Canada, leaving them in a constant state of labour precarity.

⁴⁰² Cohen, *supra* note 348 at 83.

⁴⁰³ Jah-Hon Koo and Jill Hanley, “Migrant Live-In Caregivers: Control, Consensus, and Resistance in the Workplace and the Community” in Choudry and Smith, *supra* note 84 at 37.

⁴⁰⁴ Rachel K Brickner and Christine Straehle, “The missing link: Gender, immigration policy and the Live-in Caregiver Program in Canada” (2010) 29:4 Policy and Society 309 at 317.

⁴⁰⁵ Cohen, *supra* note 348 at 84.

⁴⁰⁶ *Ibid.*

Yet with push factors for emigration intensifying in the Philippines owing in large part to the neoliberal policies of the Marcos regime, many Filipina women would seek to emigrate to find jobs as domestic workers, including in Canada. The effect was that Filipina women gradually replaced Black Caribbean women as the primary source for imported domestic help for white Canadian families after the Caribbean Domestic Scheme was phased out to make way for the NIEAP.⁴⁰⁷ But with no hope of permanent status, fear of deportation, work permits tied to employers, social isolation, family separation, and the near-total control of employers over caregivers' living and working conditions through the live-in requirement, these women faced extreme forms of structured precarity imposed by immigration law. Predictably, employers could take advantage of these women's situations, paying workers less for longer hours and imposing even harsher working conditions. Numerous studies have documented cases in which migrant caregivers suffered financial, psychological, sexual, or physical abuse and/or mundane and everyday breaches of their contractual employment rights.⁴⁰⁸

Yet despite these formidable barriers, women of colour in various formulations of migrant domestic programs "are arguably the temporary foreign workers with the longest, most autonomous, and most diverse organizing history in Canada."⁴⁰⁹ The work of informal social networks, religious congregations, ethnic associations, and workers centres, particularly those by and among Filipina women, have won significant policy improvements over the decades, perhaps most well demonstrated by being the only "low-wage" stream under the broader TFWP to have forced the Canadian government to concede pathways to permanent residency, almost from the beginning. This was initially won through the creation of a new coalition called INTERCEDE (International Coalition to End Domestic's Exploitation) in 1979, which successfully lobbied the government for both standardized employment contract terms and conditions and the opportunity

⁴⁰⁷ Marishana Mabusela, "West Indian Domestic Scheme" (2 June 2021) *The Canadian Encyclopedia*, online: <https://perma.cc/Z9GN-K36T>.

⁴⁰⁸ See Daiva Stasiulis and Abigail Bakan, *Negotiating Citizenship: Migrant Women in Canada and the Global System* (Toronto: University of Toronto Press, 2005); Jacqueline Oxman-Martinez, Jill Hanley, and Leslie Cheung, *Another look at the Live-in-Caregivers Program: An analysis of an action research survey conducted by PINAY, the Quebec Filipino Women's Association with the Centre for Applied Family Studies* (Montreal: Metropolis, 2004).

⁴⁰⁹ Koo and Hanley, *supra* note 403 at 38.

to apply for landed status if the worker had worked continuously in Canada under their domestic labour contract for two years.

In 1981, these demands were reflected in the creation of the Foreign Domestic Movement (FDM) Program. Yet enormous discretionary power remained vested in immigration officials to deny FDM applications on “lack of potential for self-sufficiency” – a vague and catch-all term for perceived deviancy from the intersectional ideal of white, fluent English/French speaking, wealthy, highly formally educated applicants. Immigration officers in practice also required domestics with potential sponsorable family members in their home countries to provide them with evidence that those family members had job offers in Canada. These practices worked to exclude many from status, especially Black Caribbean women who tended to be older and have more dependents back home, despite satisfying the formal two-year domestic working requirement for PR.⁴¹⁰ Further, caregivers faced barriers in redressing chronic employment law violations due to fear of losing status and the power imbalance in having to live within their employers’ home.⁴¹¹ The program was renamed the Live-In Caregiver Program (LCP) in 1992, imposing additional requirements on acquiring status including: formal education (achieving the equivalent of secondary school graduation), skills training, and sufficient fluency in English or French – all requirements that disproportionately impacted migrant domestic women from the most popular source countries in the Philippines, Caribbean, and Latin America.

The LCP and its different iterations have been a permanent staple of migrant flows to Canada since the post-war era. It remained immensely popular into the 21st century, with the number of annual admissions increasing from 4,369 in 2001 to 13,773 in 2007.⁴¹² However, the structural precarity created by the mandatory two years of unfree temporary contract labour tied to an employer, the live-in requirement, and disenfranchisement through exclusions from social security and collective bargaining rights continued to plague workers. Organizers pressured the government to reform the LCP in 2014, critically eliminating the live-in requirement, thus resulting in another renaming into the “Caregiver Program”. However, the Program still restricted

⁴¹⁰ Cohen, *supra* note 348 at 85.

⁴¹¹ Stiell and England, “Domestic Distinctions: Constructing Difference among Paid Domestic Workers in Toronto” (1997) 4:3 *Gender, Place and Culture* 339.

⁴¹² Faraday, *supra* note 388 at 36.

caregivers' ability to transition to permanent residency by imposing additional language and licensing requirements and a cap on the numbers of permanent residency spots given per year. Caregivers in the reformed program continued to report structural power imbalances with employers leading to experiences of abuse and exploitation.⁴¹³

Aside from the Caregiver Program, the other two low-wage TFWP streams (the SAWP and the NOC C & D Pilot Program) do not contain *any* option for transition into permanent residency and are thus permanent non-immigrant unfree labour programs. Created in 2002, the NOC C & D stream of the TFWP expands the scope of these programs from agriculture to other sectors of the economy where cheap labour cannot be easily outsourced, such as oil and gas, construction, and food & service industries. C & D refers to jobs that require less formal education, as opposed to other sections of the labour force classified under management occupations (Skill Type 0), professionals (Skill Level A), and “skilled” work (Skill Level B).⁴¹⁴ Unlike the SAWP’s 8 months seasonal cap, temporary work permits under this program can be extended to 24 months. Further, the Federal government has generally written itself out of enforcing employer compliance with contract terms and minimum legal protections, leaving isolated non-immigrant workers to fend for themselves when it comes to employment rights and occupational health and safety.

From an initial intake of 2,277 workers in 2002, the NOC C & D program grew to 14,893 in 2010.⁴¹⁵ Fast food corporations quickly developed an appetite for NOC C & D non-immigrant labour programs. From 2005 to 2010, franchise owners of Tim Hortons restaurants in Alberta and BC alone received successful labour market opinions for 3,575 NOC C & D workers, 78% of whom were from the Philippines.⁴¹⁶ Further, NOC C & D workers are subject to revolving mandatory dislocation policies of “4-in-4-out” – meaning that workers can only work for a maximum of four years after which they must leave the country for a minimum of four years. Like the seasonal revolving door system of the SAWP, 4-in-4-out impedes the ability of workers to

⁴¹³ Rupa Banerjee, et al, “Assessing the Changes to Canada’s Live-In Caregiver Program” (2017) Pathways to Prosperity, online: <https://perma.cc/FLZ9-5T6X>.

⁴¹⁴ Government of Canada, “National Occupational Classification: View Matrix” (last accessed 14 June 2025), online: <https://perma.cc/NHE7-T8RQ>.

⁴¹⁵ Faraday, *supra* note 388 at 44.

⁴¹⁶ Polanco, *supra* note 368 at 72.

permanently settle and establish ties in Canada while simultaneously emphasizing the ‘temporary’ nature of their working arrangement that justifies continued denial of status and equal rights.⁴¹⁷

Meanwhile, since its inception in 1966, the SAWP has greatly expanded its source countries and number of participating workers. While the number of SAWP workers averaged around 4,000 to 6,000 annually from 1974 to 1986, it grew to 8,539 in 1987 and 12,237 in 1988⁴¹⁸, ballooning to 30,500 in 2019.⁴¹⁹ This expansion is largely due to two 1987 reforms: (1) lifting restrictions on numbers of workers and (2) privatization of SAWP administration. As part of SAWP privatization, the grower lobby incorporated the Foreign Agricultural Resource Management Services (FARMS), creating an institution by which the interests of state and capital could directly manage SAWP. Because of the powers given to FARMS, it sits in all policy meetings that concern the SAWP, alongside Canadian, Latin American, and Caribbean government bodies. FARMS also runs a for-profit travel company (CanAg) that has an effective monopoly on SAWP travel as the sole government authorized travel agent.⁴²⁰

As detailed by Clare Glassco, “FARMS is responsible for seeing not only that workers are hired, but also that they are fired.”⁴²¹ For SAWP workers, breach of contract means the possibility not only of termination of employment, but also loss of status, deportation, and being barred from return to the program. This structure forces workers to put up with abusive and exploitative conditions and deters them from enforcing their rights. Termination of employment clauses are drafted broadly as workers can be repatriated (and replaced) “for non-compliance, refusal to work, or any other sufficient reason stated in [the] contract”⁴²² – again mirroring 19th century indentured migrant worker regimes where contractual specific performance was enforced by penal consequences.

⁴¹⁷ Faraday, *supra* note 388 at 6.

⁴¹⁸ Maxwell Brem, “Migrant Workers in Canada: A Review of the Canadian Seasonal Agricultural Workers Program” (2006) The North-South Institute at 4.

⁴¹⁹ Employment and Social Development Canada, “Government of Canada proposes new regulations to improve protection of temporary foreign workers” (26 July 2021), online: <https://perma.cc/YD7A-9VSR>.

⁴²⁰ Glassco, *supra* note 254 at 97.

⁴²¹ *Ibid* at 98.

⁴²² See “CONTRACT FOR THE EMPLOYMENT IN CANADA OF SEASONAL AGRICULTURAL WORKERS FROM MEXICO – 2022” (2022) Government of Canada at s X(2), online: <https://perma.cc/AV8G-DT8K>.

The disposability of SAWP workers is perhaps most acutely demonstrated by the prevalence of deportation of workers injured or made ill on the job (“medical repatriation”). Data from FARMS indicates that from 2001-2011, 787 medical repatriations were made in Ontario alone, 41% of which were for “medical or surgical reasons” and 26% of which were for “external injuries including poisoning”.⁴²³ Whereas workers who have permanent status would be entitled to healthcare and provincial workers compensation, SAWP workers are instead commonly subject to deportation and replacement, thus being excluded from opportunities to seek care and compensation. Thus, medical repatriation is a key element of the SAWP that allows Canadian agribusiness and the state to exploit non-immigrant migrant workers to the point where their bodies may break down, while simultaneously exporting any responsibility or liability for care, reparation, and support that might otherwise be borne by Canada onto developing countries.

The power of workers to fight back has been subject to consistent attempts at legal disenfranchisement. This includes the Supreme Court’s 2011 decision in *Fraser*⁴²⁴, where the court refused to acknowledge the impact of Canada’s immigration laws in producing the hyper-exploitation faced by migrant farm workers. In fact, it omitted any significant reference to migrant farm workers entirely from its decision in affirming that farm workers could be excluded from the *Ontario Labour Relations Act* and that significant incursions on the right to strike and collectively bargain in the context of farm work were constitutional. *Fraser* also legally reified the residency requirement that excluded SAWP workers from employment insurance (EI) benefits.⁴²⁵ However, these EI exclusions are being challenged again in a major class action lawsuit brought in 2023 on behalf of migrant agricultural workers claiming nearly \$500 million in EI premiums that the federal government has collected from them but that they have been unjustly denied access to.⁴²⁶

Even in legal areas where non-immigrant migrant workers are not formally excluded, few workers will report illegal working conditions due to the power employers hold over their

⁴²³ Aaron Orkin, et al, “Medical repatriation of migrant farm workers in Ontario: a descriptive analysis” (2014) 2:3 CMAJ Open E192.

⁴²⁴ *Ontario (Attorney General) v Fraser*, 2011 SCC 20 [*Fraser*].

⁴²⁵ See Chris Ramsaroop, “The Case for Unemployment Insurance Benefits for Migrant Agricultural Workers in Canada” in Choudry and Smith, *supra* note 84 at 105-122.

⁴²⁶ Goldblatt Partners, “Palmer and Peters v Attorney General of Canada” (9 February 2024), online: <https://perma.cc/5HMR-HJSA>.

immigration status. The few that do complain find that the dynamic of their employment relationship often impairs or delays their pursuit of remedies. In an extensive study on the experiences of a variety of non-immigrant migrant workers, Sarah Marsden notes that:

Although neither employment standards nor workers' compensation schemes exclude workers on the basis of status, these regimes also do not adequately account for the fear and power imbalances that can arise from precarious migration status. Differential access to protection against exploitative and unsafe working conditions thus functions to create and maintain a class of workers whose labour is welcome and necessary but who work without equal benefit of protective laws and who are deprived thereof on the basis of a specific shared trait – namely, precarious migration status.⁴²⁷

Further, in other areas of social life, such as publicly funded healthcare, education, employment insurance, and income security, the law excludes or restricts access for non-immigrant migrants through a variety of means including: restrictive definitions of who can be considered a “resident”, mandatory residency wait periods, proof of status requirements, discrimination against those with closed work permits, and extensive documentary requirements in contexts where these documents are frequently withheld from non-immigrant migrants.⁴²⁸ On this point, Marsden argues that “[r]elative to the laws governing workplaces, migration status tends to be deployed in a more restrictive and exclusive manner in the context of the social state.”⁴²⁹ Laws in Canada have thus been instrumental in legitimizing the subordination of non-immigrant migrant workers (a key group within the broader “deportspora”) through the TFWP and direct and indirect exclusions from legal rights and protections in Canada.

These domestic legal exclusions thus continue and reproduce asymmetric neocolonial relations between states and people, ensuring “that costs of reproducing workers under their auspices are externalized to the source country of origin, partly through enforced limitations on

⁴²⁷ Sarah Grayce Marsden, *Enforcing Exclusion: Precarious Migrants and the Law in Canada* (Vancouver, Toronto: University of British Columbia Press, 2018) at 98.

⁴²⁸ *Ibid* at 100-134.

⁴²⁹ *Ibid* at 133.

the duration of stay in the host state and partly through participants' exclusion from full access to social and statutory benefits.”⁴³⁰

B. Commodified inclusion and neoliberal creep in immigration status

As Wendy Brown writes, neoliberalism is in part signaled by “crass or unethical commercialization of things and activities considered inappropriate for marketization” insofar as it “limits or stratifies access to what ought to be broadly accessible and shared”.⁴³¹ Within Canadian immigration law, neoliberal creep has had the effect of both expanding and stratifying ‘economic’ immigration streams as well as infiltrating and ultimately restricting ‘non-economic’ immigration streams. Like other areas where neoliberal logic has taken a hold of policy discourse, neoliberal immigration creates, exalts, and subsequently rewards its ideal subject – “the super-rational, self-maximizing entrepreneur unencumbered by social commitments or physical limits”⁴³² – while disciplining and disempowering those who deviate from this ideal.

After officially moving away from a white nationalist immigration policy in 1967, the *Immigration Act* of 1976 re consolidated Canadian immigration (PR) under three distinct categories, which continues to this day: (1) family class immigrants, (2) “independent” immigrants selected primarily on education and occupation, and (3) refugees and other humanitarian immigrants.⁴³³ Business immigrants who did not have family relatives in Canada were considered a subsection of independent immigration and the Business Immigration Program was newly created in 1977.⁴³⁴ While we discussed the introduction and expansion of TFWPs beginning in 1973 in the previous section, the neoliberalization of PR status through

⁴³⁰ Tyler Chartrand and Leah F Vosko, “Canada’s Temporary Foreign Worker and International Mobility Programs: Charting Change and Continuity Among Source Countries” (2021) 59:2 *International Migration* 89 at 93.

⁴³¹ Brown, *supra* note 374 at 29.

⁴³² Martha McCluskey, “Countering Neoliberal Logic With The Vulnerable Human Subject” (8 September 2021) Yale Law and Political Economy Project, online: <https://perma.cc/EHJ5-VYHC>.

⁴³³ Canadian Museum of Immigration at Pier 21, “Immigration Act, 1976”, online: <https://perma.cc/Y9TP-RM59>.

⁴³⁴ Trevor Harrison, “Class, Citizenship, and Global Migration: The Case of the Canadian Business Immigration Program, 1978-1992” (1996) 22:1 *Canadian Public Policy* 7 at 11.

commodified political inclusion was arguably set into motion through Canada's creation and expansion of the Business Immigration Program in the late 1970s through to the 80s.

Originally, the Business Immigration Program included only two classes of applicants: “entrepreneurs” and “self-employed” persons. In the early years, successful applicants skewed heavily towards the self-employed class. In 1981 for instance, 86% of all business class immigrants landed as self-employed immigrants.⁴³⁵ Canadian officials however, noticed the profit-maximizing potential of commodifying immigration status through business class immigration and in 1986 created a new “investors” category, defined as “people who have a net worth of at least half a million dollars and undertake to invest significant funds into businesses in Canada”. By 1991, investor class immigrants would overtake self-employed immigrants in number. As a percentage of total immigration, business class immigrants expanded several times over from 3.6% in 1980 to 11.1% by 1992.⁴³⁶ These changes marked the first time in Canadian immigration where wealth became a *direct* proxy for what constituted a desirable immigrant to Canada, justified in neoliberal global competitiveness discourse as providing political enfranchisement in exchange for attracting foreign direct investment. The Business Immigration Program thus reflected the unambiguous preference of neoliberal governance in facilitating the free global mobility of not just capital, but the owners and purveyors of capital.

By the 1990s, neoliberalism moved the Canadian state away from public provision in a variety of social areas and redistributed resources towards businesses and law enforcement. In immigration law and settlement services, as Sedef Arat-Koc details, this translated to both a greater emphasis on market competition-based requirements for permanent residency (e.g. stricter formal education and training requirements, French/English requirements, and direct and indirect wealth requirements) as well as fiscal restraint leading to an excision of social reproduction costs favouring ‘self-sufficient’ immigrants (e.g. more stringent requirements and enforcement of family immigration, cuts to language training programs, and introduction of user

⁴³⁵ *Ibid* at 12.

⁴³⁶ *Ibid*.

fees such as landing taxes).⁴³⁷ The rest of this section will detail three of these neoliberal changes: (1) stricter and punitive language requirements, (2) the curtailment of family immigration, and (3) the proliferation of discriminatory “migrant taxes”.

First, in the 1990s, Canada imposed English/French testing as a condition of permanent residency, not merely naturalization. Despite European language testing being a clear ‘race-neutral’ technology of racialized exclusion among white settler colonies at the turn of the 20th century⁴³⁸, the neoliberal era saw its return and normalization. Further, with respect to language training and proficiency, the Canadian government moved from a ‘carrot’ (incentivization) approach to a ‘stick’ (punitive) approach. Notably, the government defunded the National Language Training Program (NLTP), which was the only language training program that offered a living allowance and an allowance for dependent care, transportation, and living away from home. The NLTP was extremely popular, given the difficulty in combining income-earning activities with intensive language training for immigrants. Following a successful court challenge by two immigrant women (supported by the Centre for Spanish Speaking Peoples and the Women’s Legal Education and Action Fund) on the discriminatory nature of restricted eligibility for the NLTP allowance, the Federal Government decided instead to eliminate the living allowance of the NLTP altogether.⁴³⁹

As the state divested itself from responsibility over publicly funded language training, it simultaneously imposed more stringent English/French language requirements for economic immigration streams in 1995 under the idea that immigrants should be able to “hit the ground running”.⁴⁴⁰ Immigration policy documents from the 1990s began to associate stringent language requirements as necessary for successful integration and for supporting economic growth and competitiveness. As Arat-Koc notes in the context of the intersectional implications of integrating linguistic imperialism in immigration law and policy:

⁴³⁷ Sedef Arat-Koc, “Gender and Race in “Non-discriminatory” Immigration Policies in Canada: 1960s to the Present” in Angela Robertson and Enakshi Dua, eds, *Scratching the surface: Canadian anti-racist, feminist thought* (Women’s Press, 1999) at 222-225 [“Gender and Race”].

⁴³⁸ See Lake and Reynolds, *supra* note 113.

⁴³⁹ Arat-Koc, *supra* note 437 at 222.

⁴⁴⁰ *Ibid* at 223.

As opposed to the older selection criteria, which seemed to emphasize occupational skills and resulted in a significant increase in immigration from developing countries, the emphasis on knowledge of English or French is more likely to disadvantage immigrants from countries where these are not the spoken languages. Even though the history of colonialism and existing imperialism imposes a “necessity” on many peoples of the world to learn the imperial languages, access to such knowledge is still largely governed by class and gender. As women are less likely than men to learn foreign languages, the new immigration criteria are likely to make it even more difficult for women to achieve status as independent immigrants. Women are more likely than men to be excluded from immigration. If they are included, they are more likely to be included in family class immigration, as dependents.⁴⁴¹

This change in policy accelerated with the 1997 publication of the Immigration Legislative Review Advisory Group’s report *Not Just Numbers: A Framework For Future Immigration to Canada*, a report that some scholars have called “the central Canadian policy document of the 1990s”.⁴⁴² The report set into motion a focus on PR distribution that exalted “self-supporting immigrants” who could maximize long-term economic earning potential while minimizing short-term costs for the Canadian state. In terms of language ability, this meant crystallizing French/English ability as “a prerequisite for entry to the labour market of Canada”, formalizing minimum official language requirements, instituting mandatory language testing for many immigration streams, and downloading the costs of these onto prospective immigrant applicants themselves – reforms that were initially resisted by some in the government but won the day with subsequent reforms in the early 21st century.⁴⁴³ After the *Immigration and Refugee Protection Act [IRPA]*⁴⁴⁴ was passed, the weight of the language factor within the points system increased from 14% of total points in 2001 to 36% by late 2003.⁴⁴⁵

⁴⁴¹ Sedef Arat-Koc, “Neo-liberalism, State Restructuring and Immigration: Changes in Canadian Policies in the 1990s” (1999) 34:2 *Journal of Canadian Studies* 31 at 46 [“Neo-liberalism, State Restructuring and Immigration”].

⁴⁴² James P Walsh, “Quantifying citizens: neoliberal restructuring and immigrant selection in Canada and Australia” (2011) 15:6-7 *Citizenship Studies* 861 at 874.

⁴⁴³ Jeffrey Darren Millar, “The Revaluation of the National Language in a Post-National Era: Language Policy and the Governance of Migration and Citizenship” (2014) York University Thesis at 86-87.

⁴⁴⁴ SC 2001, c 27 [IRPA].

⁴⁴⁵ Millar, *supra* note 432 at 77.

Neoliberal understandings of language and integration also meant the downloading of third-party language assessment fees to migrants – the exact opposite approach of the living allowance originally associated with the NLTP. As of 2023, IELTS testing fees cost slightly over \$300 plus tax for each sitting⁴⁴⁶, creating another financial barrier for migrants who wish to obtain permanent residency status, in addition to the opportunity costs for dedicated language, costs of legal help, and other related migrant-downloaded fees and costs. It remains a remarkable victory of Canadian racial aphasia that the very cause of the original 1907 anti-Asian riots in Vancouver – the refusal to approve a European language screening test for immigrants as a means of indirect racial exclusion – was now enthusiastically championed and normalized without much in the way of political pushback.⁴⁴⁷ Also lost to contemporary political consciousness was the fact that these European language test requirements were modelled on US Jim Crow laws to disenfranchise Black Mississippi voters after explicit racial disenfranchisement was blocked by civil war-era constitutional amendments.⁴⁴⁸

Second, neoliberal immigration resulted in significantly curtailed family class immigration. As Jesse Root writes, the “shift away from nation-building and longer-term immigration goals,” informed by the demographic shift away from preferred white migrants from European nations and settler colonies to majority migrants of colour, “has also meant a tightening of rules for immigrants sponsoring family members who may consume public social benefits disproportionate to their perceived labour market/economic contribution.”⁴⁴⁹ Under neoliberalism, the (im)migrant family has been framed as an undesirable grouping of dependents, violating the ideal of atomized self-sufficiency.⁴⁵⁰ Family immigration has thus been vilified through the idea of bogus marriages abusing the system, welfare state burdens due to lower rates of labour market participation for family members, and the perception of the ‘migrant family’ as

⁴⁴⁶ IELTS Canada, “Test fees” (last accessed 14 June 2025), online: <https://perma.cc/G3MK-VBN3>.

⁴⁴⁷ Price, *supra* note 199 at 631.

⁴⁴⁸ Lake and Reynolds, *supra* note 113 at 71-72.

⁴⁴⁹ Jesse Root, et al, “Discounting Immigrant Families: Neoliberalism and the Framing of Canadian Immigration Policy Change” (2014) RCIS Working Paper No. 2014/7 at 4-5.

⁴⁵⁰ Christina Gabriel, “Framing Families: Neo-Liberalism and the Family Class within Canadian Immigration Policy” (2017) 38:1 Atlantis 179.

a (uniquely) patriarchal institution in which unequal gender roles, forced marriages and gender-based violence are ‘imported’ problems.⁴⁵¹

As neoliberalism restructured domestic Canadian society by significantly cutting public social investments and putting an increased burden on the family (particularly women) for social reproduction and care, it has simultaneously moved immigration policies “further in a direction of hyper-masculinization, prioritizing economic class immigration, upholding the ideal of the self-sufficient, flexible, mobile (usually male) professional, and further downgraded the significance of the contributions most women could make as workers and family members.”⁴⁵² By the mid-90s, for the first time economic immigration outstripped family immigration as the largest immigrant category and the gap has generally increased in proportion since.⁴⁵³ By 2012, 62.4% of new immigrants were in the economic category, with only 25.2% in the family class, and 12.4% in protected persons and others.⁴⁵⁴

Strategically, as Canadian neoliberalism promotes policies which call for a return to the nuclear family formation as a solution to social and economic problems, it relies upon an exploitable underclass of non-immigrant labour to fill labour market gaps at cheapened cost – wages that are critical for remittances to support family members back at home who are barred from reuniting with their family in Canada. In other words, neoliberal immigration results in the exaltation of traditional nuclear family forms in the domestic national space while imposing family separation among status-subordinated non-immigrant families.⁴⁵⁵ Working class migrants of colour are excised, both legally and politically, from the idea of Canadian nation building and the social contract – making the state-sanctioned separation of *their* families reconcilable with efforts to keep *our* families together.⁴⁵⁶

⁴⁵¹ Root, et al, *supra* note 449 at 16.

⁴⁵² Sedef Arat-Koc, “Invisibilized, Individualized and Culturalized: Paradoxical Invisibility and Hyper-Visibility of Gender in Policy Making and Policy Discourse in Neoliberal Canada” (2012) 29:3 Canadian Woman Studies 29(3) 6 at 11.

⁴⁵³ Alexandra Dobrowolsky, “(In)Security and Citizenship: Security, Im/migration and Shrinking Citizenship Regimes” (2007) 8:2 Theoretical Inquiries in Law 628 at 639.

⁴⁵⁴ Gabriel, *supra* note 439 at 180-181.

⁴⁵⁵ Root, et al, *supra* note 449 at 8.

⁴⁵⁶ *Ibid* at 12-13.

Several key reforms during the neoliberal immigration era have severely curtailed family immigration including narrowing the family class definition, creating more onerous family sponsorship requirements, and instituting greater immigration ‘family policing’. As Rell DeShaw notes, the concept of family reunion as an immigration method had long existed in Canadian law and for “most of the 20th century, the range of relatives who could be sponsored was fairly broad”.⁴⁵⁷ 1910 saw the first enumeration of specific relatives that could be admitted through family immigration: which included wives, children, parents, brothers, and sisters. By 1976, two categories were created to facilitate this immigration: the “family class” and “assisted relative” categories – the latter of which included unmarried siblings (as dependents of sponsored parents).⁴⁵⁸ This began to reverse significantly in the mid-90s, when the government started to view family immigrants as presumptively suspect and put prohibitions on the sponsorship of siblings and extended family “except in very limited and specific circumstances.”⁴⁵⁹

While family sponsorship of parents and grandparents remained on the books, by the late 2000s and into the 2010s, issuance of PR to this group would be curtailed significantly. The Harper administration would implement a stringent Minimum Necessary Income (MNI) requirement for sponsorship of parents and grandparents in which sponsors had to show *three consecutive years* of (Canada Revenue Agency recognized) income which met or exceeded the low-income cut-off (LICO) target *plus 30%*. In addition, the duration of family sponsorship undertakings for parents and grandparents was extended from 10 to 20 years.⁴⁶⁰ These policies were criticized at the time by the National Association of Women and the Law as “de facto privatization of basic social security on the part of the federal government”.⁴⁶¹ The MNI requirements were subject to a major constitutional challenge on section 15 grounds, arguing that because women, racialized communities, and people with disabilities experienced severe

⁴⁵⁷ Rell DeShaw, “The History of Family Reunification in Canada and Current Policy” (Spring 2006) Canadian Issues 9.

⁴⁵⁸ *Ibid* at 10.

⁴⁵⁹ *Ibid* at 11. A family sponsorship undertaking is an agreement where a Canadian citizen or PR sponsor promises to financially support a sponsored family member for a certain period to absolve the state of providing social assistance support.

⁴⁶⁰ *Regulations Amending the Immigration and Refugee Protection Regulations*, PC 2013-1401, (2014) C Gaz II, Vol 148, online: <https://perma.cc/V9U6-622N>.

⁴⁶¹ National Association of Women and the Law, “Brief on the Proposed Immigration and Refugee Act (Bill C-11)” (23 April 2001) at 15, online: <https://perma.cc/Q4ZB-6SAZ>.

economic, employment, and income disparities in Canadian society, they and their families were adversely impacted by the MNI requirement. However, the Federal Court of Appeal upheld the requirement, and leave to the Supreme Court of Canada was denied.⁴⁶²

At the same time, the government significantly reduced opportunities for family reunification by implementing a yearly cap of 5,000 visas for parents and grandparents while simultaneously replacing PR on arrival with “Super Visas” – long-term temporary visas which excluded them from rights given to immigrants with permanent status including political, employment, social assistance, and healthcare rights. As Root summarizes:

[T]he Super Visa...in practical terms means that those families who can pay are well-positioned to sponsor long-term visits for parents or grandparents who would otherwise not be eligible for any state support during their visit time in Canada. But for those who cannot pay the Super Visa, all routes to temporarily reunite families will remain closed. Immigrant wealth, in other words, will increasingly determine whether immigrants’ extended families will be reunited or remain apart. [Emphasis added].⁴⁶³

Associated with the moral panic around family immigration – popularized through tropes of fraudulent marriages, queue-jumpers, and welfare burdens – has been the simultaneous rise of what I term ‘family policing’ in immigration law. As Megan Gaucher writes, the contours of this moral panic were demonstrated by IRCC’s designation of March 2013 as “Fraud Prevention Month” – stoking concerns around the alleged threat of “the undesirable immigrant falsely using family to obtain Canadian citizenship.”⁴⁶⁴ Associated reforms “focused on further restricting what constitutes family for the purposes of reunification, establishing a role for the state to critically assess the intimate details of one’s conjugal relationships in order to protect Canadian citizens and the immigration system from perceived external threats.”⁴⁶⁵

⁴⁶² *Begum v Canada (Citizenship and Immigration)*, 2018 FCA 181.

⁴⁶³ Root, et al, *supra* note 449 at 10.

⁴⁶⁴ Megan Gaucher, *A family matter: citizenship, conjugal relationships, and Canadian immigration policy* (Vancouver: UBC Press, 2018) at 3.

⁴⁶⁵ *Ibid.*

The state's power to "critically assess the intimate details" of spousal relationships has taken various forms. Restrictions on spousal immigration have long been "a way of monitoring and enabling certain familial relations for colonial authorities."⁴⁶⁶ Despite Federal Court warnings, value judgements and assessments of good/bad faith in spousal relationships for the purpose of family sponsorship continue to be replete with colonial narratives and racializing stereotypes which privilege normative Western cultural ideas of the nuclear family, love, migration, and the ideal couple – what some academics term as "technologies of love".⁴⁶⁷ The core of this good/bad faith analysis is codified in Section 4(1) of the *IRPA*:

4 (1) For the purposes of these Regulations, a foreign national shall not be considered a spouse, a common-law partner or a conjugal partner of a person if the marriage, common-law partnership or conjugal partnership

(a) was entered into primarily for the purpose of acquiring any status or privilege under the Act; or

(b) is not genuine.⁴⁶⁸

Thus, to be eligible for a permanent resident visa through the spousal/partner category, applicants must satisfy a disjunctive two-prong test in showing that they did not enter the relationship primarily to acquire any immigration status *and* that their relationship is "genuine". The disjunctive formulation is inherently problematic as it allows for the absurd outcome that a relationship would be found genuine yet still be refused if the decision maker thought the primary purpose was to gain some sort of status. Yet given the importance of status in determining nearly every aspect of a person's life, every applicant would reasonably consider status as part of their conjugal relationship, which allows immigration officers and tribunals enormous discretion in rejecting couples who are deemed to *care too much*. Perhaps the most Kafkaesque of these cases involve situations where it is accepted that the couple have biological

⁴⁶⁶ Joe Turner, "The Family Migration Visa in the History of Marriage Restrictions: Postcolonial Relations and the UK Border" (2015) 17 *The British Journal of Politics and International Relations* 623 at 628.

⁴⁶⁷ Sharmin Rahman, "The Reasonableness of Assessing "Genuineness" in Canadian Spousal Sponsorship Permanent Residence Applications" (2018) UCL Migration Research Unit Working Papers No. 2018/15 at 11, online: <https://perma.cc/WA7J-FGBY>.

⁴⁶⁸ *IRPA*, *supra* note 444 at s 4(1).

children together and wish to commit towards raising the child together yet are still rejected (and thus separated from their children) through the determination that the relationship was originally entered into primarily to secure some form of status.⁴⁶⁹

In practice, this has meant that, for non-Western couples, “immigration decision-makers often begin their analysis from a place of mistrust...the hopeful migrant has the burden of providing that they are not worthy of suspicion.”⁴⁷⁰ This ‘guilty until proven innocent’ approach holds resiliently for non-Western couples, even though Section 4 is written in a way that suggests the *government* holds the evidentiary burden in proving either part of the disjunctive test. As Sharmin Rahman notes, the disjunctive test “reinforces the prejudices that immigration decision-makers can hold in Canadian spousal sponsorship cases” and “denies the right for hopeful migrants to marry for any reason other than the ‘romantic marriage ideal’ that is rooted in modern, Western conceptions of coupling”.⁴⁷¹ Further, because scrutiny of only the *beginning* of the relationship is determinative in Section 4(1)(a), “[h]opeful migrants are reduced to not only needing to prove that they love each other according to markers that immigration decision-makers are familiar with, but also, that they have loved one another from the start.”⁴⁷²

In 2012, following media reports and concerted lobbying by conservative groups such as Canadians Against Immigration Fraud, the federal government instituted conditional permanent residency (CPR) for sponsored spouses and partners to allegedly crack down on marriage fraud and protect “innocent” Canadians. CPR requires newly sponsored spouses and partners to remain in a conjugal relationship with their sponsor for two years after receiving landed status or risk losing their status and was implemented despite the opposition of more than eighty organizations across Canada that work with women and immigrants, who argued that CPR exacerbated power imbalances and increased violence for immigrant women in abusive situations.⁴⁷³

⁴⁶⁹ *Vo v Canada (Citizenship and Immigration)*, 2018 FC 230.

⁴⁷⁰ Rahman, *supra* note 467 at 26.

⁴⁷¹ *Ibid* at 29.

⁴⁷² *Ibid*.

⁴⁷³ Rupalee Bhuyan, Anna C Korteweg, and Karin Baqi, “Regulating Spousal Migration through Canada’s Multiple Border Strategy: The Gendered and Racialized Effects of Structurally Embedded Borders” (2018) 40:4 Law & Policy 346 at 363.

In a similar vein, Canada introduced the *Zero Tolerance for Barbaric Cultural Practices* in 2014, which included an amendment to *IRPA* which renders all permanent residents or foreign nationals inadmissible on the grounds of practicing polygamy, which is deemed under the legislation to be a “barbaric cultural practice”.⁴⁷⁴ According to Gaucher, by “framing polygamy as both foreign and culturally specific, a narrative of the polygamous family as the non-Canadian family emerged,” simultaneously solidifying “the monogamous conjugal family as a marker for citizenship for immigrant families both prior to and after obtaining permanent residency.”⁴⁷⁵ Though both the CPR and the *Zero Tolerance for Barbaric Cultural Practices Act* were eventually repealed, they symbolize the ways in which neoliberalism’s re-focusing on the Western nuclear family unit as the normative foundation of society has found expression in immigration law through increased family policing informed by Orientalist stereotyping.

Third and finally, the rise of neoliberalism in Canadian immigration policy has been accompanied by a broadside of “migrant taxes”.⁴⁷⁶ In March 1995, the Federal government began to charge a “right of landing fee” which alongside mandatory application fees, came out to \$975 for every adult immigrant, including refugees, as part of an effort to privatize and download public service and administration costs to individual immigrants and their sponsors through “user fees” at the point of delivery. Ironically, even though the government claimed it would use the revenues from the user fees towards settlement services for new immigrants, it undermined its own claims by simultaneously cutting settlement services substantially. Critics such as Sedef Arat-Koc have also pointed out the fees’ discriminatory and disproportionate impacts especially on women and immigrants from Third World countries coming from family and refugee/humanitarian streams, renaming it the “modern head tax” in reference to its parallels with the much-maligned Chinese Head Tax of 1885-1923.⁴⁷⁷

⁴⁷⁴ SC 2015, c 29 at s 2.

⁴⁷⁵ Gaucher, *supra* note 464 at 6.

⁴⁷⁶ Here, I use the Oxford definition of a tax, which is “a compulsory contribution to state revenue, levied by the government on workers’ income and business profits, or added to the cost of some goods, services, and transactions.” Thus, migrant taxes are above-defined compulsory contributions to state revenue that are levied specifically against migrants.

⁴⁷⁷ Arat-Koc, “Neo-liberalism, State Restructuring and Immigration”, *supra* note 441 at 45.

The right of landing fee is one example of an expanding set of migrant processing taxes – compulsory government levies imposed on migrants ostensibly to support the cost of increasingly complex and onerous migrant screening processes. These include: the introduction of new immigrant and temporary visa application fees, medical and biometric fees, upfront language testing fees (discussed earlier), and significantly increased citizenship fees.⁴⁷⁸ The cumulative effect of these migrant processing taxes has been to continually extract wealth from non-citizens in a recurring set of encounters (particularly those migrants who are excluded from PR on arrival categories) with immigration authorities under cost-recovery justifications. While wealthier non-citizens may simply be able to foot these increasing costs as mere inconveniences, working class non-citizens face increased financial and other barriers in obtaining status and citizenship while being forced to pay repeating fees to the government merely to obtain or maintain some form of legal status and recognition.

Migrant processing taxes are not the only type of migrant taxes that have proliferated in the neoliberal era of immigration. Discriminatory and onerous migrant taxes have increasingly bled into other areas of social life while the state has been withdrawing from social services for the broader population. This has the two-fold utility of framing untenable social inequalities (such as in housing) as a problem of allowing too many foreign bodies into the country while simultaneously propping up various social institutions (such as education) from going bankrupt in the face of public funding cuts.

For instance, in British Columbia, the accelerating crisis of housing unaffordability has increasingly been framed in racial terms – allegedly as a problem of the investments of wealthy Chinese immigrants as opposed to wealthy domestic interests or broader policy decisions related to the financialization of housing as investment assets alongside growing income and wealth

⁴⁷⁸ In the mid-2010s, the Conservative Federal government increased citizenship application fees over 500% from \$100 to \$530. Evidence has indicated that this significant increase in “citizenship tax” has led to a significant decline in number of immigrants applying for citizenship, thus disenfranchising newcomers in Canadian political life. As Andrew Griffith writes, the “user fee” approach to citizenship is “essentially treating citizenship as a purely private good” rather than something publicly valuable in strengthening society, furthering equality, and improving democratic life. Andrew Griffith, “The impact of citizenship fees on naturalization” (12 October 2016), Policy Options, online: <https://perma.cc/XZ2R-ADVW?type=standard>.

disparity.⁴⁷⁹ In response to racialized scapegoating of wealthy Chinese immigrants, which ironically were on paper the type of “self-sufficient” immigrants that neoliberal immigration policies were designed to prioritize, British Columbia imposed a foreign-buyers tax which added an additional property transfer tax of 15% (later increased to 20%) on all residential property purchased by foreign nationals.⁴⁸⁰ Migrant housing taxes eventually evolved into a full Federal ban on purchasing housing through the *Prohibition on the Purchased on Residential Property by Non-Canadians Act*⁴⁸¹, which went into effect on January 1, 2023.

Though the law contains specific carve-outs for migrants with PR or temporary resident status, the Act leaves undocumented persons unable to access the Canadian housing market entirely.⁴⁸² Further, anyone violating the law or assisting anyone to violate the law may be liable for a fine of \$10,000.⁴⁸³ This migrant exclusionary logic also underlies the decision of the City of Toronto to require valid immigration status for both municipal housing subsidies and basic needs supports for shelter residents – effectively banning status-excluded migrants from housing supports – in spite of the City’s formal commitment to non-discriminatory access for all residents under “Sanctuary City” principles.⁴⁸⁴

Importantly, the proliferation of migrant taxes in Canada alongside increasing status-precarity does not only result in more flexible and exploitable migrant labour and the exclusion of this labour from critical areas of social life and support but is also directly profitable for the Canadian state. Through ‘education head taxes’ (discriminatory tuition fees), the education sector has been a site of neocolonial wealth extraction primarily from Global South families to the Canadian education sector in the tune of billions of dollars annually. This xenoracial capitalist extraction has primarily taken the form of discriminatory and extractive international tuition fees for non-permanent resident students in post-secondary but also increasingly K-12

⁴⁷⁹ Christopher Cheung, “Why Racism in Vancouver’s Housing Debate Can’t be Ignored” (7 August 2015), The Tyee, online: <https://tinyurl.com/55ck4zsa>.

⁴⁸⁰ Ashifa Kassam, “Vancouver slaps 15% tax on foreign house buyers in effort to cool market” (2 August 2016), The Guardian, online: <https://perma.cc/QXJ8-Y4AG>.

⁴⁸¹ SC 2022, c 10, s 235.

⁴⁸² *Ibid* at s 4(2).

⁴⁸³ *Ibid* at s 6.

⁴⁸⁴ City of Toronto, “Identification Requirements to Access City Services” (last accessed 15 June 2025), online: <https://perma.cc/5BBP-LH6M>.

levels. Education head taxes and their role in the Canadian political economy will be explored in greater detail in Chapter Four.

C. Rise of crimmigration, securitization, and paramilitarized border enforcement

Neoliberalism is commonly conflated with small governments, but this obscures the central, overarching, and expensive role that the state and its carceral apparatuses are called on to fulfill in such a political-economic system. David Harvey elaborates:

The role of the state is to create and preserve an institutional framework appropriate to such practices. The state has to guarantee, for example, the quality and integrity of money. It must also set up those military, defence, police, and legal structures and functions required to secure private property rights and to guarantee, by force if need be, the proper functioning of markets. Furthermore, if markets do not exist (in areas such as land, water, education, health care, social security, or environmental pollution) then they must be created, by state action if necessary.⁴⁸⁵

As such, neoliberal *divestments* from state provision in areas such as environmental protection, housing, health, and social security are inherently intertwined with corresponding state *investments* in policing and carceral infrastructure to uphold markets and private property rights. Predictably then, the rise of neoliberalism has ushered in a significant carceral expansion in migration governance. This is visible not only in the expansion of immigration detention and border policing, but also in legal, political, and discursive shifts that link certain types of migration and migrant bodies as criminal in nature.

The link between the emergence of “crimmigration” within broader global neoliberalist turns in policy deserves further explanation. “Crimmigration” as a popular concept was coined by Juliet Stumpf in a 2006 article to reflect the increasing convergence between criminal and

⁴⁸⁵ Harvey, *supra* note 373 at 2.

immigration law in the United States since the late 1980s.⁴⁸⁶ However, as we have demonstrated, early forms of 19th century imperial indentured labour immigration laws were also criminal laws by nature. Stumpf notes the role of post-9/11 anti-terrorism efforts in accelerating the connection between criminal and immigration law, with immigration law often being the coercive tool of choice due to “lesser substantive and procedural barriers to deportation compared to a criminal conviction”.⁴⁸⁷ Further, as government deregulation of market activities and privatization of previous areas of state social provision necessitated heightened state control and enforcement, governments enacting neoliberal policies across the world began to criminalize low-income, racialized, migrant, or otherwise marginalized populations “as a strategy of the state to manage/ignore poverty”.⁴⁸⁸

Harsha Walia describes the criminalization of migration as one of the defining processes of border imperialism by deliberately constructing migrants as “illegals and aliens.”⁴⁸⁹ As such, law enforcement, in the form of police and border enforcement, are reified as protecting law-abiding national citizens from criminal ‘immigrant’ deviants. But since national security threats do not solely fall within the ambit of domestic policing but also bleed into the mandate of intelligence and defense agencies, crimmigration helps justify an ‘imperial boomerang’ that results in the paramilitarization of responses to perceived migrant threats.⁴⁹⁰ Commenting on the nature of the perceived crime that working class migrants of colour ‘commit’ by moving unauthorized into and within national territory, Walia writes:

Migrants, particularly undocumented migrants or asylum seekers arriving irregularly, are punished, locked up, and deported for the very act of migration. In order to justify their incarceration, the state has to allege some kind of criminal or illegal act. Within common discourses, the victim of this criminal act is the state, and the alleged assault is on its borders. The state

⁴⁸⁶ Juliet Stumpf, “The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power” (2006) 56:2 American University Law Review 367.

⁴⁸⁷ *Ibid* at 385.

⁴⁸⁸ Cecilia Menjivar, Andrea Gómez Cervantes & Daniel Alvord, “The expansion of “crimmigration,” mass detention, and deportation” (2018) 12:4 Sociology Compass at 3.

⁴⁸⁹ Walia, *Undoing Border Imperialism*, *supra* note 383 at 53.

⁴⁹⁰ See Julian Go, *Policing Empires: Militarization, Race, and the Imperial Boomerang in Britain and the US* (New York: Oxford University Press, 2024).

becomes a tangible entity, with its own personhood and boundaries that must not be violated.

[...]

By invoking the state *itself* as a victim, migrants *themselves* are cast as illegals and criminals who are committing an act of assault on the state. Migrants become prisoners of passage; their unauthorized migration is considered a trespass, and their very existence is criminalized.⁴⁹¹

Canada has experienced similar convergences between criminal and immigration law, particularly with the passing of *IRPA* in 2001. The shift to categorizing migrants as potential national security threats (e.g. health risks, proto-criminals, and threats to the social welfare state) had already been occurring in Canada throughout the 1990s and was in full display in media coverage and political reactions to four boats transporting 599 Chinese migrants from Fujian Province, China to BC in 1999.⁴⁹² The subsequent introduction of *IRPA* formally codified this burgeoning migration-as-security-threat approach to governance by greatly expanding the criminal inadmissibility provisions from the previous regime. As a result of *IRPA*, “[n]on-citizens, even refugees and permanent residents, found to be terrorists, members of organized criminal groups, spies, criminals, or money launderers can be declared “inadmissible” and deported from Canada.”⁴⁹³

Further moves were made by the Conservative Harper administration to advance a crimmigration agenda. For instance, the 2012 *Protecting Canada’s Immigration System Act*⁴⁹⁴ significantly overhauled Canada’s refugee system, legally codifying a dichotomy between ‘deserving’ and ‘undeserving’ refugees. The core of this dichotomy was the Act’s creation of the new category of “designated foreign nationals” which “formalized a link between ‘irregularity’ and ‘criminality’ by mandating the automatic and indefinite detention of so-called ‘designated

⁴⁹¹ Walia, *Undoing Border Imperialism*, *supra* note 383 at 53-54.

⁴⁹² Maggie Ibrahim, “The Securitization of Migration: A Racial Discourse” (2005) 43:5 *International Migration* 163.

⁴⁹³ Simon Wallace, “Untangling Deportation Law from National Security: The Pandemic Calls for a Softer Touch” in Leah West, Thomas Juneau, and Amarnath Amarasingam, eds, *Stress Tested: The COVID-19 Pandemic and Canadian National Security* (Calgary: University of Calgary Press, 2021) at 231.

⁴⁹⁴ SC 2012, c 17.

foreign nationals’ or ‘irregular arrivals’ over the age of 16.”⁴⁹⁵ The speedy removal of refused asylum seekers became a governmental priority alongside tightened border controls and expanded international cooperation in deterring irregular arrivals of asylum seekers.⁴⁹⁶

Despite the usefulness of burgeoning crimmigration scholarship following the 2006 Stumpf article, scholars such as Jessica Evans warn us of the dangers of colonial amnesia inherent in understanding crimmigration as a new phenomenon as opposed to a long-standing and recurring theme, given the clear links between the historical origins of Canadian policing and border enforcement:

The history of carcerality in Canada is one which is bound by settler-colonial efforts to police the limits of political subjectivity and inclusion vis a vis the need to dispossess indigenous peoples from their lands and legitimize settler sovereignty, on the one hand, and to manage a highly flexible, exploitable and deportable labor force, on the other hand. The historical origins of the North West Mounted Police, for example, is tied to the enforcement of the Pass System which criminalized indigenous mobility and cultural practices in order to legitimize and enforce capitalist agricultural practices [...]

Furthermore, the ability to criminalize, detain, and sometimes deport racialized migrant labor in the late 19th and early 20th centuries has been a key strategy in managing tensions between flexible and ‘liberal’ labor market requirements and the settler states’ need to define its national identity through so-called racial whiteness. As such, there is no sharp boundary between the criminalization and detention of so-called domestic ‘criminals’ and international migrants.⁴⁹⁷

⁴⁹⁵ Jessica Evans, “Crisis, capital accumulation, and the ‘Crimmigration’ fix in the aftermath of the global slump” (2021) 25:2 Citizenship Studies 188 at 195.

⁴⁹⁶ Idil Atak, Graham Hudson, and Delphine Nakache, “The Securitization of Canada’s Refugee System: Reviewing the Unintended Policy Consequences” (2018) 37 Refugee Survey Quarterly 1.

⁴⁹⁷ Evans, *supra* note 495 at 190. Indeed, as noted in Chapter One, the very origin of modern immigration law is in authorizing criminal punishment to restrict certain forms of mobility. The very first immigration ordinances in the British Empire such as those applied to indentured labourers in Mauritius and the British West Indies, authorized criminal penalties for migrant workers’ breaches of contractual work duties. See Stanziani, *supra* note 59 at 61; Look Lai, *supra* note 64 at 62-70.

Canadian immigration detention and border enforcement also experienced significant infrastructural, legal, and administrative changes during the post 9/11 crimmigration era. Infrastructurally, Evans has traced how the creation of Public-Private Partnerships in prison financing through Alternative Finance Procurement (AFP) processes locked governments “into long-term spending and partnerships with private actors such that these public assets (here prisons) must be continuously in use.”⁴⁹⁸

As of September 2020, about half of all immigration detainees in Canada were kept in provincial jails⁴⁹⁹ – with the remaining detainees housed in dedicated federal Immigration Holding Centres (IHCs). Private investment in public carceral infrastructure thus directly creates incentives to find bodies (whether from those in remand, those serving out criminal sentences, or immigration detainees) to populate these facilities. Private prison firms, such as Corbel Management Corporation, have begun to procure contracts from federal authorities, including a sizable \$37.8 million contract announced in 2015 for the construction and operation of Toronto’s IHC until 2027.⁵⁰⁰ Though there has been successful lobbying to reduce use of provincial jails to house immigration detainees, this has simply been offset by the Budget 2024 authorization of federal jails to advance the same carceral purposes.⁵⁰¹

Arguably the most important institutional change in the Canadian crimmigration era was the creation of the Canada Border Services Agency (CBSA) through an Order-in-Council in 2003.⁵⁰² The CBSA oversees the immigration detention system, including arresting, holding, and recommending release of non-citizens at ports of entry and inside the country. CBSA officers

⁴⁹⁸ Evans, *supra* note 495 at 196.

⁴⁹⁹ Human Rights Watch, “Canada: Stop Incarcerating Immigration Detainees in Provincial Jails” (14 October 2021), online: <https://perma.cc/2HSF-Y9TG>.

⁵⁰⁰ Government of Canada, “Contract awarded for Toronto Immigration Holding Centre” (30 June 2015), online: <https://perma.cc/VG2W-PXU7>.

⁵⁰¹ Canada Border Services Agency, “Key issues: Ministerial transition 2024” (last accessed 27 May 2025), online: <https://perma.cc/C483-BKWW>.

⁵⁰² *Order Transferring Certain Portions of the Canada Customs and Revenue Agency to the Canada Border Services Agency*, SI/2003-216, (*Public Service Rearrangement and Transfer of Duties Act*), online: <https://perma.cc/U8DK-L494>.

work closely with the local and provincial police, the federal RCMP, and the adjudicators at the Immigration and Refugee Board (IRB) tribunals.⁵⁰³

Initially, the CBSA was simply an amalgamation of three distinct agencies: the Canada Customs and Revenue Agency, the enforcement arm of Citizenship and Immigration Canada, and part of the Canadian Food Inspection Agency. However, after the passing of the 2005 *Canada Border Services Agency Act*⁵⁰⁴, CBSA was housed firmly within Public Safety Canada – the same department which oversees the RCMP and the Canadian Security Intelligence Service (CSIS) – entrenching the idea that irregular migrants were a public security threat. This administrative reshuffling held major ramifications for border enforcement in Canada as the CBSA was repositioned not just alongside the RCMP and CSIS, but also functionally as the only federal agency empowered to conduct *both* policing and security intelligence operations.⁵⁰⁵

Furthermore, in line with the dictates of xenoracial capitalism, the CBSA remains the only major law enforcement agency in Canada with no independent civilian oversight, at a time when the migrants that it targets are overwhelmingly working class people of colour exercising their mobility rights but shut out of status normalization.⁵⁰⁶ This lack of oversight continues to be the case in spite of the disproportionately extensive powers of arrest, detention, search, and seizure granted to CBSA officers (including obligations of mandatory arrest and detention for designated foreign nationals)⁵⁰⁷, indefinite immigration detention with no presumption of release (in violation of international human rights law)⁵⁰⁸, and the paramilitarization of Border Security Officers beginning with the \$1.07 billion CBSA Arming Initiative from 2006-2016 which

⁵⁰³ Stephanie J Silverman, “The Monster in the Closet: Why It Matters that Normative Theorists Fail to Reckon With Immigration Detention” (February 2021) SSRN Draft Paper at 5, online: <https://perma.cc/A84D-3E9B>.

⁵⁰⁴ SC 2005, c 38.

⁵⁰⁵ Graham Hudson and Sasha Kovalchuk, “Urban securitization and inland border enforcement” in Graham Hudson and Idil Atak, eds, *Migration, Security, and Resistance: Global and Local Perspectives* (London: Routledge, 2021) at 112.

⁵⁰⁶ Joanne Roberts, “People of colour say Canadian border agents discriminate against them as they return home” (16 September 2022), CBC News, online: <https://perma.cc/KG8G-KFBQ>.

⁵⁰⁷ Gordon Maynard, “Arrest and Detention” (9 May 2013) National Citizenship and Immigration CLE, online: <https://perma.cc/D8WS-942Z>.

⁵⁰⁸ Human Rights Watch, “Legal Analysis of Agreements Allowing Immigration Detention in Canadian Provincial Jails” (4 April 2022), Human Rights Watch, online: <https://perma.cc/V2H2-7NC6>.

equipped officers with collapsible batons, pepper spray, handcuffs, and firearms in response to perceived migrant threats.⁵⁰⁹

At its legal core, the crimmigration trend in Canadian law relies on the selective incorporation of criminal and administrative doctrine⁵¹⁰ in the immigration realm in a way that maximizes executive discretion to deal with predominantly migrants from former colonial peripheries as harshly as possible with minimum legal protection. Immigration lawyers Siena Antis, Joshua Blum, and Jared Will describe this regime as a “separate but unequal” system, which has consistently “failed to provide basic procedural and substantive protections that are available in other Canadian legal regimes where liberty is at stake.”⁵¹¹

In particular, they point to three key elements of this “separate but unequal” regime: (1) a lack of procedural fairness including almost complete reliance on – and acceptance of – unsworn hearsay from state officials to form the evidentiary record, (2) lack of tribunal jurisdiction to review or control conditions of detention, and (3) lack of any requirements to release the detainee where his or her detention has become indefinite or unhinged from its immigration-related purpose.⁵¹² As a result of selective incorporation, many legal guard rails set up for prisoners in the criminal justice system are removed for immigration detainees, including access to free telephone calls, interpreters, or even legal counsel.⁵¹³

Critically, evidentiary onus in immigration detention is effectively flipped on its head in a violation of the presumption of innocence. As Stephanie Silverman details: “[i]n a significant reversal from the criminal justice context, the detainee bares an evidentiary burden to overturn the reasons for their detention and secure release. Courts rarely grant more rights or limit the scope of people vulnerable to detention.”⁵¹⁴

⁵⁰⁹ Canada Border Services Agency, “Evaluation of the CBSA Arming Initiative” (September 2017), online: <https://perma.cc/E45K-L6DC?type=standard>.

⁵¹⁰ Peter L Markowitz, “Deportation is Different” (2011) 13:5 Journal of Constitutional Law 1299 at 1351.

⁵¹¹ Siena Antis, Joshua Blum, and Jared Will, “Separate but Unequal: Immigration Detention in Canada and the Great Writ of Liberty” (2017) 63:1 McGill Law Journal 1.

⁵¹² *Ibid* at 7-18.

⁵¹³ Silverman, *supra* note 503 at 6.

⁵¹⁴ *Ibid* at 5-6.

Further, even though immigration detention can potentially last for months or years, Canadian courts have excised migrants from cruel and unusual treatment or punishment protections under section 12 of the *Charter*.⁵¹⁵ Whereas the Supreme Court of the United States has itself acknowledged deportation as punishment⁵¹⁶, Canadian courts have neither recognized deportation as “punishment” or even “treatment” under section 12⁵¹⁷ – indicative of a particularly *Canadian* discourse that minimizes carceral harms inflicted on migrants through a self-valorizing assumption that Canadian immigration detention review is separate, but in fact equal. These trends have not only systematically disenfranchised status-excluded migrants within the immigration detention system but have also had deadly effects: from 2000 to early 2023, at least 17 individuals died in immigration detention, most in provincial jails.⁵¹⁸

In the final analysis, what does positioning migrants as criminally inclined and expanding carceral bordering infrastructure *do* for xenoracial capitalism? What is all of this for? Shirley Leyro and Daniel Stageman argue that crimmigration is in large part *designed* to facilitate the economic exploitation of resident non-citizens.⁵¹⁹ It does this through two interrelated processes that further the goals of xenoracial capitalism: (1) increasing labour compliance through marginalization, constant fear of deportability, and the erratic tendencies of immigration policies, and (2) creating and leveraging socially and legally imposed limits to civic participation to reduce utilization of available public services.⁵²⁰ The two sides of this disenfranchising coin – state-sanctioned vulnerability to labour exploitation in addition to an eroded ability to make claims on public services or space – make status-excluded migrant workers and their families ideal neoliberal objects. In a word, they are made to be Canada’s anti-citizens.

⁵¹⁵ *Charkaoui v Canada (Citizenship and Immigration)*, 2007 SCC 9 at paras 95-98.

⁵¹⁶ See *Padilla v Kentucky*, 559 US 256 (2010). For a more comprehensive argument of deportation as punishment subject to section 12 of the *Charter*, see *R v Wong*, 2018 SCC 25, Factum of the Joint Interveners Chinese and Southeast Asian Legal Clinic and South Asian Legal Clinic of Ontario (21 September 2017) at paras 13-20, online: <https://perma.cc/2577-VDHK>.

⁵¹⁷ *Canada (Minister of Employment and Immigration) v Chiarelli*, [1992] 1 SCR 711 at 735.

⁵¹⁸ Hanna Gros and Samer Muscati, “Deaths Underscore Inhumanity of Canada’s Immigration Detention” (27 January 2023), Human Rights Watch, online: <https://perma.cc/P3CR-9JLG>.

⁵¹⁹ Shirley P Leyro and Daniel L Stageman, “Crimmigration, Deportability and the Social Exclusion of Noncitizen Immigrants” (2018) 15:2 Migration Letters 45 at 45-46.

⁵²⁰ *Ibid* at 52.

Despite some progress towards migrant justice through the dismantling of explicit white nationalism in the law, Canadian immigration policies have continued to perpetuate racial, class, and gender disparities through strategies of labour immobility and discipline in ways that are at times shockingly similar to the very first intra-imperial immigration ordinances that managed ‘coolie’ labour. Neoliberalism has significantly influenced the shaping of modern immigration laws, favouring economic immigration, and maintaining unfree migrant labour primarily from the Global South, while restricting non-economic immigration streams and downloading social reproduction costs to source countries. The securitization of borders and the crimmigration regime provides the brute force by which disenfranchised non-citizen residents are kept in line – creating the conditions for large segments of undocumented, status-excluded labour to proliferate. It is within these neocolonial conditions that this paper explores the *contemporary* political economy of status-excluded migrant labour in Canada and the young people who toil in the shadows.

Chapter Three – The political economy and lived experiences of status-excluded youth

I. Yin and Yang: status-excluded labour in the administrative shadows

Under many Chinese philosophical traditions, most notably in Daoism, yin-yang refers to the duality but interconnection of opposing forces. Yang (陽) is associated with the sun and light, whereas yin (陰) is associated with the moon and shade.¹ According to this concept, the notion of complementary duality can be found in many areas of the natural world as well as in human societies. Shadow (yin) cannot exist without light (yang). Additionally, where there is light, there also must be shadow.

I start with the metaphor of yin-yang to help illustrate the relationship between formal black-letter immigration programs (the yang, where law and policy is publicly debated and structured, with migrants making themselves known and legible to immigration authorities in order to acquire and keep formal status) and the informal, muddled space of status-exclusion (the yin, characterized by illegality, deportability, and the underground life of evading detection by law enforcement). Navigation between the light and the shadow is especially fraught, as one status-excluded mother put it: “applying [for status] is like telling [the immigration authorities] that we are here – come get us! We pray they let us stay until our [H&C] application is done. It was scary, but what can we do? We cannot afford school, cannot afford to get sick.”²

Undocumented status is artificial – there can be no undocumented experience without immigration policy that is constructed in a particular way that excludes people from status in one way or another. Under this view, the yin of status-excluded communities is innately tied to the yang of formal immigration structures and policies which directly influence which bodies may remain within the light and which bodies are forced into the shadows. As Michael Samers argues in the context of France, the “creation of undocumented immigration [is effected] through a

¹ Tony Fang, “Yin Yang: A New Perspective on Culture” (2012) 8:1 Management and Organization Review 25.

² Interview with M1, archived with the author.

racialized, Europeanized and securitized asylum policy,”³ other restrictive PR policies, combined with “an apparently persistent demand for extremely low-paid labour”.⁴

As we have seen in the prior historical chapter, neoliberal immigration in Canada has skewed PR heavily towards those who are seen as economically ‘self-sufficient’ (in terms of independent wealth, high levels of formal education, training, high-waged work experience, and English/French language skills – factors that are highly correlated with wealth and capital) while constricting the scope of family and humanitarian immigration programs not seen as sufficiently economically productive for the now profit-maximizing nation-state. Meanwhile, migrants who fall short of this neoliberal ideal, including lower-wage migrant workers from the Global South and their families, are funneled into sojourner-type temporary status programs or shoved outside of status entirely.

The shadow metaphor in the immigration sphere also speaks to the *administrative invisibility* of unfree migrant labour in Canada. In *Home Economics*, Nandita Sharma argues that the NIEAP (the precursor program to the modern TFWP) was one of the least discussed aspects of Canadian immigration policy in part because the non-immigrant status of NIEAP participants meant that they were excluded from most annual statistics and research prepared by immigration departments. This categorical non-permanency also meant that these temporary foreign workers were “excluded from any systematic or comprehensive demographic and socio-economic analysis of their impact on Canadian society.”⁵ Most information on migrant labour programs was not made public but rather had to be extracted piecemeal through specific protracted departmental and freedom of information requests, undermining the development of a popular understanding of the structure and broader impact of the NIEAP.⁶ This institutional opacity has continued to evolve with the 21st century neoliberal transition from state-run immigration to a

³ Michael Samers, “Invisible capitalism: political economy and the regulation of undocumented immigration in France” (2003) 32:4 *Economy and Society* 555 at 563.

⁴ *Ibid* at 572.

⁵ Nandita Sharma, *Home Economics: The Making of ‘Migrant Workers’ in Canada* (Toronto: University of Toronto Press, 2006) at 135 [*Home Economics*].

⁶ *Ibid*.

system that is increasingly controlled and administered by non-state actors such as for-profit corporations and educational institutions – a sort of “shadow immigration department”.⁷

To the extent that this administrative invisibilization continues to apply to various aspects of the TFWP and other related temporary migration programs, its effects are greatly magnified when it comes to undocumented, status-excluded communities. There is no agreed-upon method to effectively track or even ‘guestimate’ the number of status-excluded individuals in Canada at any one period. Neither IRCC nor CBSA publishes data on their running estimates of status-excluded people in Canada, assuming such data collection and estimations exist internally at all. In a November 2022 communiqué, IRCC admitted that “[t]here are no accurate figures representing the number or composition of undocumented immigrants residing in Canada” and that “[e]stimates from academic sources range between 20,000 and 500,000 persons, although there may be more.”⁸ In an interview with the *Globe and Mail* in late 2023, Immigration Minister Marc Miller estimated the number at around 300,000 to 600,000 people.⁹ Existing numbers of status-excluded people are expected to increase significantly as the Migrant Rights Network estimates that some three million temporary status permits are set to expire over the next few years.¹⁰

One approach towards some form of evidence-based estimation may come from close examination of removal statistics. CBSA tracks numbers of removal orders¹¹ through its national removal inventory, which hit 477,341 cases in December 2024.¹² These numbers give us a sense of the populations that CBSA is monitoring and tracking for the purposes of its removal process.

⁷ *Globe and Mail* Editorial Board, “Immigration: Canada’s economy can’t rely on temporary workers and study permits forever” (8 June 2023), *The Globe and Mail*, online: <https://perma.cc/CE4S-4M48>.

⁸ Immigration, Refugees and Citizenship Canada, “CIMM – Undocumented Migrants – November 18, 2022” (18 November 2022), online: <https://perma.cc/2XKM-NJVQ>.

⁹ Christian Paas-Lang, “Canadians — and Liberals — split on giving the undocumented status: immigration minister” (15 June 2024), *CBC News*, online: <https://perma.cc/2YUE-FFDK>.

¹⁰ Migrant Rights Network, “Migrant Rights Network Response to Budget 2025” (4 November 2025), online: <https://perma.cc/N3Q6-TKCN>.

¹¹ Referring to formal orders issued by immigration authorities that indicate that the subject individual cannot legally remain in Canada and must leave the country. Removal orders can be further disaggregated by severity into departure orders, exclusion orders, and deportation orders. See Canada Border Services Agency, “Removal from Canada” (last accessed 16 June 2025), online: <https://tinyurl.com/58msvzay>.

¹² Canada Border Services Agency, “Key issues: Ministerial transition 2024” (last accessed 27 May 2025), online: <https://perma.cc/C483-BKWW>.

However, caution must be used against drawing inferences from the national removal inventory number, as the majority (397,036) of those cases were in the “No Action Required” category, which is comprised of a variety of individuals with removal orders having pending applications for permanent residency, including asylum claims.¹³

Since refugee claimants have temporary residency status, but are automatically given a conditional removal order once they make their application, they ought not be counted towards undocumented/status-excluded numbers. Removal order numbers also exclude migrants who irregularly crossed into Canada and have thus far escaped detection entirely. With respect to data comprehensiveness and reliability, the Office of the Auditor General has stated in its audit of immigration removals that CBSA “did not have a sound data quality program in place to ensure that the information in its removal inventories was accurate” and that there were “significant periods of inactivity among cases of foreign nationals whose whereabouts were unknown.”¹⁴

Some scholars have similarly argued that undocumented communities in Canada are subject to “institutional invisibility” and that undocumented children’s access (or lack of access) to education is primarily found in unwritten rules and discretionary practices.¹⁵ In the face of a “legal black hole” with respect to formal law, policy, and bureaucratic practices which govern access to education for undocumented children, there has emerged a patchwork but “reciprocal understanding of the myriad of underground practices, half-written guidelines and contradictory interpretations of the law which evoked opacity, rather than transparency.”¹⁶ Further, from the administrative perspective, status-excluded children could be legally and socially invisibilized depending on ad hoc bureaucratic requirements for recognition. As one local school board representative in Ontario rather coldly explained: “if you do not have a permanent [Ministry of Education allocated] code, simply you do not exist”.¹⁷ Yet this pervasive institutional invisibilization is also strategically leveraged in modes of resistance, where status-excluded migrants employ a variety of strategies, along with allies and supporters, to facilitate their

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ See for example, Francesca Meloni, et al, “Invisible students: institutional invisibility and access to education for undocumented children” (2017) 13:1 International Journal of Migration, Health and Social Care 15.

¹⁶ *Ibid* at 20.

¹⁷ *Ibid* at 21.

everyday mobility and mitigate status-related barriers – what Francisco J Villegas calls “strategic in/visibility”.¹⁸

Though the character of the yin and yang of migration regimes may seem clashing, they are in fact deeply interconnected. Unfortunately, much of the scholarship that narrowly focuses on the lived experiences of undocumented communities in Canada and liberal rights claims can often be disconnected from the material realities of immigration law and the profitability of status-exclusion and nationalist segregation. In contrast, I argue that by seeing status-exclusion and formal immigration programs as part of an indivisible whole, it becomes clear that the production and management of status-excluded labour is a key shadow policy goal of the Canadian government. What *connects* the yin and yang in this case is the phenomenon of adverse incorporation in migration governance.

A. Adverse incorporation: production and management of status-excluded labour as shadow policy

Within the political economy of low-wage migrant labour in Canada, the yin-yang metaphor should not be taken as a form of ‘oppression Olympics’ – that is, to mean that status-excluded, informal labour is necessarily more precarious than migrant workers with *some* formal contingent status (whether under TFWP, student visas, or otherwise). What *is* different between formal low-wage migrant worker programs and status-excluded labour pools is that the latter is governed as ‘shadow policy’. By shadow policy, I refer to the deep and foundational administrative invisibility that pervades the production and management of status-exclusion in Canada. The political economy of status-excluded migrant labour and related government policy, therefore, cannot be understood through the conventional methodology of legal, policy, and statistical research and analysis. Rather, systemic understanding can only be achieved

¹⁸ Francisco J Villegas, “Strategic In/Visibility and Undocumented Migrants” (2010) 368 Counterpoints 147.

tangentially, with clues derived from the cracks, holes, silences, and omissions within formal immigration policy, as well as engagement with status-excluded communities directly.

Yet the shadow policy of managing status-excluded labour is no less important a policy goal than managing migrant labour ‘above ground’. During this current era of neoliberal immigration, both the Canadian state and Canadian industry have developed an addiction to a particular type of labour: a highly disciplined, cheapened, flexible, and easily disposable post-Fordist pool of workers.¹⁹ While this type of labour force can be produced in immigration law through sojourner TFWPs and various related work authorization policies²⁰, it can *also* be produced through conditions of discipline imposed by the state-sanctioned disenfranchisement, illegalization, fear, and administrative invisibility inherent to status-exclusion. In fact, Canada has seen simultaneous and parallel growth in *both* formal temporary migrant labour and status-excluded labour.²¹

The relationship between formal precarious migrant labour programs and the informality of status-excluded labour cannot be understood within a simple binary model of political inclusion and exclusion. Rather, the framework of *adverse incorporation* is more attuned towards capturing the dynamics of these different subsegments of the labour market and their relationship to each other and the broader legal superstructure. In her landmark study of Syrian refugees entering seasonal agricultural work en masse in Turkey, Sinem Kavak advances the idea of adverse incorporation in immigration by arguing that labour precarity is relational and that its creation and perpetuation in one segment can create a centripetal force that pushes the entire labour market into further insecurity and informality.²² Kavak further argues that relational precarity functions through adverse incorporation in the lower segments of the labour market. This means that marginalized groups, including undocumented migrant workers, “are not

¹⁹ Alain Lipietz, “The post-Fordist world: labour relations, international hierarchy and global ecology” (1997) 4:1 Review of International Political Economy 1.

²⁰ Judy Fudge and Fiona MacPhail, “The Temporary Foreign Worker Program in Canada: Low-Skilled Workers as an Extreme Form of Flexible Labour” (2009) 31:5 Comparative Labor Law and Policy Journal 5 at 5-7.

²¹ Sarah Marsden, “Silence Means Yes Here in Canada: Precarious Migrants, Work and the Law” (2014) 18:1 Canadian Labour & Employment Law Journal 1.

²² Kavak describes labour precarity as “the condition of lacking predictability, job security, and material welfare”. Sinem Kavak, “Syrian refugees in seasonal agricultural work: a case of adverse incorporation in Turkey” (2016) 54 New Perspectives on Turkey 33 at 34.

excluded from the labor market but rather incorporated into it *through adverse terms that stem from already existing vulnerabilities*” [emphasis added].²³ Adverse incorporation in this sense is similar to the concept of “differential inclusion” of non-citizens, but focuses further on dynamics of structural domination/subjugation, the relationship of those dynamics to pre-existing axes of social difference, and the political economy of the terms by which they are adversely incorporated/included.²⁴

For status-excluded migrants, these adverse terms include being incorporated into informal labour markets whilst being shut out or extremely restricted from access to social services, welfare programs, and formal workers’ rights as well as dealing with the constant threat of apprehension and deportation by border police. As such, Kavak argues that the adverse terms created by immigration policy peripherization directly influences migrant workers’ integration in labour markets, “deteriorat[ing] the working conditions and bargaining power of all the workers [in less desirable segments of the labour market] where exploitation was already deep and multifaceted.”²⁵

In applying the concept of adverse incorporation to Canada’s migrant labour situation, I offer two constructive amendments to Kavak’s articulation of the idea. First, Kavak contrasts adverse incorporation theory to labour market segmentation theory, the latter which she critiques as providing “only a partial picture of the labor relations and class positions in informal labor markets, as it focuses on the experiences and exclusion of immigrants and other disadvantaged groups, but not the transformation of the lower segments of the labor market as a whole.”²⁶

However, this characterization ignores the critical role that the national-foreigner legal and social construction plays in producing and normalizing ‘separate’ labour markets which in turn justify an unequal distribution of rights and obligations. Nationalized labour market segmentation and its axiomatic acceptance is thus foundational for global capitalist relations in

²³ *Ibid.*

²⁴ See Jukka Könönen, “Differential inclusion of non-citizens in a universalistic welfare state” (2018) 22:1 *Citizenship Studies* 53-69.

²⁵ Kavak, *supra* note 22 at 51.

²⁶ *Ibid* at 38.

breaking solidarity and deteriorating the working conditions and bargaining power for all workers as posited by Kavak's adverse incorporation theory. These two concepts are thus mutually constitutive rather than mutually exclusive. As Sharma describes in the context of Canada:

Nationalist ideological practices contribute greatly to the creation and restructuring of national labour markets and the differential categorization of various groups of workers within it by the state. The notion that there ought to be separated spaces for differentiated peoples is, in part, what allows for the structuring of competition within what has always been and remains a global market for labour. The reproduction of labour markets as national is an important part of nation-building exercises that assist in the reproduction of not only the state but also of global capitalism.

[...]

Through nationalist claims on jobs in their Canadian home, White workers continue to have more power than those cast as foreigners within nationalized labour markets. What they gain through this is the existential power of being seen to be Canadian and the material affects such an identity organizes.²⁷ [emphasis added]

Secondly, Kavak argues that the process of adverse incorporation into the lower segments of the labour market necessarily creates “an army of working poor” who suffer from urgent material need and are unable to negotiate better conditions, thus creating a “centripetal force that pushes the labor market in a more insecure and informal direction.”²⁸ However, Kavak does not account for the development of powerful working-class political formations that struggle to overcome nationalist and racial divides. The centripetal force that leads to a race to the bottom when unfree migrant labour is adversely incorporated into a labour market is not inevitable – a fact that seems obvious at first glance but for which minimization or erasure is a required (if unspoken) premise of xenoracist domestic working-class responses to the plight of migrant labour subordination.

²⁷ Sharma, *Home Economics*, *supra* note 5 at 49.

²⁸ Kavak, *supra* note 22 at 52.

Understanding adverse incorporation of low-wage migrant labour through temporary foreign labour programs and the production of status-exclusion is particularly important in mapping the modalities of xenoracial capitalism in Canadian immigration law post-1967. The pervasive assumption of (white) race-as-nation does heavy lifting in justifying the simultaneous labour-inclusion/rights-exclusion of migrant workers primarily from the Global South, evoking Anne Anlin Cheng's observation that "racist institutions in fact often do not want to fully expel the racial other; instead, they wish to maintain that other within existing structures".²⁹ This has arguably been the *modus operandi* of xenoracial capitalism in a supposedly 'post-racial' Canadian immigration policy environment.

The framework of adverse incorporation tells us much about the role that bordering regimes play in containing and managing people on the move under global capitalist relations. The goal of hierarchal capital-prioritizing immigration policy and expanded border policing is thus *not* to exclude and deport everyone who is illegalized by immigration law. Rather, as Arun Kundnani argues, "[n]eoliberalism depends upon racially coded global divisions of labor that render vast swathes of the human population superfluous to capitalist production. Projects of racist policing, mass incarceration, border militarization, and counter-terrorism are directed at managing this 'surplus' humanity".³⁰

An increasing number in this surplus humanity is constituted of negatively racialized low-wage migrant workers who end up labouring in wealthy countries such as Canada. By 2019, migrant workers constituted the majority of total international migration (169 million of a total 281 million), while global remittances skyrocketed from \$128 billion USD in 2000 to \$813 billion USD in 2022.³¹ However, the production and management of this surplus migrant labour has not been static. It has evolved through different programs and modes of operation over time.

²⁹ Anne Anlin Cheng, *The melancholy of race: psychoanalysis, assimilation, and hidden grief* (New York: Oxford University Press, 2001) at 12.

³⁰ Arun Kundnani, "Abolish National Security" (June 2021), Transnational Institute at 8, online: <https://perma.cc/TM28-M5E2>.

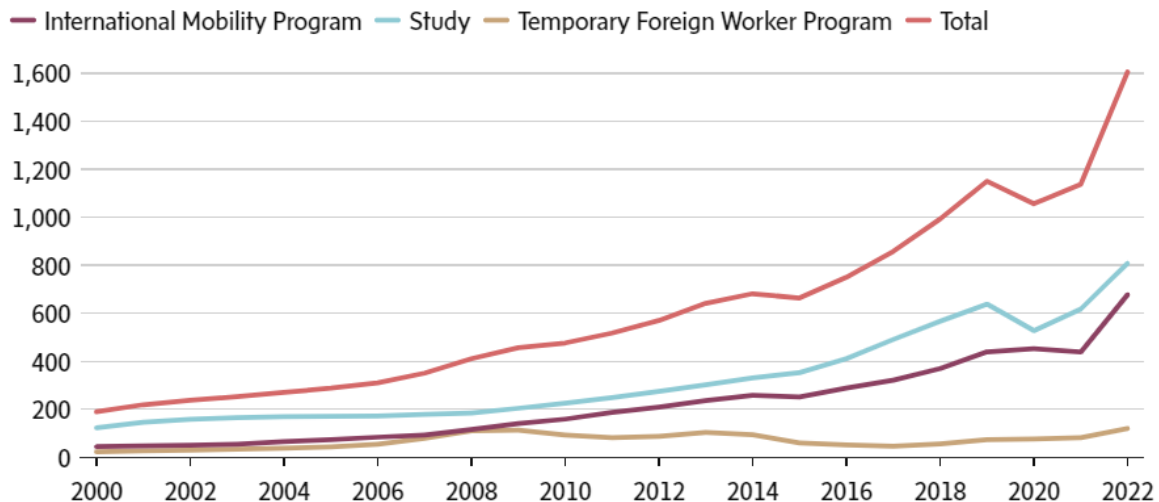
³¹ International Organization for Migration, *World Migration Report 2024* (Geneva: IOM, 2024) at 6, 8.

If the introduction and subsequent expansion of the SAWP in 1966 and the NIEAP in 1973 first ushered in the era of ‘permanently temporary’ sojourner categories of quasi-citizens, then the 21st century has seen enormous numbers of flexible temporary workers (particularly through the International Mobility Program), international student workers, and status-excluded undocumented labour as the preferred vehicles by which to produce and manage racialized, non-citizen bodies whose surplus value can be captured, whose rights can be easily denied, and whose reproduction costs can be repatriated. The following subsection will expand on this important modern shift.

B. Ascendancy of the international mobility program, international student labour, and its impacts on status-excluded labour

An enduring increase in temporary immigration

At end of each year, in thousands



SOURCE: IRCC

Figure 4: Non-Immigrant Employment Authorizations issued by Canada (2000-2022)³²

³² Globe and Mail Editorial Board, *supra* note 7.

As dramatically illustrated in Figure 4, Canada's addiction to structurally cheapened and disenfranchised non-immigrant labour, though not at all new, has exploded since the beginning of the 21st century. However, whereas the late 20th century saw the Canadian state act as a direct broker for the recruitment, management, and discipline of low-wage migrant workers, it is now increasingly empowering non-state actors (notably, private employers and educational institutions) to recruit and manage non-immigrant migrants under novel arrangements.

While the TFWP has been consistently denounced for its exploitation and abuse of migrant labour³³, relatively less attention has been paid to the veritable explosion of numbers in other non-immigrant work authorization programs, specifically migrant student-labourers and workers within the International Mobility Program (IMP) – which includes the Post-Graduation Work Permit (PGWP) Program for recently graduated migrant student-labourers. Indeed, even as the numbers of TFWP participants have flatlined, the number of migrant workers under the IMP and the international student program has since surged. Both absolute and relative numbers are staggering. From 2012 to 2022, the number of annual IMP permits issued increased 225% from 208,660 to 677,400, while the number of study permits issued increased 194% from 274,700 to 807,750.³⁴ By the end of 2023, there were 1,040,985 international students residing in Canada.³⁵ Since then, as cost-of-living crises have soared nationwide, the federal government has increasingly scapegoated international students for putting “pressure on housing, health care, and other sectors”. As a result, it implemented a cap to reduce the number of international student

³³ See for example Vic Satzewich, “The Canadian state and the racialization of Caribbean migrant farm labour 1947–1966” (1988) 11:3 *Ethnic and Racial Studies* 282; Daiva Stasiulis and Abigail B Bakan, “Negotiating Citizenship: The Case of Foreign Domestic Workers in Canada” (1997) 57:1 *Feminist Review* 112; Sharma, *Home Economics*, *supra* note 5; Fay Faraday, “Made in Canada: How the Law Constructs Migrant Workers’ Insecurity” (September 2012), Metcalf Foundation, online: <https://perma.cc/4FN5-G89R>; Aziz Choudry and Adrian A Smith, eds, *Unfree Labour? Struggles of Migrant and Immigrant Workers in Canada* (Oakland: PM Press, 2016); Ethel Tungohan, *Care Activism: Migrant Domestic Workers, Movement-Building, and Communities of Care* (Chicago: University of Illinois Press, 2024).

³⁴ Globe and Mail Editorial Board, *supra* note 7.

³⁵ ICEF Monitor, “Canada hosted more than 1 million international students in 2023” (24 January 2024), online: <https://perma.cc/YM2F-J4P8>.

visas issued in 2024 by 35%³⁶ and a further 10% in 2025.³⁷ As of August 31st, 2025, there were 802,425 international students residing in Canada.³⁸

While IMP migrant labour and international student labour is by no means administratively invisible in the way that status-excluded undocumented labour is, there are elements of these programs which obfuscate structural conditions of non-immigrant labour exploitation typical of adverse incorporation strategies. With the IMP, this obfuscation occurs through the amalgamation of a variety of different temporary labour authorization programs, including some that facilitate mobility of relatively privileged high-income working professionals and intra-company transferees. With international student workers, the migration-for-education avenue obscures conditions of labour precarity, tuition exploitation, debt-load, and fear of risking future opportunities for PR status, which structures so much of the international student work experience. International student labour market participation rates have soared over time – increasing from 7% in 2000 to a remarkable 57% (a majority of students) in 2018.³⁹

In Chapter Two, we discussed the historical development of the TFWP from the mid-1960s (SAWP) up until the mid-2010s. In June 2014, the TFWP was split in two with the creation of the IMP. The key distinction between the TFWP and the IMP is that the latter does not require Labour Market Impact Assessments (LMIAs).⁴⁰ Since there had always been LMIA exemption categories in the TFWP prior to 2014, it would be more accurate to say that the IMP was a re-branded spinoff of the TFWP, but which rapidly overtook it in terms of importance in

³⁶ Immigration, Refugees and Citizenship Canada, “Canada to stabilize growth and decrease number of new international student permits issued to approximately 360,000 for 2024” (22 January 2024), online: <https://tinyurl.com/25d4696u>.

³⁷ Immigration, Refugees and Citizenship Canada, “2025 provincial and territorial allocations under the international student cap” (24 January 2025), online: <https://tinyurl.com/2hjmkpac>.

³⁸ This number comes from the sum of the number of individuals with only a study permit (514,540) plus the number of individuals with both a study permit and a work permit (287,885). Immigration, Refugees and Citizenship Canada, “Understanding student and temporary worker numbers in Canada” (last accessed 6 November 2025), online: <https://tinyurl.com/5rpz28en>.

³⁹ Eden Crossman, et al, “International students as a source of labour supply: A summary of recent trends” (23 March 2022) 2:3 Statistics Canada Economic and Social Reports 1 at 3, online: <https://perma.cc/C4ZU-N7S6>.

⁴⁰ An LMIA is a document issued by Employment and Social Development Canada (ESDC) that TFWP employers must receive in order hire a potential temporary foreign worker. It is designed to ensure that Canadian employers are genuinely unable to find qualified Canadian workers for specific jobs and require (at least contractually) that workers receive prevailing wages and working conditions at least as favourable as those offered to domestic workers for similar work.

migrant labour procurement and management.⁴¹ This is also the reason why, in terms of data comparison, LMIA-exempt categories of the TFWP are often used as a proxy for IMP numbers pre-2014. As Fay Faraday writes, the TFWP-IMP split (1) complicated comparisons of migrant labour programs over time, (2) did not change the underlying state-sanctioned precarity of low-wage migrant workers, and (3) allowed for the rapid expansion of migrant labour exploitation under the IMP with “considerably less public scrutiny and study”.⁴²

Why did the TFWP flatline in popularity? Grievances for abuses associated with the TFWP and the role of status-precarity and deportation in exacerbating pre-existing employer/employee power imbalances had been well-documented for years. In 2013, political pushback to the program reached a crescendo in the form of protectionist backlash that resulted in reforms making TFWP (and related LMIA) applications more costly and strictly regulated.⁴³ Further, the caregiver subprogram, long since a mainstay of the TFWP and unfree migrant labour programs in general, was slowly phased out as new applications for caregivers were siphoned off to permanent resident streams and the program officially came to an end in 2019.⁴⁴ A major win for migrant caregivers and their supporters came when, in June 2024, Minister Marc Miller announced new pilot programs to grant PR on arrival for migrant home care workers⁴⁵ – a critical demand of the migrant caregivers movement since 1979.⁴⁶ However, PR on arrival has not been extended to other areas of ‘lower-skilled’ work as LMIA-exempt non-immigrant work arrangements continue to expand significantly.

After the 2014 TFWP-IMP split, the TFWP narrowed to focus on agricultural worker subprograms, where patterns of employer exploitation based on closed work-permits are well-documented, and for which countries in Latin America and the Caribbean serve as principal

⁴¹ Tyler Chartrand and Leah Vosko, “Canada’s Temporary Foreign Worker and International Mobility Programs: Charting Change and Continuity Among Source Countries” (2021) 59:2 *International Migration* 89.

⁴² Fay Faraday, “Canada’s Choice: Decent work or entrenched exploitation for Canada’s migrant workers” (June 2016) at 15, Metcalf Foundation, online: <https://perma.cc/4NJL-6RCT>.

⁴³ Chartrand and Vosko, *supra* note 41 at 99.

⁴⁴ *Ibid.*

⁴⁵ Immigration, Refugees and Citizenship Canada, “Canada announces new pilot programs to support caregivers and Canadian families, intends to make the caregivers program permanent” (3 June 2024), online: <https://perma.cc/KT9Z-RBDY>.

⁴⁶ Migrant Rights Network, “Release: Migrant Care Workers Welcome Permanent Resident Status On Arrival” (3 June 2024), online: <https://perma.cc/L88A-3C6R>.

sources. Chartrand and Vosko surveyed TFWP numbers between 2013 and 2018, finding that by the end of the period, Mexico, Jamaica, and Guatemala constituted the largest source countries for TFWP permits, whereas previous key source countries such as the US, UK, and especially the Philippines (which in 2013 accounted for the greatest number of TFWP permits due to the caregiver program) fell off dramatically.⁴⁷

The newly spun-off IMP however, had an entirely different branding than the TFWP's toxified association with low-wage, highly disposable agricultural labour from the Global South. The IMP instead was associated image-wise with high-wage, high-skilled, and highly educated working professionals from the Global North. This was in part due to its original association with LMIA-exempt categories of the TFWP guaranteed by free trade agreements – particularly the North American Free Trade Agreement (NAFTA) in 1994. A variety of categories from these and other programs were spun off in 2014 such that a veritable hodgepodge of subprograms ended up falling under the IMP umbrella including: the PGWP Program, Reciprocal Youth Exchange Agreements, International Free Trade Agreements, the Intra-Company Transfer Program, the Bridging Open Work Permit, and the Social and Cultural Benefits category.⁴⁸

This branding helped contribute towards political acquiescence to massive IMP expansion amid TFWP pullback, taking advantage of what Sharma calls the “modern paradigm” of national immigration programs treating migrants from imperial metropolises or wealthier countries as if they were not even migrants, a dynamic present in the move to consider IMP non-immigrant workers as conceptually, politically, and materially distinct from traditional TFWPs.⁴⁹ However, Chartrand and Vosko problematize the IMP's association with privileged migration by surveying how some IMP subprograms have ended up replicating many of the structural restrictive and exploitative conditions found in TFWPs. For instance, in 2017, some one-third of work permits issued under the IMP were *closed* work permits bounded to a specific employer – conditions found within a variety of IMP subprograms such as International Experience Canada,

⁴⁷ *Ibid.*

⁴⁸ Canadavisa.org, “What is the International Mobility Program?” (last accessed 17 June 2025), online: <https://perma.cc/SBB6-33A7>.

⁴⁹ Nandita Sharma, *Home Rule: National Sovereignty and the Separation of Natives and Migrants* (Durham: Duke University Press, 2020) at 6 [*Home Rule*].

NAFTA, Provincial Agreements, and Intra-Company Transferees. Many of these permits have additional restrictions on type of work or occupation, location of work, and even times and periods of employment.⁵⁰

Additionally, the conditions for structural abuse, including lack of knowledge and barriers to accessing effective legal recourse and protection is exacerbated by the focus on younger workers in two of the largest IMP subprograms: (1) International Experience Canada (IEC) which grants permits to young people (usually up to 35 years of age) to work for a short duration from countries that reciprocate the same right, and (2) the PGWP program which grants work permits of up to three years to graduates formerly on student permits. As of May 2024, PGWP holders constituted 26% of all IMP work permit holders.⁵¹ The conditional nature of temporary work status, particularly in the case of PGWP holders' hopes of eventually converting to permanent residency, can make young workers hesitant to file complaints or claim labour protections for fear of jeopardizing their future status.⁵² As one former PGWP holder shared:

[IRCC] said you need one year of experience. [...] My boss would make us work afterhours at the site and not pay us. He didn't give us proper documents. He didn't give us paystubs. Nothing like that. He told us 'if you don't like it, I can find someone to replace you.' I needed the hours, you know? You just need to make the hours. And if he doesn't give [the proof of employment and hours] to me, I'm screwed, you know what I'm saying? So you can't say anything. It's not worth it to complain. Obviously.⁵³

The structural disenfranchisement of IMP workers is intensified further by the fact that, unlike for TFWP permits, IMP work authorizations are LMIA-exempt. This means that importantly, employers hiring IMP workers can effectively recruit more migrant workers for lower wages by avoiding the TFWP requirements (such as localized median wage floors, caps on proportions of low-wage migrant workers, or transition plans away from reliance on migrant workers) enhancing the ability of employers to give below-market wages while avoiding scrutiny

⁵⁰ *Ibid* at 100-101.

⁵¹ Immigration, Refugees and Citizenship Canada, "IRCC, Deputy Minister, Transition Binder, 2024 - Temporary Immigration" (last accessed 17 June 2025), online: <https://perma.cc/J46P-TLPX>.

⁵² Chartrand and Vosko, *supra* note 41 at 101-102.

⁵³ Interview with M2, archived with author.

from Employment and Social Development Canada.⁵⁴ Notably, international student work authorizations also share this employer-friendly feature, which may in part explain the expansion of student permits as *de facto* low-wage LMIA-exempt work permits.

Finally, as the numbers of IMP permits have skyrocketed in recent years, its demographics have begun to shift significantly towards Global South countries. As a result of the IMP's origins in bilateral working holiday programs and free-trade agreements, eight of the top ten source countries were originally wealthy countries from the Global North: the US, France, UK, Australia, Ireland, South Korea, Japan, and Germany. The other two source countries on the top ten list – China and India – have seen rapid growth during this period. This is particularly notable since, unlike the other eight countries, neither China nor India is a signatory to a free trade or labour mobility reciprocity agreement with Canada. China has significantly increased in the number of IMP permits issued from 14,735 in 2013 to 22,015 in 2018. India's growth has been even more staggering. India was not even among the top ten largest sources of IMP work permit holders in 2004 and only surpassed 5,000 permit holders in 2010. However, it has since become far and away the leader in IMP permits issued. By 2023, the number of IMP permits holders who were Indian nationals soared to 523,265 and the top ten source countries list for IMP permits had completely revamped itself. From highest to lowest, they were: India, Ukraine, China, Iran, the Philippines, France, Mexico, Nigeria, Colombia, and the US.⁵⁵ As Chartrand and Vosko note, the rise of India and China as IMP source countries reflect:

the complexity of source countries with unique experiences of colonialism, imperialism and racialization that intertwine with their contemporary status as sources of “surplus” labour despite their relatively powerful place in global political economy. Both India and China were subject to either direct colonial rule or indirect imperial interventions by the British Empire and have long-standing labour migration links to Canada, albeit never having reached the same magnitude as in recent years.⁵⁶

⁵⁴ Employment and Social Development Canada, “Program requirements for low-wage positions” (last accessed 17 June 2025), online: <https://perma.cc/KV8P-NJNN>.

⁵⁵ Statista Research Department, “Top ten origin countries of International Mobility Program permit holders in Canada in 2023” (18 March 2025), online: <https://perma.cc/23YF-G6N6>.

⁵⁶ Chartrand and Vosko, *supra* note 41 at 102.

Unsurprisingly, the largest segments of IMP migrant workers from India were participants in the PGWP, Spousal Work Permit, and Intra-Company Transferee categories – IMP subprograms which are most readily identified with employment conditions characterized by multiple dimensions of precariousness.⁵⁷ These contemporary developments in Canadian non-immigrant employment authorizations suggest the continued salience of neocolonial dynamics when examining how Canadian immigration law survives scrutiny, structures inequality, and creates new flows of cheapened and flexible migrant labour, “exploiting the broader context of cataclysmic economic, social, environmental and political changes in the global South pushing people out of rural livelihoods into urban slums and then out of their home countries”.⁵⁸ In contrast with the TFWP, the IMP’s administrative mixing of high-wage professionals with low-wage migrant labour prone to structural abuse and exploitation creates an effective political (and analytical) smokescreen by which the federal government can hide these dynamics, at least in the short run.

Furthermore, by 2022 four Asian countries – India, China, Iran, and the Philippines – emerged as the top source countries with respect to PGWPs, representing 56.7%, 10.3%, 2.6%, and 2.3% of all PGWP permit holders, respectively.⁵⁹ The significant expansion of non-immigrant post-graduate workers is an expected result of the simultaneous explosion in international students and the resulting ‘Pivot to Asia’⁶⁰ in terms of Canada’s procurement of both international student labour and IMP migrant labour.

⁵⁷ *Ibid* at 105; Eric Tucker, “Migrant workers and fissured workforces: CS Wind and the dilemmas of organizing intra-company transfers in Canada” (2017) *Economic and Industrial Democracy* 1.

⁵⁸ Daiva Stasiulis, “Elimi(Nation): Canada’s “Post-Settler” Embrace of Disposable Migrant Labour” (2020) 14:1 *Studies in Social Justice* 22 at 31.

⁵⁹ ApplyBoard, “Students From These Countries Are Pursuing Canada’s PGWP at a Higher Rate” (18 May 2023), online: <https://perma.cc/5HGA-9XDT>.

⁶⁰ I intentionally use this term here as a reference to US President Obama’s shift in foreign policy beginning in 2011 prioritizing the Asia-Pacific and particularly strategic engagement and competition with China, which has framed as the US ‘Pivot to Asia’. See David Shambaugh, “Assessing the US ‘Pivot’ to Asia” (2013) 7:2 *Strategic Studies Quarterly* 10.

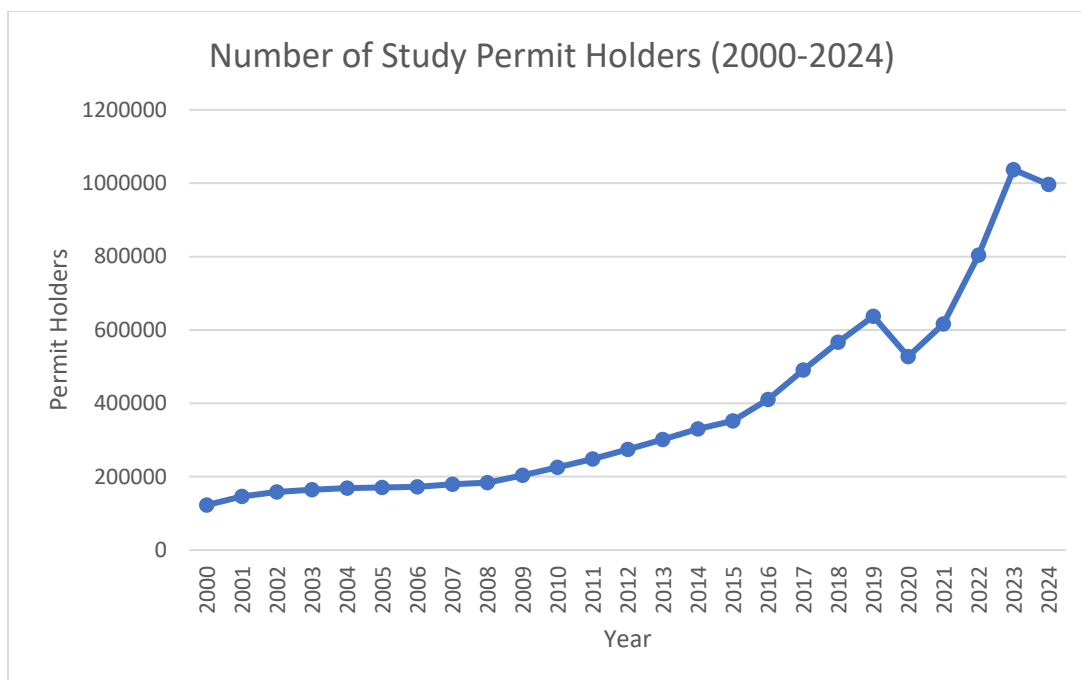


Figure 5: Number of Study Permit Holders in Canada at Year End (2000-2024)⁶¹

The emergence of the Canadian education export industry as a site for massive neocolonial wealth transfer in the 21st century will be explored in detail in Chapter Four, but as Figure 5 illustrates, the number of international students (those with study permits) in Canada has rapidly accelerated in recent years. Between 2010 and 2019, Canada oversaw a 185% increase in international students with a majority (60%) reporting that they planned to apply for permanent residency in Canada afterwards.⁶² Aside from a small and temporary dip in 2020 due to the COVID-19 global pandemic, the number of international students grew to unprecedented levels, exceeding one million for the first time in its history in 2023 before dipping again due to new restrictions and caps implemented beginning in 2024.⁶³

⁶¹ Immigration, Refugees and Citizenship Canada, “Temporary Residents: Study Permit Holders – Monthly IRCC Updates - Canada - Study permit holders on December 31st by country of citizenship” (last accessed 7 November 2025) [Study Permit Holders], online: <https://perma.cc/TZB7-N69T>.

⁶² Lilach Marom, “Market mechanisms’ distortions of higher education: Punjabi international students in Canada” (2023) 85 Higher Education 123, citing Canadian Bureau for International Education statistics.

⁶³ Immigration, Refugees and Citizenship Canada, *Study Permit Holders*, *supra* note 61.

The ‘Pivot to Asia’ is reflected in international student demographics at all levels of study. As illustrated in Figure 6 below, as of the end of 2023, India and China dominated as international student source countries, comprising 41% and 10% of the total inbound student population. In comparison, no other source countries exceeded 5% of the total (with the Philippines as the next most popular source country).⁶⁴ In terms of total numbers, India, China, and the Philippines alone accounted for 427,085, 102,150, and 48,870 international students in Canada.⁶⁵

Where do inbound students come from?



Figure 6: Top Source Countries for International Students in Canada (2023)⁶⁶

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

⁶⁶ Canadian Bureau for International Education, “Where do inbound students come from?” (last accessed 14 June 2024), online: <https://perma.cc/K7TZ-JE6Q>.

In the context of ever-increasing international tuition rates, these shifts in demographics highlight the “power imbalances between the Global South and the Global North, along with the assumed superiority of a Western education, [which] fuel education-migration.”⁶⁷ As many scholars have noted, in an era of neoliberal immigration defined by adverse incorporation, international education has developed into both a profitable and predatorial export industry for many Western countries, including Canada.⁶⁸ These industry dynamics are made possible by international student policies taking full advantage of growing resource disparities between Global North and Global South educational institutions, resulting in many students opting for international study because local forms of higher education are inaccessible to them.⁶⁹

Like other IMP work permit holders, international student workers do not have to obtain an LMIA to work – a requirement under the TFWP. Further, under s. 186(v) of the *Immigration and Refugee Protection Regulations*, holders of study permits are allowed to work full-time during any “regularly scheduled break between academic sessions” and up to 20 hours per week “during a regular academic session”.⁷⁰ The contradictions of this dichotomy – drastically increasing tuition, yet limiting work hours to pay it off on pain of inadmissibility – was highlighted in the summer of 2019 for international student Jobandeep Singh Sandhu who was deported for essentially “working too much”.⁷¹

What is the impact of this explosion in LMIA-exempt migrant labour in Canada post-2014 on status-excluded, undocumented labour? The links between temporary categories, (in)availability of PR and regularization, and falling out of status are both under-researched and undertheorized. People on the move can become status-excluded in a variety of ways ranging from “entering the country illegally through an unofficial border crossing to arriving legally and

⁶⁷ Marom, *supra* note 62 at 134.

⁶⁸ See for example, Vik Naidoo, “From ivory towers to international business: Are universities export ready in their recruitment of international students?” (2010) 14:1 *Journal of Studies in International Education* 5; Ping Zheng, “Antecedents to international student inflows to UK higher education: A comparative analysis” (2014) 67:2 *Journal of Business Research* 136.

⁶⁹ See Parvati Raghuram, Markus Roos Breines, and Ashley Gunter, “Beyond #FeesMustFall: International students, fees and everyday agency in the era of decolonisation” (2020) 109 *Geoforum* 95.

⁷⁰ *Immigration and Refugee Protection Regulations*, SOR/2002-227 at s 186(v) [*IRPR*].

⁷¹ Brian Hill, “International student arrested, facing deportation for working too many hours” (13 May 2019), *Global News*, online: <https://perma.cc/Q3DE-3BHD>.

overstaying beyond a visa's expiration date".⁷² However, what is clear is that many low-wage workers and international students who, for one reason or another, do not qualify for permanent residency and/or fall out of temporary status, often continue to live in Canada after the expiration of their visa status as status-excluded residents.⁷³

It stands to reason then that an unprecedented increase in non-immigrant employment authorizations (whether through an IMP visa, a study visa, or otherwise) alongside a set of PR eligibility criteria that greatly skews in favour of formally educated, high income professionals and investors, would have increased the status-excluded population in Canada over the last decade, even if there is no reliable current estimate of that population at the moment. It is this predicted rapid growth, alongside its political, legal, and social invisibilization, that demands greater academic attention and more robust theorization.

Further, as of the time of writing, Canada is in the midst of a turn from adverse incorporation to nativist exclusion which is expected to 'convert' into status-exclusion a large number of the nearly three million people whose temporary status will run out in the next several years.⁷⁴ As the Migrant Rights Network notes, this mass status-exclusion is being *produced* by various pre-existing changes brought about by neoliberal immigration: slashing permanent residency opportunities for low-wage migrant workers, delaying regularization promises, curtailing family reunification, undermining refugees' asylum rights, increasing fees and liquidity requirements, and refusing to renew work permits.⁷⁵ The 'shadow policy' theory suggests that this mass production of status-excluded labour is not ancillary to Canadian immigration – it is one of its primary objectives.

⁷² Marietta Armanyous and Graham Hudson, "Barriers vs. bridges: Undocumented immigrants' access to post-secondary education in Ontario" (2019) RCIS Working Paper No. 2019/5 at 5.

⁷³ Marshia Akbar, "Temporariness and the production of policy categories in Canada" (2022) 48:16 Journal of Ethnic and Migration Studies 3929 at 3939.

⁷⁴ Migrant Rights Network, "Migrant Rights Network Response to Budget 2025" (4 November 2025), online: <https://perma.cc/N3Q6-TKCN>.

⁷⁵ Migrant Rights Network, "2.3 Million People Being Shut Out & Excluded" (25 September 2024), online: <https://perma.cc/9TG4-Y8SS>.

II. Understanding the experience of status-excluded youth in Canada through xenoracial capitalism

The prior section has surveyed some of the historical and legal scaffolding behind the production and management of status-excluded communities in Canada. However, what of the ‘Dreamers’ themselves? What are the lived experiences and strategies of survival for status-excluded young people trying to navigate the fraught ‘game boards’ in which they find themselves, whether for a short or prolonged period, at the very bottom? This section will sketch out some of the key elements that shape and structure the experiences of status-excluded migrant youth in Canada.

As detailed in Chapter One, a xenoracial capitalism approach posits that a key role of immigration law vis-à-vis status-excluded and other precarious-status labour in Canada is structuring and managing primarily Global South labour within the nationalized territory of Canada. From this approach, the mass import, disciplining, and status-exclusion of cheapened Global South labour for job functions that cannot be easily or feasibly outsourced can be thought of as the mirror image of outsourced Global South labour that is cheapened and made more insecure by ‘race-to-the-bottom’ global supply chain competition. As Venkatesh writes: “[c]apitalism *requires* the law to support a continuous creation of a racialized subaltern and the cooptation of the relatively less exploited because it requires a *self-perpetuating* chasm between the exploited and co-opted beneficiaries for continued value extraction and capital accumulation” [emphasis added].⁷⁶ Nationalist bordering and immigration policy is an optimal site in which these self-perpetuating racialized processes of difference making and cooptation can occur.

Yet Global South migrants are not merely agent-less individuals displaced by global economic forces, mismanagement of rapacious local elites, or the trickery, exaggerations, and misrepresentations of opportunistic migration intermediaries. They also make sophisticated choices within and against these constraints by leveraging various immigration avenues,

⁷⁶ Vasanthi Venkatesh, “Radical Resistance in the Penumbra of the Law: Legal Mobilization for Migrant Farmworkers under Neo-colonial Racial Capitalism” (2025) 37:1 Journal of Law and Social Policy 22.

remittance circuits, and transnational networks as pathways for socioeconomic advancement.⁷⁷ Yet this agency remains both ambivalent and dynamic. It has the potential to disrupt and transform legal and political regimes through organization and collective struggle, even as it is incorporated into nationalist state and capital strategies that rely on a continuously renewed pool of deportable, cheapened labour. As E Tendayi Achiume argues, “Third World peoples were brutally initiated into First World political communities under European colonialism”⁷⁸ in a manner which entrenches colonial advantages to beneficiaries of nationals of wealthy states. Reckoning with the fact that formerly colonized peoples are not political strangers to those in former imperial metropolises, allows us to reclaim the narratives of the reviled unauthorized Global South economic migrant as representative of “international movement that responds to the asymmetrical benefits structure of co-dependence in the contemporary global order and seeks to achieve a more equitable relationship between center and periphery”⁷⁹ – in other words, materially understanding Third World ‘migration as decolonization’.

A xenoracial capitalism lens also surfaces the key question of *which* economic and political interests benefit from maintaining highly subjugated status-excluded conditions among certain populations living and working within Canadian nationalized space. Such a materialist line of questioning cuts directly against much of the ‘saviour’ analysis animated by the Eurocentric universalism and Christian missionary zeal which pervades Western liberal human rights work in general⁸⁰ and indeed much of the history of ‘Sanctuary’ migrant support work.⁸¹ It refocuses our analysis of status-exclusion and bordering away from moralism and towards the intertwined material processes of race-making and profit-making.

⁷⁷ For an examination of the complex factors that go into driving Global South migration to the Global North beyond macro push and pull factors, see Vorvornator Lawrence Korsi, “Do we go or we stay? : Drivers of Migration from the Global South to the Global North” (2022) 12:1 African Journal of Development Studies 71.

⁷⁸ E Tendayi Achiume, “Migration as Decolonization” (2019) 71 Stanford Law Review 1509 at 1533.

⁷⁹ E Tendayi Achiume, “Reimagining International Law for Global Migration: Migration as Decolonization?” (2017) 111 AJIL Unbound 142 at 143.

⁸⁰ Makau w Mutua, “Savages, Victims, and Saviors: The Metaphor of Human Rights” (2001) 42 Harvard International Law Journal 201 at 233.

⁸¹ Rachel Humphris, “A history of the memories of the ‘sanctuary city’ in Toronto, Canada” (2020) RCIS Working Paper No. 2020/5 at 3-4; For a more detailed treatment of Eurocentrism during the emergence of contemporary post-war humanitarian migration programs, see Laura Madokoro, *Elusive Refuge: Chinese Migrants in the Cold War* (Cambridge: Harvard University Press, 2016).

With this lens in mind, this section explores the experiences and challenges of status-excluded migrant youth and attempts to situate these experiences within the broader political, social, economic, and legal context in which they must operate. It draws heavily upon 22 semi-structured interviews of current or formerly status-excluded migrant youth (aged 18-35) who all also have experience working under status-excluded conditions, as well as interviews with 5 expert stakeholders. This section maps their experiences onto five (non-exhaustive) broad categories: (1) navigating immigration status (chutes and ladders), (2) labour conditions, (3) navigating access to education, (4) housing, health, and finances, and (5) family and community supports and getting help. In each of these areas, I will highlight interactions between status-excluded migrant youth and relevant law and policy.

A. Navigating the board: immigration chutes and ladders

Starting at the bottom

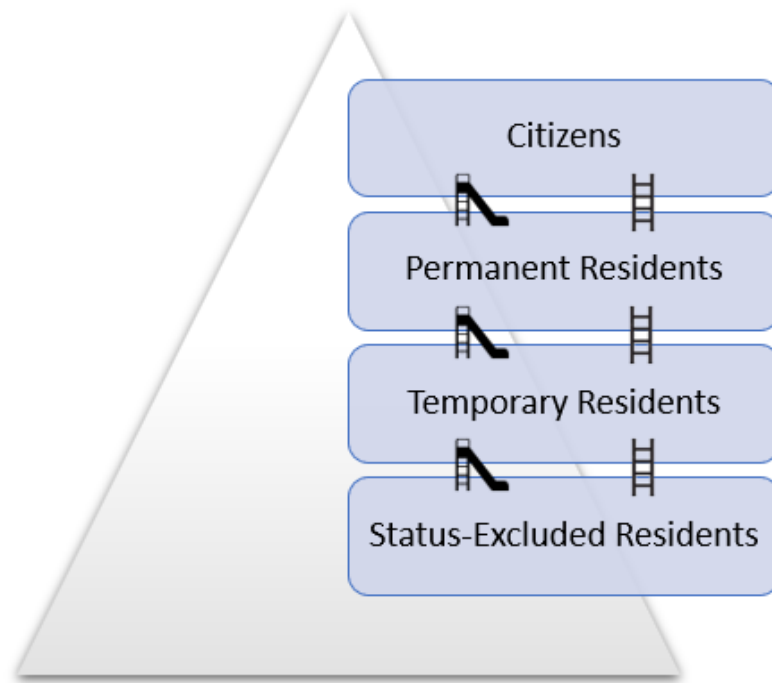


Figure 7: Immigration Status Pyramid with Chutes-and-Ladders

As detailed in Chapter One, migrants’ navigation of the immigration status pyramid in any nationalized territory can be conceptualized within a ‘chutes and ladders’ framework, where chutes are avenues to lose status and ladders are avenues to improve or gain status. Further, the pyramid is set up in a way that treats migrants differently. One of the areas in which this differential treatment manifests is the question of *how* to get on to the board in the first place and *where* on the board one can get on. Some people outside Canadian territory, such as children born to Canadian citizens abroad, can start at the very top of the ladder (citizen) even before they enter Canadian territory proper.⁸² Migrants that are relatively privileged by the system (in terms of family connections, capital, ‘high-skilled’ job offer, education/training, age, health, French/English language, etc.) are more likely to get on to the board with PR on arrival and a relatively straightforward path towards naturalization. Others who are not as privileged may only

⁸² Government of Canada, “Bill C-71: An Act to amend the Citizenship Act (2024)” (23 May 2024), online: <https://perma.cc/8NN7-ZYN9>.

be able to enter with temporary status (temporary foreign workers, international students, refugee claimants, etc.) and find themselves fighting to keep that status alive.

The least privileged by the system are forced to make risky unauthorized crossings, often with the help of smugglers, to try and enter nationalized space at the very bottom of the pyramid – status-exclusion. Several interviewees either came this way as adults or were brought to Canada as status-excluded minors. Unauthorized border crossings (including at the US-Canada border) must be located “within a political economy of neoliberal global capitalism that produces displacement, dispossession and marginalization, particularly in the Global South” with wealthier states such as Canada responding to such flows with “highly visible assertions of border control and restrictive migration and citizenship policies.”⁸³

These unauthorized entries and crossings in turn can be made increasingly dangerous by state policy. For instance, since the passing of the euphemistically named *Safe Third Country Agreement* (STCA)⁸⁴ in 2004, legal options to make asylum claims inland by those crossing the US-Canada border have been significantly curtailed and illegalized. The STCA removes the ability of non-US/Canadian nationals crossing through designated ports-of-entry to apply for asylum and immediately deports them unless they meet narrow exceptions.⁸⁵ Notably, the top five source countries for refugee claims by irregular border crossers between 2017-2025 were all Global South countries: Haiti, Nigeria, Colombia, Türkiye, and Pakistan.⁸⁶

As a result, these migrants are forced to enter between designated land crossings and use more dangerous and treacherous routes to avoid being turned back as well as, in some cases, to preserve their legal right to asylum. These individuals are often those who are excluded even

⁸³ Jane Helleiner, “Unauthorised Crossings, Danger and Death at the Canada-US Border” (2013) 39:9 *Journal of Ethnic and Migration Studies* 1507 at 1508-1509.

⁸⁴ *Agreement between the Government of Canada and the Government of the United States of America: For cooperation in the examination of refugee status claims from nationals of third countries*, Can TS 2004 No 2 at Art 4 [STCA]; *Immigration and Refugee Protection Act*, SC 2001, c 27 at s 101(1)(e) [IRPA].

⁸⁵ These exceptions are unaccompanied minors, certain family members of Canadian citizens/PR, those who already have status in Canada, and narrow public interest exceptions. See Philippe Antoine Gagnon, Robert Mason, and Madalina Chesoi, “Overview of the Canada-United States Safe Third Country Agreement” (Ottawa: Library of Parliament, 2023) at 1-2, online: <https://perma.cc/5Z6G-6SCB>.

⁸⁶ Immigration and Refugee Board of Canada, “Refugee Protection Claims Made by Irregular Border Crossers” (last accessed 20 June 2025), online: <https://perma.cc/2678-FWAS>.

from obtaining temporary status and entering (e.g. through visitor visas) and as such, their movement is illegalized, and they are forced to risk their physical safety and security to enter the board at the very bottom. While some migrants making these unauthorized border crossings are looking to be picked up by CBSA/law enforcement to be brought in and make a refugee claim, some look to avoid detection entirely to come and set up a life in Canada first before considering any regularization options. As one such irregular crosser stated:

Since [my husband] was killed by the police [in my home country]...we do not trust them. We just want to live in safety. Going back is not a choice...I'd rather live underground than to go back and face [state violence]. That's why we used a smuggler."⁸⁷

Manitoba and Quebec have been key destinations for those who are making unauthorized crossings into Canada from the US, crossings which since the imposition of the STCA have been made increasingly deadly.⁸⁸ In June 2017, Mavis Otuteye, a Ghanaian grandmother, was found dead in a drainage ditch attempting to cross from Minnesota to the border town of Emerson, Manitoba. Otuteye was status-excluded in the US as well and attempting to visit her newly-born granddaughter in Toronto.⁸⁹ In January 2022, at the same border crossing, four Indian nationals, including a baby, were found frozen to death attempting to cross to the US during a blizzard.⁹⁰

Cynically, then Prime Minister Justin Trudeau blamed the deaths on “human traffickers and of people who took advantage of their desire to build a better life” rather than acknowledging the Canadian government’s bordering policies which enact violence on ‘undesirable’ migrants, including women and children, funneling them into status-exclusion and risky, life-threatening border crossings.⁹¹ This has been a continuation of a long-standing trend of victim-blaming discourse in Canada around border violence which frames unauthorized

⁸⁷ Interview with M3, archived with author.

⁸⁸ Kathleen Harris, “Refugee influx: 5 things to know about illegal border crossings into Canada” (24 February 2017), CBC News, online: <https://perma.cc/W6A7-WXZA>.

⁸⁹ Karen Pauls, “Ghanaian grandmother who died in ditch en route to Canada might have been able to enter legally” (2 June 2017), CBC News, online: <https://perma.cc/N8FF-WETH>.

⁹⁰ Manavi Kapur, “The death of four Indians on the US-Canada border spotlights the desperation to immigrate” (26 January 2022), Quartz, online: <https://tinyurl.com/3re9ub48>.

⁹¹ Press Trust of India, “‘So tragic’: Canadian PM after Indian family freezes to death near border” (22 January 2022), Business Standard, online: <https://tinyurl.com/yux6cuun>.

crossers as “either endangering themselves and/or being exploited by smugglers/traffickers” and which refuses to acknowledge “the ways in which the narrowing of routes of authorised movement and pathways to secure status through restrictive im/migration, citizenship and border policies were contributing to danger and death.”⁹² As demonstrated by the dangerous, often fatal, unauthorized border crossings made necessary by narrowing status options for migrants as well as harsh border securitization policies, even entering the status-pyramid at the very bottom can be a life-threatening ordeal. As another irregular border crosser put it: “if there was another way, we would try it. But there isn’t. So we have to put the blindfolds on and trust [the smuggler].”⁹³

Regardless of what status individuals enter the board on however, they must figure out a way to navigate the ensuing chutes-and-ladders game to reside and live safely and with legal security in nationalized space. The precarious legal status trajectories (PLSTs) of individuals are incredibly diverse, but the following section details some common (non-exhaustive) chutes and ladders for migrant youth who experience or have experienced status-exclusion. Some common chutes include: visa or permit overstays, failed refugee/protection claims, criminal or medical inadmissibility, termination or abusive labour conditions, and systemic or administrative barriers. Conversely, common ladders include: extensions/renewals, finding another work permit, study permit, GBV/trafficking TRV, family sponsorships, H&C, and refugee/protection claims.

Common chutes (falling to the bottom)

1) Visa or permit overstays

One of the common ways in which migrant youth fall out of status is through coming into Canada with authorized temporary status (often a visitor, work, or study permit) and overstaying that permit. Yet just as with permanent residence status, one’s chances for acquiring a permit in the first place are not equally distributed but patterned by international power relations, colonial

⁹² Helleiner, *supra* note 83 at 1521.

⁹³ Interview with M5, translated through interpreter, archived with author.

legacies, as well as race, ethnicity, class, and gender.⁹⁴ For instance, the Government of Canada recognizes 62 passports (of generally wealthy countries and/or British commonwealth territories) as visa-exempt⁹⁵, which means that nationals of these countries/territories have automatic rights to enter the board on a visitor visa, which can generally be renewed.⁹⁶ Thus, unlike other migrants, these nationals do not have to worry at all about risky unauthorized crossings to enter Canadian territory, at least initially. Other nationals however, particularly from lower-income Afro-Asian countries, may struggle to even initially obtain a visitor visa and may thus be disproportionately funneled into unauthorized entry options.⁹⁷

Unlike the US, where unauthorized entry is more common, many status-excluded residents in Canada initially enter through some sort of temporary authorization before falling out of status.⁹⁸ Many people who lose their visitor status and overstay come for hopes of finding a job or a better life, but do not qualify for other programs that could become pathways for permanent status. Often these are so-called ‘economic’ migrants from the Global South who, in large part because of the inequalities created by colonial and neocolonial imperialism, feel they have nothing to return to in their home country, yet do not fit the narrow criteria for refugee protection.⁹⁹ Some overstayers were very clear eyed about the realities of losing their status, as one young Nigerian man stated:

Yes, it was tough [to overstay]. But I do not want to go back and [make no money] again. It was hard to go underground but not harder than life back home. There are people I like and they helped a lot: find a job, getting

⁹⁴ Sofya Aptekar and Amy Hsin, “Stratified Entry into Illegality: How Immigration Policy Shapes Being Undocumented” (2023) 102 Social Forces 45 at 46.

⁹⁵ Immigration, Refugees and Citizenship Canada, “Entry requirements by country or territory” (last accessed 20 June 2025), online: <https://perma.cc/HC6Q-LT2N>.

⁹⁶ Although most visitors from visa-exempt countries now are required to apply for an obtain an electronic travel authorization (eTA), which is a simplified pre-screen for criteria such as security and medical factors. Nicole Ireland, “What is electronic travel authorization and who needs to worry about it?” (5 January 2017), CBC News, online: <https://perma.cc/9SK3-9Y5M>.

⁹⁷ Comparing data on total intakes and total approvals, the countries with the lowest visitor visa approval rates are Sudan, Gambia, Djibouti, Chad, and Senegal. Immigration, Refugees, and Citizenship Canada, “Source Countries - New Applications and Extensions Approved by IRCC for Temporary Residents (in Persons) by Month, from January 2022 to March 2025” (last accessed 23 June 2025), online: <https://perma.cc/2JDV-C5FS>.

⁹⁸ Lilian Magalhaes, Christine Carrasco, and Denise Gastaldo, “Undocumented Migrants in Canada: A Scope Literature Review on Health, Access to Services, and Working Conditions” (2010) 12 Journal of Immigrant and Minority Health 132.

⁹⁹ Achiume, “Migration as Decolonization”, *supra* note 78.

groceries. [...] Of course they are cash jobs, but that's okay. As long as I avoid [the CBSA].¹⁰⁰

One Chinese grocery store worker, whose fellow villagers had also been irregular economic migrants in different parts of the world, put it this way:

I thought, 'okay, I'll try too.' But a job is not easy to find here. I could only get one at the fruit stand or meat factory. I worked hard, saved money, but debt continues to be a big problem since I borrowed money to come here and need to pay back. Even if I wanted to go back, I cannot until the debt is paid off and I have something to show [my family] for it.¹⁰¹

International students may also overstay their study permits for various reasons. As Canada continues to export a predatory higher education industry and numbers of international students remain at very high levels, many of those on study permits are unable to keep their status going and fall into status-exclusion. Study permits typically come with an assortment of conditions, violation of any of which could result in loss of status. Permit holders must, *inter alia*: be enrolled at a Designated Learning Institution (DLI), actively be enrolled and be making progress towards completion, not take leaves from their education greater than 150 days, and work only as authorized.¹⁰²

Exorbitant and discriminatory international tuition fees alongside ever-increasing cost of living expenses (housing, food, clothing, transportation, etc.) put tremendous financial pressure on international students as they attempt to navigate life in Canada. One common way in which students lose status is simply running out of funds and not being able to afford expensive semester tuition fees to keep enrolment. This was the case for one Indian engineering student. His family had incurred debt to provide funds to send him to Canada for school, but could only afford to support him over the first year and a half of tuition fees:

Each semester I need to pay like twenty-three thousand dollars to enroll, or something crazy. My family was relying on me staying with my Uncle [rent-

¹⁰⁰ Interview with M4, archived with author.

¹⁰¹ Interview with M5, translated through interpreter, archived with author.

¹⁰² Government of Canada, "Your Study Permit Conditions" (last accessed 23 June 2025), online: <https://perma.cc/X78U-JHQW>.

free]. It worked out for the first year but we got into a big fight and my Uncle started charging me a thousand dollars a month [in rent]. I was running out of money so I worked a couple of part-time jobs. [...] By the end of fourth semester I couldn't keep doing it [working and studying together] anymore. There is no financial aid for people like us. [...] My parents in Mumbai were running out of money, so I couldn't afford it anymore and [IRCC] wouldn't extend my visa. I tried to get a lawyer but couldn't afford it. It was so hard. It's so f***** up, man. I get mad just thinking about it.¹⁰³

Another international student lost their status by not being able to keep up their grades when trying to look for work to pay their increasing expenses:

Every time I got rejected. I must have sent in like 300 resumes or something. No lie. And these are not for like good jobs or anything, just minimum wage jobs, or not even, you know what I mean? Grocery store, gas station, mowing lawns, anything. I had to chain together 3 different jobs. [...] I did them after class, during weekends. It would be like: work, then study, crash for 5 hours, class, work, then again. [...] Yeah my body just broke down. I couldn't go to class. Couldn't complete the degree. It's not just me, some of my friends were in the same boat.¹⁰⁴

In other situations, international students lost their status through misrepresentation and sometimes outright fraud from predatory actors such as education consultants. In one well-known case, over 700 students were victimized by fraudulent school admissions letters provided by private education recruiter Brijesh Mishra.¹⁰⁵ After discovering this, the students tried to make the best of the situation, with many applying successfully for alternative study/work visas. Only after applying for PR did this cohort end up on the radar of immigration authorities, who accused them of misrepresentation and rendered about 150 of them inadmissible.¹⁰⁶ The students overstayed to fight their cases and thanks in part to a tremendous mobilization and extended sit-in protest organized by international students, migrant workers, and community supporters

¹⁰³ Interview with M6, archived with author.

¹⁰⁴ Interview with M7, archived with author.

¹⁰⁵ Cheryl Chan, "Surrey man caught up in fake admission letter scandal facing deportation" (8 June 2023), Vancouver Sun, online: <https://perma.cc/26SA-CYAU>.

¹⁰⁶ *Ibid.*

(predominately Sikh Punjabis), Immigration Minister Marc Miller was forced to stop the mass deportations, issue temporary visas, and commit to a case-by-case review.¹⁰⁷

2) Failed refugee/protection claims

Another common immigration status chute is that of failed refugee/protected person claims. Sections 96 and 97 of the *IRPA* relate to Convention refugees and persons in need of protection, respectively.¹⁰⁸ While both sections provide a framework for legal recognition of those at risk in their home countries through the granting of permanent status and support, their legal definitions are still quite narrow. Section 96 recognizes Convention refugees in accordance with the 1951 *Refugee Convention*¹⁰⁹: a person who “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of [their] nationality and is unable or, owing to such fear, is unwilling to avail [themselves] of the protection of that country.”¹¹⁰

Since this “well-founded fear of being persecuted” definition excludes many groups of people who face serious risks if repatriated, section 97 recognizes a “person in need of protection” as one that would face a risk of torture, cruel, inhumane or degrading treatment or punishment, or a risk to their life if returned to their home country or the country where they normally reside.¹¹¹ However, many migrants find themselves out of status when these refugee/protected person claims are rejected, disbelieved, or otherwise fall through. The probability of acceptance or failure can also be significantly influenced by broader political trends, as well as individual refugee decision-maker biases. One interviewee came to Canada as a child and was included as a dependent in her mother’s refugee application. Unfortunately, they

¹⁰⁷ Amardeep Kaur, “The Toronto Morcha: International Students Halt Deportations to India” (1 July 2023), Jamhooor, online: <https://perma.cc/WU79-F3YC>.

¹⁰⁸ *IRPA*, *supra* note 84 at ss 96-97.

¹⁰⁹ *Convention relating to the Status of Refugees*, 28 July 1951, 189 UNTS 150 [*Refugee Convention*].

¹¹⁰ *Ibid* at Art 1(2).

¹¹¹ *IRPA*, *supra* note 84 at s 97.

came at a time where refugee/asylum refusal rates from Mexico were at an all-time high (only 378 claims were approved out of 7,028 cases in 2007).¹¹²

The government at the time was not accepting single women from Mexico, regardless of the violence. [As far as I know] all of them were denied by default. The refugee lawyer did not prep us for the interview and hearing, it was just ‘get it over with.’ Once we were rejected, we faced a lack of funds and could not appeal. We had no community support. We didn’t know [about Legal Aid Ontario] supports.¹¹³

Another failed refugee claimant, a Chinese status-excluded mother who had been targeted for forced sterilization after having a third child in violation of family planning regulations, emphasized the poor advice given by prior immigration agents and consultants in her community, steering her away from a genuine set of facts that would have had reasonable merit for a legal refugee/protection claim towards a false cookie cutter refugee story of religious persecution perceived by the agent to have a greater chance of success.¹¹⁴

Migrants who apply and are rejected from refugee/protected persons claims not only find themselves subject to reactivated removal orders, but frequently find themselves out of funds for fighting and attempting to appeal their decisions. In situations where they believe it is still too risky or dangerous to return, many choose to navigate a precarious, status-excluded life in Canada instead. As the previous interviewee explained:

No, I won’t go back. Ever. I will not let them do [the sterilization procedure on me]. I don’t care, I would rather [be dead] than go back and face the doctors. [...] If you ask me why I made this choice, my answer is “what choice?” My kids have a better life here. Someone must sacrifice.¹¹⁵

¹¹² Rupaleem Bhuyan, Adriana Vargas, and Margarita Píntín-Perez, “Fleeing domestic violence from a ‘safe’ country?: Refugee determination for Mexican asylum-seekers in Canada” (2016) 32:3 *Refuge* 95 at 97.

¹¹³ Interview with M8, archived with author.

¹¹⁴ Interview with M9, archived with author.

¹¹⁵ *Ibid.*

3) Criminal or medical inadmissibility

Sections 33-44 of the *IRPA* set out a criminal inadmissibility regime that bars both permanent residents and foreign nationals from obtaining or keeping immigration status and from entry or continued residence in Canada.¹¹⁶ In order to be found inadmissible, a section 44 report is prepared by the Minister and forwarded to the Immigration and Refugee Board (IRB) for an admissibility hearing. A finding of inadmissibility leads automatically to the issuance of a removal order and loss of immigration status.¹¹⁷ In general, it is easier for non-PRs to lose their status through criminal inadmissibility than PRs. Under section 36(2)(a), a foreign national may be found inadmissible if they are convicted of an indictable offence or two summary offences not arising out of a single occurrence. Where an offence may be prosecuted either summarily or by way of indictment, it is deemed to constitute an indictable offence even if it was prosecuted summarily.¹¹⁸ For example, a single conviction for assault for spitting, even if extremely minor, could result in the most serious of immigration consequences: loss of status, detention, and deportation.

Criminal charges and convictions are heavily influenced by patterns of racialized policing and Crown behaviour. Black migrants to Canada, who are disproportionately policed, arrested, charged, and prosecuted are thus also more vulnerable to losing their status through criminal inadmissibility.¹¹⁹ One Black interviewee originally lost his temporary work permit status after agreeing to a plea bargain for an assault charge after a fight. He expressed frustration that nobody during the process, including his defense lawyer, the Crown, the judge, or court workers, had warned him of the serious immigration consequences he would suffer if he pled guilty:

¹¹⁶ *IRPA*, *supra* note 84 at s 2(1), defines a foreign national as someone who is not a Canadian citizen or a permanent resident and includes a stateless person.

¹¹⁷ *Ibid* at ss 44(2) and 45(d)

¹¹⁸ *Ibid* at s 36(3).

¹¹⁹ See Scot Wortley and Maria Jung, *Racial Disparity in Arrests and Charges An analysis of arrest and charge data from the Toronto Police Service* (Toronto: Ontario Human Rights Commission, 2020) at 15-34, online: <https://perma.cc/JHP6-UF4P>.

No one ever told me s***. Would have never pled out if I knew. And my lawyer, he didn't do nothing for me. Didn't tell me nothing at all [about the immigration consequences].¹²⁰

Another avenue by which migrants (particularly queer, trans, and women of colour) lose their immigration status and become undocumented is through the criminalization and inadmissibility of sex work. The *Protection of Communities and Exploited Persons Act* (PCEPA)¹²¹, contains numerous criminal provisions (purchasing, material benefit, procurement, or advertisement) that upon conviction, can render individuals at risk of losing their status and be subject to deportation.¹²² In addition to criminal inadmissibility, immigration regulations have been advanced so as to effectively prohibit those with temporary status from legally engaging in sex work and, more broadly, any sort of employment in a wide range of industries deemed to be related to sex work. *IRPR* sections 183(1)(b.1), 196, 200(3)(g.1) impose general prohibitions on sex work as well as prohibitions on entering “into an employment agreement, or extend the term of an employment agreement, with an employer who, on a regular basis, offers striptease, erotic dance, escort services or erotic massage”¹²³, even for those who otherwise have authorization to work. Notably, these sex work employment prohibitions do not apply to citizens or permanent residents, but only to migrants with temporary status.

Through the nexus of criminal and immigration offenses, migrant workers have lost their status and have been subject to deportation, sometimes to situations of high risk of violence and abuse, after being arrested in police raids on workplaces associated with the erotic industry and transferred to CBSA for detention.¹²⁴ These punitive immigration provisions increase the vulnerability of migrants, such as international student workers, who would otherwise have work authorization but choose to work in sex work-related industries. For instance, one international

¹²⁰ Interview with M10, archived with author. Note that this interviewee's plea deal was made before the Supreme Court of Canada's ruling in *R v Wong*, 2018 SCC 25, which ruled that in order for a guilty plea to be informed, the accused must be made aware of the nature of the effect and consequences of the plea, including immigration consequences that are sufficiently serious as to be legally relevant (e.g. risk of deportation). Since then, various changes have been made by different court actors to screen for non-citizenship and refer them to seek immigration legal advice before entering pleas. See Legal Aid Ontario, “Plea Comprehension Inquiry” (last accessed 23 June 2025), online: <https://perma.cc/KCN2-Z2CY>.

¹²¹ PCEPA, SC 2014, c 25.

¹²² *Criminal Code*, RSC 1985, c C-46, ss 286.1(1), 286.2(1), 286.3(1), and 286.4(1).

¹²³ *IRPR*, *supra* note 70, ss 196, 196.1.

¹²⁴ See *Pahul v Canada (Citizenship and Immigration)*, 2020 CanLII 115570 (FC).

student interviewee decided that erotic massage work was the best source of income in terms of money and flexibility with her studies. When the massage parlour she worked at was raided by police, she was asked by a female officer whether she had been trafficked, to which she replied that she had not and was doing the work voluntarily. It was then that the ‘anti-trafficking’ raid quickly transformed into an anti-migrant raid:

The police asked me for my immigration papers. I told her ‘I don’t have them on me right now.’ I mean, who carries around all their immigration documents all the time? [...] I told her I was a [university student] and showed my Student ID card. She went back to talk to her boss. I was really scared [they would arrest me]. Probably the most scared I’ve ever been.¹²⁵

Fortunately, the interviewee was not arrested and detained but instead given a ‘warning’ (she lost her status much later due to financial trouble in paying tuition fees). However, the experience demonstrates how migrant workers in the sex work industry must navigate a complex and multiscalar web of repressive laws that could result in loss of status and other consequences – a regime some scholars have characterized as a ‘carceral web’.¹²⁶

4) Termination or abusive labour conditions

Some status-excluded migrants initially arrive on temporary work permits but lose their status along the way due to developments after arrival in Canada, finding themselves forced to make a difficult decision between whether to return home or stay and attempt to survive without status. Often migrant workers lose status if they lose their job and cannot find another eligible employer before ‘time is up’. For instance, one man’s work permit was tied to his employer, a packaging company in which he worked on the floor. His boss would frequently demand that his team (entirely made up of precarious status workers) work past their designated hours, often

¹²⁵ Interview with M11, archived with author.

¹²⁶ July Fudge, et al, “Caught in the Carceral Web: Anti-Trafficking Laws and Policies and Their Impact on Migrant Sex Workers” (2021).

unpaid. When he complained, he was immediately terminated and formally lost status when his work permit renewal was refused:

‘I have a choice’, I said. I won’t accept this. He fired me on the spot. And he was right - I didn’t have a choice. [...] Now I work another factory, but less money, under the table.¹²⁷

In another case, a healthcare worker was told by her employer that she would not have her work permit renewed after she became pregnant and took maternity leave. She stated that she originally thought long and hard about whether to keep the baby, not because she didn’t want one but that she dreaded losing her job and immigration status:

When I told HR, the woman’s face was so... I knew what would happen. You just knew. [...] After I came back from maternity leave, everyone acted like nothing happened. Then [HR] said they could not apply [for the LMIA] again. Business is bad. You know it’s a lie because they were still hiring others.¹²⁸

As in the days of ‘coolie’ labour, vesting employers through immigration law with the ability to effectively remove status and greenlight state violence is extremely effective as a tool of labour discipline. Workers who may wish to organize, unionize, or complain, can be subject to arbitrary termination and blacklisting. In one well-publicized case, Arthur Lorenzo, whose complaint started a formal CBSA investigation into violations of the TFWP in Labrador City, was deported after failing to find another employer willing to apply for an LMIA for him and being rejected for a Victims of Trafficking in Persons (VTIP) permit.¹²⁹

5) Systemic or administrative barriers

¹²⁷ Interview with M12, archived with author.

¹²⁸ Interview with M13, archived with author.

¹²⁹ Chris Ensing, “Labrador whistleblower’s ‘heart is broken,’ faces deportation” (26 January 2017), CBC News, online: <https://perma.cc/4JC8-TCUU>.

Beyond this, many migrants lose their status due to a variety of systemic or administrative barriers. One migrant justice organizer explained that many people lose visitor or work status simply due to mistakes or misrepresentations on the part of those they hire:

When [migrants] arrive, they have difficulty renewing status. But they cannot do it themselves, they are not familiar with the process, and many have options that they don't know about. So they pay different people – friends, third party agents, immigration consultants and lawyers. Rely on them to help them through the process. But there is a lot of scams, misinformation, miscommunications. Some people are told [by their immigration agent] they have work permit or visitor status, but they don't actually have [it]. Some are told the application was sent in, but it was never sent.¹³⁰

Sometimes changes of addresses may result in notices and requests for further information left without response, resulting in a refusal. Language barriers and inaccessible legal support can also amplify vulnerability. One Chinese migrant worker hired a Chinese-speaking individual who advertised herself as an 'immigration consultant' to help him apply for a work permit. The consultant later texted him that "everything was good with his permit".¹³¹ After getting no further updates and enlisting the help of a social worker to check his immigration status, he was shocked to find out that his work permit application, though completed, was not sent in or processed at all, while his visa had already expired – rendering him undocumented and subject to a removal order. He later lamented that "there was no way for me to check on my own because my English is not good".¹³²

Common ladders (climbing up)

1) Temporary status ladders

¹³⁰ Interview with NGO1, archived with author.

¹³¹ Interview with M5, translated through interpreter, archived with author.

¹³² *Ibid.*

While numerous pathways to acquire or regularize immigration status exist in theory, only a limited set are realistically accessible to the predominantly racialized, working-class “Dreamers” who find themselves status-excluded in the first place.¹³³ For analytical purposes, I categorize these pathways into temporary status ladders and permanent status ladders, noting that temporary pathways can lead into permanent ones, and that permanent pathways are often preceded by periods of temporary status.

Implied/maintained status and restoration of status

Migrant youth who have technically overstayed their temporary permit duration may still have authorization to conditionally stay during processing of their already-submitted renewal or extension application. The *IRPR* contains provisions which provide a buffer for migrants whose status has expired and would otherwise have a legal obligation to leave the country, but who have applied to extend or renew their status *before* their initial status expiry.¹³⁴ This was previously known as “implied status” but is now referred to as “maintained status during processing” and is a liminal space of conditional status that temporary resident migrants may frequently find themselves in.

For those who have passed their permit duration and have *no* maintained status during processing, the *IRPR* also contemplates a process for “restoration” of temporary status (for a visitor, worker, or student)¹³⁵ within 90 days of losing their status (e.g. overstaying duration, failure to comply with conditions, or cancellation of a TRP).¹³⁶ Applicants must also meet all other conditions of their stay generally and on their permit (for instance, not working without

¹³³ For instance, with respect to economic immigration (the largest

¹³⁴ *IRPR*, *supra* note 70, ss 181 and 183(5).

¹³⁵ *Ibid*, s 182.

¹³⁶ *IRPA*, *supra* note 84, s 47.

authorization, including during their period of status-exclusion). Restoration status determinations are highly discretionary.¹³⁷

Navigating maintained status and restoration of status processes can be extremely stressful and anxiety provoking. One interviewee fell out of status and temporarily lost her job as an Early Childhood Educator because her immigration lawyer accidentally filed her work permit renewal application to the wrong office and she thus fell out of status, was not eligible for maintained status, and had to stop working for three months:

It was stressful. I saw the papers and so I know why [the lawyer was confused as to which office to send the renewal application to] but my heart just sank. [...] My boss told me they couldn't keep me on [while waiting for the restoration application]. I just remember crying to my mom [on the phone] like, non-stop.¹³⁸

Eventually the interviewee was successful with her restoration of status application and was able to work again, but falling out of status due to her lawyer's mistake cost her months of savings and she had to take on several odd jobs that were not related to her field of study to try to pay the bills.

Applying for new permits (visitor, work, or study)

Some status-excluded individuals have been able to apply for new visitor, work, or study permits while *within* Canada as an immigration ladder. Generally, individuals must have some sort of existing valid status to apply for (or switch between) a visitor, work, or study permit while inside Canada.¹³⁹ However, the *IRPR* contemplates several exceptions¹⁴⁰ and immigration

¹³⁷ Government of Canada, "Restore your status and get a work permit" (last accessed 24 June 2025), online: <https://perma.cc/N97Y-26LV>.

¹³⁸ Interview with M14, archived with author.

¹³⁹ Government of Canada, "Visitor visas for workers and students: How to apply from inside Canada" (last accessed 24 June 2025), online: <https://perma.cc/3CT2-JD4B>.

¹⁴⁰ For instance, in the case of applying for a work permit inside Canada, see *IRPR*, *supra* note 70, ss 199, 206-208.

officers have some discretion in terms of assessment of in-Canada applications. This is reflected by several interviewees who indicated that they had successfully climbed out of status-excluded situations through in-Canada visitor, work, or study permit applications.

One interviewee initially entered Canada on a temporary work permit in the food service industry but was pressured to leave her job after she complained about her manager's unwelcome comments about her appearance.¹⁴¹ Her initial work permit expired and she was unable to find another employer who would sponsor her work permit renewal application. After several months of overstay, her consultant advised her to apply for a visitor visa in Canada, for which she was accepted. At the time, Canada was in lock-down due to the COVID-19 pandemic and temporary public policy was promulgated to explicitly allow visitor visa holders to apply for job offer-related work permits while in Canada.¹⁴² With the visitor visa, the interviewee was eventually able to receive a work permit for a clerical office job, a development which she described as allowing her "to breathe for the first time in two years".¹⁴³ Unfortunately in August 2024, under the stated concern that "some bad actors were using the policy to mislead foreign nationals into working in Canada without authorization", IRCC ended the policy early – thus ironically taking away one of the options that would have allowed migrant workers to avoid losing status.¹⁴⁴

In another case, an interviewee was laid off as a caregiver by her employer who she described as "unreasonable" and having a "Napoleon complex".¹⁴⁵ When she could not find another employer to sponsor a work permit renewal, she fell out of status until, out of lack of alternatives, she applied and was accepted as an international student at a nearby private arts college. However, given that continuing to finish the 2-year diploma would cost nearly \$75,000, she did not have the resources to fully complete the program while working and found herself out of status again.¹⁴⁶ Her story underscores the reality that availing oneself of ladders back to

¹⁴¹ Interview with M15, archived with author.

¹⁴² Government of Canada, "Temporary public policy to exempt certain visitors in Canada from immigration requirements during the coronavirus (COVID-19) pandemic" (24 August 2020), online: <https://perma.cc/V2XZ-RPHQ>.

¹⁴³ Interview with M15, archived with author.

¹⁴⁴ Charlie Buckley, "Visitors to Canada can no longer apply for work permits from within the country" (29 August 2024), CTV News, online: <https://perma.cc/59UL-J2QR>.

¹⁴⁵ Interview with M16, archived with author.

¹⁴⁶ *Ibid.*

temporary status are generally stopgap solutions that can be very expensive for individual migrants, even when successful.

Temporary residency permits

Finally, immigration officers hold significant discretionary power to issue a temporary resident permit (TRP) where the officer “is of the opinion that it is justified in the circumstances”.¹⁴⁷ TRPs are used where an individual is otherwise inadmissible but can convince the immigration officer that their need to travel to Canada outweighs the “risks”.¹⁴⁸ Often these TRPs are issued in relation to criminal or health inadmissibility issues. A notable special TRP is the Victims of Trafficking in Persons (VTIP) permit, which is issued for at least 12 months, with some exceptions. Decision-makers are directed to consider whether: the recruitment of the individual was fraudulent or coerced and for the purposes (actual or intended) of exploitation; the individual was coerced into employment or other activity; the conditions of employment or any other activity were exploitative; and the individual’s freedom was restricted.¹⁴⁹

However, the VTIP has been criticized for its very limited access, restricted and conditional rights, lack of PR avenues, and the continuation of deportation and detention as against trafficked victims.¹⁵⁰ Furthermore, as elaborated upon in Chapter Four, immigration officers and decision-makers typically do not see *state-sanctioned* conditions of labour exploitation and abuse as exploitation for the purposes of trafficking.¹⁵¹

¹⁴⁷ *IRPA*, *supra* note 84 at s 24.

¹⁴⁸ Government of Canada, “Protection and assistance for victims of human trafficking” (last accessed 25 June 2025), online: <https://perma.cc/CQ5U-DSL7>.

¹⁴⁹ Genevieve Giesbrecht, “The Intersection of Immigration and Human Trafficking: How Canada Can Provide Further Support to Foreign National Victims and Survivors” (30 May 2023), Canadian Bar Association, online: <https://perma.cc/7645-AV65>.

¹⁵⁰ Canadian Council of Refugees, “Temporary Resident Permits: Limits to protection for trafficked persons” (June 2013) at 1, online: <https://perma.cc/4VAX-RDLY>.

¹⁵¹ For instance, see *Shala v Canada (Citizenship and Immigration)*, 2021 FC 326, where the Federal Court where the appellants were deceived by agents and entered into a closed work permit for an exploitation employer where he experienced “very long work hours, six or seven days a week, without standardized breaks, under bad conditions,”

2) Permanent status ladders

From the perspective of security and rights, it is far more beneficial to obtain PR rather than TR. However, communities who are already status-excluded typically cannot avail themselves of many avenues for permanent residency, particularly with respect to economic immigration which constitutes the significant majority (60% for 2025) of all PR issuance.¹⁵² As such, status-excluded migrants typically attempt to climb PR ladders within family and ‘humanitarian’ categories.

Family reunification

As detailed in Chapter Two, family reunification in Canadian immigration policy has shrunk over time both in terms of percentage of overall immigration as well as the scope of relatives who may be eligible for reunification. Today, the vast majority (95%) of family category immigrants are spouses (inclusive of common-law and conjugal partners) and parents and grandparents (PGP), with dependent children at 4% and other relatives at 1%.¹⁵³ Further, family immigration has itself been significantly neoliberalized, with sponsorship undertakings of varying durations required for all categories of family immigration and a stringent minimum necessary income test required for PGP sponsorship, effectively pricing working-class migrants out of reunification with parents and grandparents.¹⁵⁴

and suffered verbal abuse and significant wage theft (para 9). The Court agreed with the immigration officer that labour trafficking and labour exploitation were separate and distinguishable and held against Mr. Shala that he “intended to pursue employment opportunities in Canada with the prospect of a better financial future” and voluntarily “agree to terms” (para 36).

¹⁵² Government of Canada, “Canada’s immigration levels” (last accessed 25 June 2025), online: <https://perma.cc/277J-7GFU>.

¹⁵³ Immigration, Refugees and Citizenship Canada, “Evaluation of the Family Reunification Program” (March 2024), online: <https://perma.cc/L7E5-TX66> at 5, 10.

¹⁵⁴ *Ibid* at 11.

As a result, family immigration can be extremely difficult as a ladder for status-excluded migrants; several interviewees indicated that they had pursued family immigration options but all failed. One interviewee, who entered as a temporary foreign worker, started a relationship with a Canadian citizen and soon discovered that she was pregnant. After her maternity leave, her employer did not renew her LMIA and she lost her status, but she and her boyfriend submitted a common-law partner sponsorship application. During this time however, the father grew “more and more distant” and it was increasingly clear that he “didn’t want to be in the baby’s life” – leading to their breakup and the eventual withdrawal of the application.¹⁵⁵ The interviewee also mentioned how difficult it was to try and navigate spousal support claims at family court while status-excluded, being “always scared that he was going to get angry and call CBSA.”¹⁵⁶

In another case, a Sri Lankan former international student and PGWP holder had married her long-time boyfriend in Canada but had their initial spousal application rejected on the grounds that their marriage was not genuine. Their case eventually made it to an appeal proceeding at the Immigration and Refugee Board, but was also rejected there:

The [government] lawyer asked us again and again about the smallest detail. What day did he first hold your hand? What day did he say ‘I love you’? Who can remember this [to the exact day]? My memory is not so good anymore. Can you remember without checking your phone? [...] Our consultant did not [warn us about this] at all.¹⁵⁷

While the couple had the right to judicially review the decision to Federal Court, they could not afford the high cost of hiring a lawyer (immigration consultants cannot represent at Federal Court) and the spousal sponsorship reached a dead end.

Refugee and protected person claims

¹⁵⁵ Interview with M13, archived with author.

¹⁵⁶ *Ibid.*

¹⁵⁷ Interview with M21, archived with author.

As mentioned earlier in this section, refugee and protected persons claims pursuant to ss 96-97 of *IRPA* are common avenues by which working-class migrants from the Global South attempt to secure permanent status, whose factual background may or may not fit neatly within the legal definitions of refugee or persons in need of protection. One Haitian interviewee recounted how an immigrant agent (she was not sure if he was a registered immigration consultant/lawyer or not) helped her file the initial Basis of Claim (BOC) form for her and her two kids, but she was never given a written copy. At hearing, she was found not credible given the significant differences between her story and BOC claim. Only when she received a copy of the written refusal decision was it made clear to her that much of the facts in the claim form were either omitted, changed, or entirely made up.¹⁵⁸

After connecting with a community agency, she was able to obtain a legal aid refugee lawyer, who on appeal successfully argued that her previous representative's errors prejudiced her case significantly and resulted in an unfair decision. She was finally accepted as a 'person in need of protection' under section 97, a decision that ended a brutal and tiring five years. As the interviewee described, getting the positive decision was "a crushing weight off her shoulders."¹⁵⁹ Her story also highlights the importance of proper, effective, publicly-funded legal aid, especially in cases where fundamental rights to life, liberty, and security of the person are so clearly at stake.

Yet refugee and protected persons categories of immigration have also not been immune to the broad neoliberalization of immigration law, as even core humanitarian programs are selecting immigrants "on the basis of their perceived economic value to the country, making family reunification and its humanitarian obligations secondary and tertiary concerns."¹⁶⁰ This neoliberal creep is perhaps most starkly demonstrated by the introduction in 2018 of the Economic Mobility Pathways Pilot (EMPP), which focuses on prioritizing permanent residency for 'skilled' refugees through existing economic immigration programs, with attendant negative

¹⁵⁸ Interview with M3, archived with author.

¹⁵⁹ *Ibid.*

¹⁶⁰ Yasmeen Abu-Laban, Ethel Tungohan, and Christina Gabriel, *Containing Diversity: Canada and the Politics of Immigration in the 21st Century* (Toronto: University of Toronto Press, 2022) at 115.

intersectional effects that further entrench disadvantage on the basis of race, gender, and class.¹⁶¹ Alongside the neoliberalization of family reunification, this has meant that even though these humanitarian and family immigration programs still make up 40% of total immigration – that percentage has been substantively eroded by logics which privilege the neoliberal ideal of citizen. Azar Masoumi argues that this pattern in refugee restructuring is intimately tied to the production of precarious migrant workers, demonstrating that key source countries of *both* asylum claims and temporary foreign workers, such as Mexico and Jamaica, have consistently had high levels of refugee rejection, “pushing them out of the permanent protection of refugee status while pulling them into the precarious opening of temporary labour migration.”¹⁶²

Humanitarian & compassionate claims

Of all potential PR ‘ladders’, humanitarian & compassionate (H&C) claims pursuant to section 25 of the *IRPA* were the most common attempted avenue for status-excluded youth interviewees – with about half having attempted an application at some point. This is unsurprising as this discretionary avenue is contemplated for justifying exceptional measures “to mitigate the rigidity of the law in an appropriate case.”¹⁶³ For some interviewees, H&Cs were seen as a strategy of last resort and for many status-excluded migrants whom are ineligible or have been rejected from other programs, it was the only avenue available for potentially acquiring PR status.

Given its role as an option of last resort and equity-based nature, caselaw has played an outsized role in shaping the interpretation and application of H&C considerations. H&C applications are analyzed through a holistic “assessment of hardship” that must be either “unusual and underserved” or “disproportionate”.¹⁶⁴ Factors that may support an H&C claim

¹⁶¹ *Ibid* at 63-64.

¹⁶² Azar Masoumi, “The Revolving Door of Im/Migration: Canadian Refugee Protection and the Production of Migrant Workers” (2024) 33:4 Social & Legal Studies 582.

¹⁶³ *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 19.

¹⁶⁴ *Ibid* at para 26.

include establishment and ties in Canada, hardship in leaving Canada, best interests of the children, health considerations, and family violence and abuse.¹⁶⁵ Conversely, factors that may negatively impact an H&C claim include a criminal record, lack of financial stability, and few/no family ties in Canada.

H&C approval rates have varied significantly over the past decade between about 65% down to 30% during the high of the COVID-19 pandemic – with some scholars observing that there appears to be a connection between increased refusal rates and higher volumes of H&C applications.¹⁶⁶ H&C applications take a lot of time to process (as of November 2024, twenty to forty-nine months)¹⁶⁷ and a lot of effort to prepare (one lawyer with expertise in H&C applications stated that initial applications were routinely in the hundreds of pages).¹⁶⁸ Further, the lengthy nature of the H&C administrative process exposes applicants to greater risk of removal. This is especially true for migrants who have already been in Canada underground for a prolonged period of time (and thus are more likely to have established ties), especially given that pending H&C applications do not stay deportation proceedings. As one applicant recounted:

I thought a long time about whether to [put in an H&C application]. My friends were telling me not to do it since [CBSA] will know where I am. It was a really hard decision because it felt like ‘oh, you are putting yourself in danger, your kids in danger’.¹⁶⁹

Another interviewee, who had his status initially revoked through criminal inadmissibility, highlighted the importance of having a dedicated lawyer through the H&C process:

My [legal aid] lawyer believed in me when I didn’t believe in myself. She fought like hell, man. She took the time to really understand my story, not just the paperwork. She built a strong [H&C] application that showed who I

¹⁶⁵ *Ibid* at para 27.

¹⁶⁶ Anthony Delisle and Delphine Nakache, “Humanitarian and Compassionate Applications: A Critical Look at Canadian Decision-Makers’ Assessment of Claims from “Vulnerable” Applicants” (2022) 11:3 *Laws* at 12-15.

¹⁶⁷ Immigration, Refugees, and Citizenship Canada, “CIMM – Humanitarian and Compassionate and Other Category” (25 November 2024), online: <https://perma.cc/FX38-ZPCM>.

¹⁶⁸ Interview with NGO2, archived with author.

¹⁶⁹ Interview with M1, archived with author.

was beyond the conviction – a father, a Christian, a worker, someone rooted in this community, you know what I’m saying? [...] The whole thing took years. I was living in fear the whole time. Checking in with CBSA, wondering if they’d show up at my door, but when we got the decision, it meant freedom. Not just for me but for my daughter too.¹⁷⁰

Regularization programs

No status-excluded youth interviewee indicated that they had experience (or indeed even knew about) status regularization avenues. Despite the federal government having committed in 2021 to “build on existing pilot programs to further explore ways of regularizing status for undocumented workers”¹⁷¹, avenues for regularization have been few and far between and, in terms of scale, just a drop in the pond for working-class status-excluded migrants. In the past several years, two small status regularization pathways were set in 2020 within the healthcare sector and the construction sector.

During the height of the COVID-19 pandemic lockdowns, precarious status and status-excluded workers were deemed “essential” to the Canadian economy, particularly in certain sectors such as food and agriculture, delivery, healthcare, warehousing, construction, cleaning, transportation, and logistics.¹⁷² In healthcare, the so-called ‘Guardian Angels’ pathway was opened in December 2020 allowing for a limited PR pathway for existing asylum seekers with valid work permits who had been employed for a minimum period in direct care to patients and residents of nursing homes.¹⁷³ Approximately 9,195 individuals came through the pathway from

¹⁷⁰ Interview with M10, archived with author.

¹⁷¹ Justin Trudeau, “Minister of Immigration, Refugees and Citizenship Mandate Letter” (16 December 2021), Prime Minister of Canada, online: <https://perma.cc/JH5B-ZM9M>.

¹⁷² Mostafa Henaway, *Essential Work, Disposable Workers: Migration, Capitalism and Class* (Halifax and Winnipeg: Fernwood Publishing, 2023) at 6.

¹⁷³ Audrey Macklin, “Pandemic Pathways to Permanent Residence” at 160-161 in Colleen M Flood, et al, eds, *Pandemics, Public Health and the Regulation of Borders: Lessons from COVID-19* (London: Routledge, 2024).

December 2020 to October 2024, although it excluded those who were undocumented, those who did not provide direct care, and those who were not asylum seekers.¹⁷⁴

In construction, the ‘Temporary Public Policy for Out-of-Status Construction Workers in the Greater Toronto Area (GTA)’ was an even more limited program ended in 2024 that was capped at 1,000 applicants and although technically included undocumented applicants, was restricted to those who did not enter irregularly, had family already in Canada, five years of continuous residency, and three years of construction industry experience *in the GTA*.¹⁷⁵ As such, it can be argued that these two pathways were not regularization avenues at all, but rather *ad hoc* economic immigration programs targeted towards specific precarious status workers in sectors deemed ‘essential’.

B. Labour conditions

Like other workers with precarious immigration status, undocumented youth frequently work under harsh, exploitative, and unsafe conditions. However, the unique nature of status-exclusion means that they are *invisible in law*: status-excluded workers find themselves in extreme conditions of vulnerability where due to systemic disenfranchisement, they cannot work legally, access services, or apply for most legal remedies without either being rejected and/or risk detection.¹⁷⁶ These structural conditions form a distinct type of experience from those workers with precarious status (such as Temporary Foreign Workers and International Student Workers) whose status is often tied to specific conditions and who are often trying to keep their status and prospects of PR alive in the future. Status-excluded youth thus work almost entirely under the table in informal economies where employment law enforcement is weak and the constant threat of

¹⁷⁴ Immigration, Refugees, and Citizenship Canada, “CIMA – Regularization of Undocumented Workers” (25 November 2024), online: <https://perma.cc/PQP4-SZC8>.

¹⁷⁵ Immigration, Refugees, and Citizenship Canada, “Subsequent temporary public policy to continue to facilitate access to permanent resident status for out-of-status construction workers in the Greater Toronto Area (GTA) – Second extension” (last accessed 15 July 2025), online: <https://perma.cc/XSG2-Q86D>.

¹⁷⁶ Paulina Segarra and Ajnesh Prasad, “Undocumented immigrants at work: invisibility, hypervisibility, and the making of the modern slave” (2024) 11:45 *Humanities and Social Sciences Communications* 1.

deportation discourages reporting abuse. Yet ironically, because status is no longer tied by work permits to a particular employer or sector, status-excluded youth often have *some* labour market mobility but only within the severe constraints of informal economies. As one interviewee put it: “if all jobs are illegal, then none are illegal. We have to eat right?”¹⁷⁷

This section consolidates and shares some of the common labour conditions that were reported by status-excluded youth in semi-structured interviews. These experiences include: (1) wage theft, (2) unsafe working conditions, (3) harassment and abuse, and (4) threats of deportation.

1) Wage theft

The vast majority of interviewees reported that they were either paid less than statutory minimum wage and/or endured repeated stretches where they were not paid at all for hours worked. In Ontario, the *Employment Standards Act* (ESA) governs minimum employment rights and protections, which at least on their face, apply to workers regardless of immigration status.¹⁷⁸ It also sets out the mechanisms by which complaints are received and adjudicated – specifically through an Employment Standards Officer, appeal to which goes to the Ontario Labour Relations Board (OLRB).¹⁷⁹ Employers often exploit the fact that undocumented youth are concerned about employer retaliation through tipping off immigration authorities by paying below minimum wage, denying overtime pay, withholding paycheques, or forcing them to work unpaid shifts.

Despite a prevailing minimum wage at the time of \$15.50, one interviewee in the food and beverage sector was hired for \$11/hour cash. On a personal level, she was “very grateful” that the employer was willing to hire her despite her undocumented status but felt frustrated that “there were just no other jobs available that would have higher pay” for her.¹⁸⁰ In one particularly egregious case, an interviewee showed up for a warehouse job that he entered into

¹⁷⁷ Interview with M4, archived with author.

¹⁷⁸ Ontario Ministry of Labour, Training and Skills Development, “Your Rights as a Foreign National Under the Employment Standards Act, 2000” (October 2020), online: <https://perma.cc/D68X-2A2D>

¹⁷⁹ Ontario Labour Relations Board, “Information Bulletin No. 24” (August 2023), online: <https://perma.cc/Z46T-Y8JQ?type=image>.

¹⁸⁰ Interview with M18, archived with author.

through a temporary work agency that initially stated it paid \$17/hour in the employment agreement. The supervisor scoffed at the idea and told him that he would be getting \$10/hour instead and should be “happy about it”, pointing out that some other precarious status workers on the line were getting \$8/hour. The interviewee quit after a week.¹⁸¹

Late payment of owed wages was another recurring theme. As one interviewee who previously cleaned offices and other commercial spaces recounted:

My boss always pays the others on time. Every two weeks, like clockwork. For me? It's always, 'next week, next week.' [...] I've gone three weeks, once a whole month, with no pay. And when I ask, he just says, 'relax, you'll get it.' He knows I'm [undocumented]. That I can't complain to anyone. Meanwhile, my phone bill's overdue, I'm eating instant noodles for dinner. I don't sleep much because of the stress. I just pray he feels like paying me on time.¹⁸²

Another practice that was reported was unpaid ‘probational’ shifts. One interviewee who worked at a grocery store reported that the employer would hire a cohort of several young precarious status workers and tell them that they were competing against each other during the first month of unpaid work and that only two of the workers would ultimately get a job.¹⁸³

Without a formal employment contract or pay stubs, status-excluded youth often face barriers to prove abuse or seek compensation, although some still find ways to put pressure on the employer to recover stolen wages. One restaurant worker was referred by a friend to a sympathetic pro bono lawyer who had helped him recover lost wages. Using a combination of screenshots, WhatsApp texts, and pictures of shift schedules, his lawyer submitted a letter of demand to the employer, which was eventually settled. As the worker stated:

The letter made a big difference. It was legal and professional, it had numbers, it was really clear. [My boss] was really unhappy but she paid because she did not want to be sued. It completely flipped things around.¹⁸⁴

¹⁸¹ Interview with M12, archived with author.

¹⁸² Interview with M11, archived with author.

¹⁸³ Interview with M7, archived with author.

¹⁸⁴ Interview with M6, archived with author.

2) Unsafe working conditions

Many status-excluded youth work in physically demanding or hazardous jobs, such as construction, cleaning, factory work, or food delivery, without proper safety training or equipment. Because they fear being reported to immigration authorities, status-excluded workers have compromised bargaining power and suffer from differential treatment in the workplace. Though employers have obligations under Ontario's *Occupational Health and Safety Act*¹⁸⁵ to provide a safe work environment, train workers on hazards, supply protective equipment, and report injuries, employers seldom follow health and safety regulations when they know their status-excluded workers will be dissuaded from filing complaints.

One migrant caregiver left her original job but could not find another employer before her work permit expired. To make ends meet she ended up working under the table for another employer, but found the conditions to be even worse, facing excessive hours and no breaks tied to being a live-in caretaker:

[The] family have three kids: two toddlers, one baby. Every morning, the mother gives me long list: cook, clean, laundry, diapers, vacuum. From early morning until night, always working. No rest, no stop. [...] I don't even have a room – I slept on the floor next to baby's crib with only a thin blanket. When baby cry, I get up. If I don't move fast, the mother bang on door, scream at me. [...] Many nights I don't sleep more than two, three hours.¹⁸⁶

Another interviewee who worked in a home and roof renovations company of about 20 people explained that because his employer knows he doesn't have status, he purposely sends him to the worst houses without proper support or equipment, which eventually resulted in various repeated injuries to his hands and back:

One time, he dropped me at this old house being gutted. There was dust everywhere, broken glass on the floor, wires sticking out the walls. No

¹⁸⁵ RSO 1990, c O.1.

¹⁸⁶ Interview with M16, archived with author.

safety briefing, no mask, no gloves, no nothing. Just said, '[tear] that down, start scraping.' [...] He would never do that to any of my coworkers. Never.¹⁸⁷

Eventually his back injury progressed to the point where he could not pick up heavier equipment or drywall and he was terminated. When asked whether he applied for workers' compensation, the interviewee shook his head, explaining that those laws "aren't for us – you should know that."¹⁸⁸

Working conditions for status-excluded workers can also be greatly influenced by other laws outside of immigration. For example, a service provider for migrant workers in the erotic massage industry explained that while previously many status-excluded workers worked alongside other workers in indoor settings, an increase in anti-trafficking raids as well as restrictive zoning bylaws have resulted in many of them doing out-calls to client's locations instead, where workers have less control over their environment and face increased risk of violence and coercion. But workers trade off those risks against greater risks of interactions with law enforcement and arrest, detention, and deportation.¹⁸⁹

3) Harassment and abuse

Undocumented youth, particularly women and queer youth, are highly vulnerable to harassment and abuse in the workplace. This includes verbal abuse, bullying, racial discrimination, and even sexual harassment and assault. Since their employment is informal, there are rarely any formal HR processes to deal with complaints, and reporting the abuse could risk retaliation and threats. The few interviewees who reported that their employers *did* have harassment policies did not ultimately end up using them for fear of retaliation.

¹⁸⁷ Interview with M2, archived with author.

¹⁸⁸ *Ibid.*

¹⁸⁹ Interview with NGO1, archived with author.

In one situation, an interviewee recounted how he was continuously bullied and called names by an older warehouse worker, but his supervisor looked the other way:

This guy kept messing with me. Calling me ‘mail-order curry boy’, saying stuff like, ‘don’t steal anything, I know your type.’ [Then he would] make some joke about how real workers have permits. At first, I ignored it. But then he started hiding my tools, blocking my way, telling me to ‘go back home’. In front of the others! [...]

I told [the supervisor], quietly, just asking him to say something – anything. He just shrugged and said, ‘that’s how he is, don’t take it personal.’ [...] Next shift, it got worse. The guy said, ‘snitch now b****, see what happens.’ After that, I stopped saying anything. I couldn’t afford to lose the job. I felt pathetic.¹⁹⁰

Another interviewee mentioned how, in the absence of the ability to formally complain, some of his coworkers had banded together to put a check to continued harassment by a fellow delivery driver, for instance intervening verbally when he was called an “illegal” and when his accent was mocked. Those same coworkers also told him that if he was being discriminated against to come to them so that they could talk to their employer collectively.¹⁹¹

Gender-based workplace sexual harassment was also reported by several interviewees. One woman who worked as a waitress commented on how a coworker who constantly called her names like ‘honey’ and ‘sweetie’ while inappropriately touching her whenever he ‘brushed’ by, calling it an accident. Although she was encouraged by some of her colleagues to report the harassment, as the only undocumented worker on staff (that she was aware of), she chose instead to leave the job rather than make “a big stink” and risk drawing further attention to herself.¹⁹²

4) Threats of deportation

Some employers use fear as a tool of control, directly threatening to report undocumented youth to CBSA if they complain, refuse extra hours, or ask for fair treatment. As covered in other sections, these practices of employer and state power harken back to the earlier uses of

¹⁹⁰ Interview with M7, archived with author.

¹⁹¹ Interview with M19, archived with author.

¹⁹² Interview with M15, archived with author.

immigration ordinances to authorize *penal punishment* against indentured migrant labourers by employers.¹⁹³ This dynamic creates a climate of fear, where basic rights are routinely violated and young people are trapped in cycles of exploitation. The result is a parallel shadow labour market in which status-excluded workers are excised from protections afforded to other workers, further marginalizing them socially, economically, and emotionally.

Nearly every single interviewee mentioned the recurring fear of detection, detention, and deportation by CBSA when addressing exploitation in the workplace. While no interviewee reported that they were subject to any direct reporting by their employer to CBSA, a climate of fear was palpable. One interviewee reported that her fear of complaining about employment standards violations was tied both to the fear of being outed to CBSA by her employer as well as a strong feeling of being “really grateful” to her employer for effectively “shielding [her] from [CBSA]”.¹⁹⁴

Some interviewees, however, did report explicit *threats* of deportation at the workplace. One home renovation worker slipped and hurt his back and asked to take time off work to go see a doctor, to which his supervisor replied, “you’re not even supposed to be here, you can’t just leave the project.” He continued to work six more days, severely exacerbating his back pain.¹⁹⁵ Another interviewee who worked in a kitchen mentioned that he was threatened immediately after asking about his unpaid wages:

We got into an argument because I was asking about my missing pay. I wasn’t rude. I just asked. But he got really angry and started shouting that I was a liar. I walked him through my schedule and [how much I got paid]. Out of the blue he said, ‘you better watch yourself or I might have to make a call. You don’t want that.’ I just nodded and walked away. [...] My hands just started shaking, like this. I haven’t said anything since.¹⁹⁶

¹⁹³ Walton Look Lai, *Indentured Labor, Caribbean Sugar: Chinese and Indian Migrants to the British West Indies, 1838-1918* (Baltimore and London: The Johns Hopkins University Press, 1993) at 62-70.

¹⁹⁴ Interview with M9, archived with author.

¹⁹⁵ Interview with M2, archived with author.

¹⁹⁶ Interview with M4, archived with author.

C. Challenges accessing education

Status-excluded youth face profound and invisibilized challenges in accessing education, despite many having grown up and studied in Canada within the K-12 public school system. While primary and secondary education is, with some exceptions, generally accessible regardless of immigration status, the transition to post-secondary education often marks a critical and disheartening juncture. At this stage, status-excluded students encounter a bewildering confluence of legal, financial, and institutional barriers that restrict their ability to pursue further learning. Other youth initially enter through international student programs, paying exorbitant fees, only to fall into status-exclusion later.

Drawing from the semi-structured interviews, this section explores how status-excluded youth navigate the complex terrain of accessing education, particularly beyond high school. It examines four recurring and intersecting themes: (1) administrative barriers to post-secondary admission; (2) financial barriers including ineligibility for domestic tuition, public scholarships, and financial aid; (3) the experience of interrupted or delayed education caused by instability and uncertainty; and (4) lack of clear information and institutional support tailored to their unique needs. Together, these themes highlight the structural constraints status-excluded youth must contend with, as well as the creative strategies they employ to access schooling.

1) Administrative barriers

Many of the barriers that status-excluded youth face in transitioning to post-secondary education are procedural and/or administrative. Centralized application centres for post-secondary education in Ontario – the Ontario Universities Application Centre (OUAC) and the Ontario College Application Service (OCAS) – act as “first gatekeepers” that require upfront that applicants disclose their current immigration status (including if they are without status).¹⁹⁷ This

¹⁹⁷ Tanya Aberman and Philip Ackerman, “‘Isn’t the Right to an Education a Human Right?’” in Sara Carpenter and Shahrzad Mojab, eds, *Youth as/in Crisis: Young People, Public Policy, and the Politics of Learning* (Rotterdam: Sense Publishers, 2017) at 127.

immediately triggers a risk of detection by CBSA, which is exacerbated by personal information policies that vest institutions with powers to notify CBSA at their “absolute discretion”.¹⁹⁸

Multiple interviewees mentioned how they experienced the application process as intimidating. One woman who wanted to apply for a nursing program stated that she started and stopped and changed her mind about her online application multiple times because OUAC required her to disclose her date of entry into Canada, which was made as part of an irregular crossing. Despite having excellent grades in the high 80s, she was afraid that disclosing it might be used as evidence against her in immigration proceedings. Ultimately, she did not choose to submit her application due to perceived risk of detection and fear of data sharing with immigration.¹⁹⁹

Another student eventually submitted his application, but recounted, “I was scared to ask questions because I didn’t want to draw attention to my situation. Nobody seemed to have answers anyway.” In contrast, when he had applied to high school as an undocumented student, he “never had anyone ask anything” about his immigration status and mentioned that the process was “quite smooth”.²⁰⁰

2) Financial barriers

Running parallel to administrative barriers to post-secondary education are financial barriers. This is particularly important since most universities and colleges require a permanent Social Insurance Number (SIN) to be eligible for domestic tuition, failing which the student will typically be categorized as an international student paying discriminatory tuition fees multiple times the domestic tuition.²⁰¹ The determination of whether a student applicant pays international tuition or domestic tuition is a zero-sum game that is incredibly important from both the student

¹⁹⁸ Armanyous and Hudson, *supra* note 72 at 9.

¹⁹⁹ Interview with M20, archived with author.

²⁰⁰ Interview with M17, archived with author.

²⁰¹ Meghan Wilson, “Access to Postsecondary Education for Undocumented Immigrants” (Fall 2008), Parkdale Community Legal Services Term Paper at 21, cited in Armanyous and Hudson, *supra* note 72 at 9.

and institutional side as it can mean a cumulative difference of tens, even hundreds of thousands of dollars in fees.

Aside from the massive discrepancy between domestic vs. international tuition rates, status-excluded applicants face additional financial hurdles trying to finance their education due to exclusion from Ontario Student Assistance Program (OSAP), most grants and scholarships, bank loans, and formal employment opportunities. This exclusion is built into legislation as the *Canada Student Financial Assistance Act* states that only Canadian citizens, permanent residents, and protected persons count as qualifying students.²⁰² As of 2025-2026, full-time single students are eligible for a maximum of \$525/week in OSAP subsidized loans and grants (or \$27,300 annually) and federal grants of up to \$6,300 annually.²⁰³

If migrant students and their families had the significant independent wealth to finance postsecondary education through international tuition without publicly subsidized grants and loans, they would typically not be of a socioeconomic class of migrants that would find themselves pushed into status-exclusion in the first place. Thus, discriminatory international tuition and financial aid segregation – both key elements of an expropriative xenoracist education sector – act as *de facto* exclusionary mechanisms for status-excluded youth accessing post-secondary education in the absence of *de jure* prohibitions. This dynamic was reflected in the experience of an interviewee originally from the Philippines, who had been accepted for two different diploma programs in healthcare, but turned down the offers after she realized she would not be eligible for OSAP or loan financing altogether – a “reality” for her that she experienced as “heartbreaking”.²⁰⁴

Sanctuary scholar support groups like S4 (Sanctuary Students Solidarity and Support) Collective are keenly aware of these financial and administrative hurdles, understanding that most student applicants are working near minimum wage jobs to finance school fees without the benefit of OSAP, bursaries, and most scholarships. In addition to working with school

²⁰² SC 1994, c 28, s 2(1)(a).

²⁰³ Government of Ontario, “Maximum amounts of aid” (last accessed 23 July 2025), online: <https://perma.cc/7MBD-G5VT>.

²⁰⁴ Interview with M13, archived with author.

administrators and access programs to secure domestic tuition for applicants, they also map out scholarships and grants that do not require citizen or PR status, encouraging their membership to apply.²⁰⁵

3) Interrupted or delayed education

Another recurring theme was how the educational dreams of interviewees were either interrupted or delayed by the multivariate obstacles that faced them. Others delayed enrolling in post-secondary due to financial limitations, uncertainty about their future, or mental health struggles. Notably, some status-excluded youth were forced to drop out of school to work and support their families. One interviewee wanted to pursue a two-year degree in design and visual arts and applied as a non-status applicant, but was told by the college administrator that she needed a permanent SIN number to be accepted for domestic tuition rates:

I had a SIN from the old [expired work] permit... I bring it to the admissions office, but [the administrator] stared at me and told me she could not accept that kind of SIN.²⁰⁶

Since she was desperate at the time to try and obtain some sort of valid status, she ended up paying the international tuition for the first few semesters with her existing savings, hoping that she could make up the rest with work and loans, but ran out of money and was unable to finish her degree, leaving her in a serious financial hole and having to pick up more shifts at work in order to support her young son who was being cared for by his grandparents back in Iran.²⁰⁷

Another interviewee had, with the help of sympathetic administrators and social workers, started a university program part-time. Still, she had to work at least 30 hours a week at her job at a restaurant and get help from her (also status-excluded) father to keep afloat without OSAP

²⁰⁵ Interview with NGO4, archived with author.

²⁰⁶ Interview with M16, archived with author.

²⁰⁷ *Ibid.*

and other financial assistance. Once her father was injured at work and suffered a serious bacterial infection, she had to withdraw from the program to focus on making income and caring for her father at the hospital. Although she didn't mind caring for her father, she felt like her "dream for a different future had ended" once she told the school administrator that she would have to withdraw, though she is now looking at more flexible options for adult continuing education.²⁰⁸

4) Lack of clear information or support

Another theme that emerged from the interviews was how difficult it was for status-excluded prospective students to find clear information and support through the process. Because so much of policy around undocumented access to education is uncertain, vague, or even contradictory, schools, administrators, counselors, and support persons often lack knowledge about the rights of undocumented students and available pathways. In some cases, it was not the students themselves who expressed apprehension in navigating the system, but the administrator. This occurred even at the K-12 level. For instance, one interviewee recounted how she had attempted to get her daughter admitted into her local public school and encountered an admissions staff who was sympathetic but "very nervous that she would get into trouble" and bumped the case to her principal instead.²⁰⁹ Despite being confronted with the specific TDSB policy "regarding the obligation to admit students without full immigration status"²¹⁰, the principal insisted that the mother needed to produce a valid work permit. After months of back-and-forth, the interviewee took her daughter to another school that admitted her, but which resulted in a significant delay to their education.²¹¹

The uncertain nature of undocumented student policy can also result in arbitrariness in decision making processes, resulting in increased stress and anxiety for students. One

²⁰⁸ Interview with M22, archived with author.

²⁰⁹ Interview with M3, archived with author.

²¹⁰ Toronto District School Board, "Policy P.061 SCH: Students without Legal Immigration Status" (16 May 2007), s 4.1, online: <https://perma.cc/B5R2-22WK>.

²¹¹ Interview with M3, archived with author.

interviewee who was entering the second year of a four-year program mentioned how administration staff turnover resulted in entirely different policies being required of her, given that the first staff member she was assigned was deeply knowledgeable with status-for-all policies but his replacement was not:

So suddenly, when I went to renew my tuition deferral and fix my course registration, they told me [the first staff member], he already left the university. He got replaced by someone new. [...] She was quite friendly, but honestly, she didn't really know much about the [non-status] thing. I tried to explain to her how I registered last year, what documents I gave, how everything was approved before, yeah? [...] She looked a bit lost and said you know actually none of that should've been accepted. She kept interrupting me and repeating all these standard policies that didn't apply to my situation – like I wasn't supposed to be there at all, like some kind of system glitch or something.²¹²

The student spent weeks gathering emails and documents from the year before as well as responding to a series of extremely detailed requests about her immigration file and history. The stress gave her severe migraines and acid reflux. Although she was eventually accepted back the next semester, her grades suffered and she felt that she “didn't belong anymore”.²¹³ This chronic arbitrariness and uncertainty in policy implementation for undocumented students results in what one long-time migrant justice organizer called “a very awkward dance” between students and frontline staff as well as frontline staff and supervisors.²¹⁴ Documentation requirements to “prove that migrants don't have status” can end up as fishing expeditions where school administrators end up in positions of *de facto* immigration gatekeepers.²¹⁵

D. Housing, health, and finances

1) Housing issues

²¹² Interview with M18, archived with author.

²¹³ *Ibid.*

²¹⁴ Interview with NGO5, archived with author.

²¹⁵ *Ibid.*

Despite commonly being scapegoated for housing unaffordability, status-excluded youth face severe and overlapping barriers when attempting to secure stable, safe, appropriate, and affordable housing. These barriers stem from root causes related to their immigration status, economic precarity, social exclusion, and lack of institutional protection. For instance, status-excluded residents in Toronto and many other municipalities are explicitly excluded from housing subsidies and rent-geared-to-income (RGI) public housing.²¹⁶ This despite clear commitments from the City of Toronto as early as 2013 to access without fear policies for all municipal services and supports to undocumented residents, including with respect to housing.²¹⁷

Lack of valid immigration status also can bleed into exclusion from formal housing markets, funneling status-excluded youth disproportionately into overcrowded and predatory housing arrangements. With no legal status, a lack of commonly accepted ID, Canadian credit history, or employment and income documentation, they generally cannot access conventional rental housing and must turn to the informal or ‘shadow’ housing market.

Interviewees reported key elements of these informal rental arrangements: a lack of formal lease (making them vulnerable to arbitrary rent increases and evictions with little notice), landlords demanding cash payments, and threats to report to immigration (much like with employers in the labour market) whenever tenants complained or otherwise asserted their rights in a way the landlord did not like. One status-excluded woman with a young child mentioned how finding housing was so difficult that when they finally moved into a small basement room, she didn’t complain to the landlord even when the heat stopped working and “just tried to stay quiet and not cause any problems.”²¹⁸ Another interviewee recounted how the landlord arbitrarily raised rent on him soon after he moved in:

The rent was \$900 when I moved in – cash only, no contract. Seemed simple enough. I e-transferred him every first day of the month. [...] One

²¹⁶ City of Toronto policies for RGI Housing Eligibility specifically require proof of valid immigration status *for each member of the household*, where valid status means either citizenship, PR, or refugee status. City of Toronto, “Rent-Geared-to-Income Housing Eligibility” (last accessed 25 July 2025), online: <https://perma.cc/HDU7-C9QN>.

²¹⁷ See for example, City of Toronto Executive Director SDFA, “Access to City Services for Undocumented Torontonians” (7 May 2014) at 2, 5, 7, and 11, online: <https://perma.cc/3AD4-H4FY>.

²¹⁸ Interview with M13, archived with author.

day he started asking stuff like where I was from, what kind of work I did. It sketched me out. He never said it directly, but I could tell he figured something out. [A few months later], the landlord told me [rent] was going up to \$1100. No explanation.²¹⁹

Housing instability and frequent moving was another recurring theme among interviewees who shared their experiences. With limited capacity to assert tenancy rights and a lack of steady income and job security, many status-excluded young people are forced into a constant cycle of moving from place to place, never truly settled or safe. Some couch surf – relying on social networks of friends, extended family, and acquaintances to find short-term places to stay. Frequent moves also make it hard to maintain school attendance, hold down a job, or access social services given the importance of a fixed mailing address. One interviewee talked about his couch-surfing experience for several months before moving into a small room in a boarding house:

At the beginning I stayed with my cousin for two weeks. But they just had a new baby, so very noisy, very crowded. I slept on [an air mattress] in the living room. I tried to help clean, buy some food, but I still feel I take too much space. Felt badly.

[...]

I stayed with a church friend for few nights, then another guy from my village. Just a few days, maybe one week. I always carry my bag, never unpack. Always feel I cannot stay too long, cannot bother people.²²⁰

Another interviewee learned from a classmate during his time as a student how to use school facilities to help manage periods of housing instability. He slept in certain libraries and common areas that were open 24/7 while waking up to shower and shave at the gym once it opened in the morning. This was a critical stopgap, especially during the winter months. However, campus security eventually caught on to him after he believed “a couple of people

²¹⁹ Interview with M10, archived with author.

²²⁰ Interview with M5, translated through interpreter, archived with author.

snitched” on him. He could no longer sleep in his usual areas without disruption and harassment in the middle of the night and was forced to couch surf with his friends.²²¹

2) Health issues

Status-excluded youth are ineligible for provincial health insurance such as the Ontario Health Insurance Plan (OHIP). In addition to being excluded from public health coverage, they are typically also unable to seek private health insurance due to lack of status.²²² This means that in the case of illness or other medical needs, they must locate health centres that provide non-insured care services. However, interviewees found that, at least for primary care (e.g. check-ups, screenings, treatment of common illnesses, vaccinations, chronic illness management, etc.) around the Greater Toronto Area, options did exist for patients without OHIP coverage. Most notably, status-excluded youth were able to access primary care for themselves and their families at community health centres (CHCs) and various walk-in clinics that did not ask for OHIP or proof of status. Several interviewees reported they had accessed healthcare through resources provided by the Health Network for Uninsured Clients (HNUC).²²³ Doctor discretion also played a role in access to healthcare, as one interviewee noted that “word gets around quickly” as to which doctors are willing to exempt status-excluded patients from billing and which are not.²²⁴

However, healthcare access became more complicated once conditions escalated to the point of needing specialist care or surgery. Tradeoffs were common in terms of cost, delay, and risk of visibility and detection by immigration authorities. Fear of medical bills or being reported prevents many from seeking care, even when in pain, sick or injured, especially in terms of going

²²¹ Interview with M6, archived with author.

²²² Lilian Magalhaes, Christine Carrasco, and Denise Gastaldo, “Undocumented Migrants in Canada: A Scope Literature Review on Health, Access to Services, and Working Conditions” (2010) 12 *Journal of Immigrant and Minority Health* 132 at 145.

²²³ Health Network for Uninsured Clients, “Services & Resources in the Greater Toronto Area (GTA)” (last accessed 25 July 2025), online: <https://perma.cc/Z7SZ-JVKZ>.

²²⁴ Interview with M14, archived with author.

to the hospital where one may be subject to a substantial bill after medical treatment.²²⁵ One interviewee avoided going to the hospital even after being struck on his bike during a food delivery, resulting in him not being able to lift his right arm for a week:

The driver, he felt bad and tried to call [the ambulance]. But I cannot go to hospital, no insurance, too expensive. I just go home, take pills, put ice on, try to rest. [...] You learn to take care of yourself, you have to.²²⁶

Serious health conditions can also jeopardize efforts to regularize status. One interviewee recalled that while his family's H&C applications were being processed, her father developed a severe infection and had to see specialists to receive ongoing rounds of treatment. Not only did the family need to enter a payment plan with the hospital for the cost of treatment, when they updated immigration to reflect the new developments, her father was deemed medically inadmissible for being an excessive demand on healthcare services. Although the family was eventually able to apply for another humanitarian exemption for medical inadmissibility, the delay meant her father passed before ever acquiring his permanent residency while saddling the family with significant additional debt.²²⁷

Another common situation where status-excluded young women would encounter the hospital system is for labour and delivery of a newborn. Although no interviewee specifically gave birth in a Canadian hospital without health insurance coverage, it was "common sense" that migrants avoided labour in a hospital to avoid hefty medical bills of \$5,000 or more.²²⁸ Rather, midwives provided crucial coverage and support for status-excluded pregnant women giving birth.²²⁹ Midwifery can additionally be attractive to status-excluded women given that they may come directly to a patient's home for labour and delivery support, avoiding extended time at the

²²⁵ This problem has since accelerated since 1 April 2023 when the Ontario provincial government ceased funding for the Physician and Hospital Services for Uninsured Persons (PHSUP) program. Government of Ontario, "March 31, 2023 is the end date for the temporary Physician and Hospital Services for Uninsured Persons (PHSUP) pandemic response funding" (29 March 2023), online: <https://perma.cc/FR24-XZXN>.

²²⁶ Interview with M19, archived with author.

²²⁷ Interview with M22, archived with author.

²²⁸ Interview with M13, archived with author.

²²⁹ Midwives in Ontario "are funded to provide care to all residents of their catchment area, regardless of whether or not they have OHIP." This is because coverage is based on "primary place of residence" rather than immigration status. Association of Ontario Midwives, "Uninsured Clients" (last accessed 25 July 2025), online: <https://perma.cc/YKK2-FWYH>.

hospital where migrants may fear detection and apprehension by immigration authorities. As one interviewee said about her experience with a midwife:

I don't know what I would do without her. [The midwife] came to my house many times and helped me through everything, especially breathing and breastfeeding after. [...] Her family was going through immigration problems so maybe she understood me better? I don't know.²³⁰

3) Finances

In addition to the specific issues of discriminatory tuition fees; ineligibility for social assistance, financial aid, grants, and scholarships; and highly restricted access to legal employment opportunities, status-excluded youth face other serious and compounding financial challenges. These include intense pressure to support their families whether in-Canada or abroad as well as barriers to banking and credit instruments.

Several status-excluded youth interviewees indicated a need to take up financial and administrative burdens far earlier than that of their peers to meet individual and family obligations. Migrant youth often become the earning arm of the household early, engaging in cash-based informal work to help pay bills. They may miss school or delay career plans to contribute to household survival. One interviewee who was brought to Canada as a young child mentioned that he did not know the family was undocumented until he was 14 and tried to get a summer job, only to find out he didn't have a SIN number.

I'd go to [high] school in the day and then hustle every evening and weekend. I gave most of the money to my mom. But rent was still always late. Always broke as s***. [...] No one knew why I fell asleep in class or why I couldn't ever do anything legit. I guess they thought I was another thug.²³¹

²³⁰ Interview with M13, archived with author.

²³¹ Interview with M17, archived with author.

Another interviewee, a mother of three, indicated that her eldest child put it upon himself to get a series of odd jobs starting as young as 13 to contribute to the household finances, including in kitchens, painting fences, and with moving and transportation companies. She also suspected that he was dealing drugs on the side, especially when he came back with larger sums of money that didn't seem to align with his preexisting jobs, which she felt "very ashamed" about as she could not make ends meet on her own.²³²

Supporting family members abroad through remittances was another common experience. Just as in the case of undocumented migrants in the US, status-excluded youth in Canada are often relied upon to "send remittances to their countries of origin to support family members in need, those that have been left behind, been deported, and/or are no longer able to work."²³³ One study by Western Union found that 35% of migrants living in Canada believe their friends or family would be in poverty if it wasn't for their regular remittances while 40% believe their friends or family would not be able to afford medical treatment.²³⁴ One former international student who became non-status described the obligation to send back money as "crushing". Back in India, his family had mortgaged their property to come up with the funds necessary to send him to Canada on a student visa. Given the role he was expected to play, he recounted that he had lied to his parents at home about doing well in school and getting a good job for nearly 10 months because he "could not face the shame" of telling them he got kicked out of school, lost status, and was working menial jobs under the table.²³⁵

These challenges are compounded by the fact that status-excluded migrants are also excluded from most typical financial products, such as bank accounts, credit cards, and lines of credit due to ID and status requirements. This can lead to an overreliance on cash, which combined with housing insecurity, can make them more vulnerable to theft. Opening a bank

²³² Interview with M9, archived with author.

²³³ Luz M Garcini, et al, "Implications of Undocumented Status for Latinx Families During the COVID-19 Pandemic: A Call to Action" (2024) 53:1 *Journal of Clinical Child & Adolescent Psychology* 10 at 14.

²³⁴ Serra Pinto Avimlah, "The Value of Remittance: How Canadian Migrants are Supporting Their Families from Afar" (6 July 2023), Western Union, online: <https://perma.cc/B5PG-3D5C>.

²³⁵ Interview with M6, archived with author.

account for status-excluded individuals is technically possible²³⁶ but can be difficult and subject to uncertain and varied requirements depending on the institution and branch, though migrants often find creative workarounds.

One long-time migrant organizer stated that some bank branches used to have bank community liaisons, many of whom were familiar with migrant communities facing precarious status and status-exclusion, who would help undocumented clients open accounts. However, these liaisons have been phased out over time.²³⁷ The organizer also observed that opening bank accounts for undocumented people has become more difficult in recent years. Previously, clients could use their foreign passport and driver's license to open an account. Some branches even accepted alternative identification such as Costco membership cards, library cards, and student IDs. But with recent increases in surveillance KYC (Know Your Client) practices, these have been increasingly rejected as internal audits overturn branch-level approvals.²³⁸ Even when status-excluded youth are able to open bank accounts however, they are still generally excluded from obtaining bank loans and lines of credit at market rates.²³⁹

E. Family and community supports: 'it takes a village'

1) Family support and mutual care

Despite the multitude of overlapping challenges that characterize daily life under status-exclusion, youth interviewees emphasized the different ways in which family members made sacrifices, came together, and went above and beyond to care for and support one another through difficult times. In almost all cases, family networks were essential lifelines in the face of

²³⁶ According to the Financial Consumer Agency of Canada, clients can open bank accounts given if they are not Canadian citizens so long as the bank is able to confirm identity through two identification documents "from a reliable source" including one indicating name and address and another with name and date of birth. See Financial Consumer Agency of Canada, "Opening a Bank Account" (last accessed 28 July 2025), online: <https://perma.cc/R4VN-4ZX3>.

²³⁷ Interview with NGO1, archived with author.

²³⁸ *Ibid.*

²³⁹ *Ibid.*

various layers of institutional exclusion from healthcare, financial aid, employment, housing, and schooling. This mutual care extended across physical distance for families that were separated from reunification due to immigration restrictions.

Parents often take on the burden of navigating an opaque and often hostile system, making sacrifices to protect and provide for their children's futures despite limited rights or legal recognition. When asked about why she decided to take her two children on a long and arduous journey to Canada from her home country alone, an interviewee expressed that she "did it all for the children – for their future."²⁴⁰ In addition, she shared how two of her neighbours, also newcomers, would take turns looking after the children while she was on cleaning and restaurant shifts while she would help out with her neighbours' childcare on the weekends. This was critical as she could not afford private daycare and the waiting list for subsidized spots in her area were years-long:

At 6 am, [my neighbour is] already up, boiling tea, waiting for us. That's how it works. We take care of each other, it takes a village, you see?²⁴¹

Another interviewee shared how when she lost her job and only source of income due to an oversight by her immigration lawyer, her parents back home in Tanzania "scraped together the money every month" for rent, groceries, transportation, and visa application fees. She recounted that even though she was struggling in Canada, her father still told her on the phone that he was "very proud" and that as the first one to go abroad, she was the "hope of the family."²⁴²

Unfortunately, in some situations, family members could be abusive and problematic, leading to serious complications. One interviewee recounted how his parents arranged for him to stay at his uncle's house, but he became increasingly violent and unstable in mood, often under the influence of alcohol:

²⁴⁰ Interview with M3, archived with author.

²⁴¹ *Ibid.*

²⁴² Interview with M14, archived with author.

At first I thought ‘okay, maybe work stress.’ But then, small things became big fights. One night, I forgot to take out the garbage and he screamed at me for twenty minutes straight. [...] [Another time] I was on a video call with my mom and he started banging the door, telling me to shut up. When I finally opened the door, he smacked me on the side of the head. That’s when I knew I had to leave.²⁴³

2) Community support, non-profits, and religious institutions

Despite the persistent fear of detection and reporting to border enforcement, status-excluded youth often found safe spaces and supports in a variety of community organizations such as faith groups and religious institutions, school programs, migrant justice organizations, and non-profits. One Sikh interviewee mentioned how, when he was low on money for food, he would visit his Gurdwara for Langar to have a meal and “recharge spiritually”, preferring it over food banks because of the type of food as well as to avoid feelings of shame associated with visiting the latter.²⁴⁴

Another interviewee explained that when he was facing criminal inadmissibility and deportation proceedings, he was referred by a librarian to his local No One Is Illegal chapter, whose members wrote letters and arranged phone and email zaps to request that his deportation be stayed. One member even taught him how to set up a crowdfunding website to raise money to cover his legal fees.²⁴⁵

Some youth form close relationships with teachers, coaches, pastors, or community workers who offer guidance, write reference letters, and help them navigate barriers or connect them with potential opportunities. One interviewee shared how, although she had been working full-time to help support her family, since her younger brother lived with a minor learning disability, she feared that he would never find a job. However, he did very well in one particular

²⁴³ Interview with M6, archived with author.

²⁴⁴ *Ibid.*

²⁴⁵ Interview with M17, archived with author.

class and that teacher recommended him to a friend for a job interview. The sister recalled accompanying his brother to the interview:

He answered some of the questions and I helped him answer some. Then [the employer] asked whether he was legally allowed to work. Oh my god. I froze. Didn't know what to say. Wow, so nervous. Then [the employer] said: 'listen, I just want someone who will work hard and listen to instructions. Can you do that?' [...] He gave [my brother] the job. I couldn't believe it.²⁴⁶

Afterwards, the interviewee learned that the teacher had asked the owner for a personal favour to take her brother in. She identified him as a someone whose actions “changed our lives forever”.²⁴⁷

Connecting with other status-excluded and precarious status youth can also help build solidarity, shared understanding, and a sense of empowerment. The S4 Collective is one example of peer support groups created for migrant students in the GTA, usually under 30 years old, who often have attempted different ways to try and access education. Many of them are working-class racialized youth from the Caribbean, Latin America, Central and North Africa, and the Middle East, who came to Canada 10-20 years ago as minors brought by their parents. In connecting with one another, sharing experiences, and attending and facilitating workshops, youth often come out feeling more supported and equipped with skills and knowledge specific to their experience, fostering resilience, and counteracting the administrative invisibility that status-exclusion imposes on them.²⁴⁸

3) Legal support and access to justice

Considering the serious legal and prolonged challenges that status-excluded youth face, legal support and access to justice are of paramount importance in their lives. One common

²⁴⁶ Interview with M22, archived with author.

²⁴⁷ *Ibid.*

²⁴⁸ Interview with NGO4, archived with author.

refrain from youth interviewees was that assistance from legal aid lawyers was generally good but trying to secure access to legal aid representation was extremely difficult. Immigration legal aid in Ontario can be found through a mix of immigration lawyers housed in certain community legal clinics, standalone Legal Aid Ontario (LAO) offices such as the Refugee Law Office (RLO)²⁴⁹, and private immigration and refugee lawyers through the legal aid certificate program for a limited set of proceedings.²⁵⁰ Though LAO does not exclude precarious status clients from eligibility, enforcement of strict financial eligibility criteria often acts as a significant barrier to access.²⁵¹

One interviewee whose family faced deportation engaged the services of a legal clinic immigration lawyer who “worked magic” in putting together a stay of removal at the last minute under very stressful conditions.²⁵² Another interviewee shared that she was initially screened in with a clinic and the immigration lawyer was beginning to review her file, but that subsequently she was asked more information about her family income (both her and her husband worked full-time jobs around the minimum wage) and was deemed financially ineligible. Reflecting on the incident with some bitterness, the interviewee felt that she “should have just lied.”²⁵³

Strict financial legal aid eligibility policies, lack of knowledge about options, and an ingrained fear of detection for government-funded services often funnel status-excluded youth and their families towards private immigration help, of which there were a wide range of experiences.²⁵⁴ One interviewee recounted a particularly predatory experience with an immigration agent:

²⁴⁹ The RLO has branches in Hamilton, Ottawa, and Toronto. See Legal Aid Ontario, “Refugee Law Office” (last accessed 30 July 2025), online: <https://perma.cc/3VVT-2AWM>.

²⁵⁰ Legal Aid Ontario, “Refugee and immigration legal issues” (last accessed 30 July 2025), online: <https://perma.cc/4Y2M-V3FL>.

²⁵¹ For instance, the amount of annual income that would exceed the LAO threshold for immigration and refugee legal aid certificates in 2025 was \$18,796 for a single person, whereas the annual salary for a full-time (37.5 hours/week) worker at prevailing minimum wage was \$33,540. See Legal Aid Ontario, “Will legal aid pay for my lawyer” (last accessed 30 July 2025), online: <https://perma.cc/XA3J-LHH3>.

²⁵² Interview with M1, archived with author.

²⁵³ Interview with M21, archived with author.

²⁵⁴ Interview with NGO1, archived with author.

I told [the immigration agent] why I need to leave China. [...] I told them about family planning and their letter [informing her that she needed to be sterilized for having a third child]. He said, ‘no, no, they will never believe you’. He told me that your only chance nowadays is if you say you are Falun Gong. I trusted him – he's the expert.²⁵⁵

The interviewee shared that she had found the immigration agent through an advertisement in a prominent Chinese-language website. She was unsure whether he was a licensed lawyer, immigration consultant, or someone who worked with a lawyer or consultant but was then completely unaware of the differences between the categories. In total, she had paid nearly \$30,000 to the agent with almost nothing to show for it. She also reported that she was dissuaded by friends from applying to legal aid given the commonly held perception that “those lawyers are not as good [as the private ones].”²⁵⁶

Self-representation is another avenue by which youth attempted to solve their legal issues. After having poor experiences with an immigration consultant, one interviewee decided to represent herself in both a visa application as well as an appeal hearing. Using a combination of crowdsourcing from online immigration forums and ChatGPT prompts, she was ultimately successful in her case, demonstrating some of the creative ways in which status-excluded youth gather information and assert their rights within institutional and resource constraints.²⁵⁷

In response to common problems among racialized migrant communities when seeking legal help, some community organizations have come together to prepare resources and public workshops. For instance, in 2021, Butterfly (Asian and Migrant Sex Workers Support Network), the Chinese and Southeast Asian Legal Clinic, and Chinese Canadian National Council – Toronto Chapter engaged in a joint project to help clients identify problems, set expectations, and protect themselves from immigration-related scams through multilingual training and material.²⁵⁸ The project also identified best practices in working with a legal representative to maximize chances of a good result including: identifying, organizing and storing key documents;

²⁵⁵ Interview with M9, archived with author.

²⁵⁶ *Ibid.*

²⁵⁷ Interview with M11, archived with author.

²⁵⁸ Interview with NGO1, archived with author.

creating specific email accounts to communicate with IRCC; requesting written retainers and receipts; requesting Access to Information and Privacy (ATIP) files; and availing themselves of resources from professional regulators.²⁵⁹

In sum, it is in these networks of community, familial, individual and collective acts of solidarity (and refusal) among ordinary people and grassroots organizations which allow status-excluded youth to survive and thrive despite facing a plethora of barriers and administrative, legal, and societal hostility. However, the conditions of administrative exclusion and heightened exploitation faced by so many status-excluded youth does not occur in a vacuum. Bringing status-excluded youth ‘out of the shadows’ through mass regularization or increased access to post-secondary education encounters tremendous pushback in large part because it threatens the proverbial goose that lays the golden eggs for the Canadian state – the international student regime and the billions of dollars that it extracts from families in the Global South annually. The next chapter uses a xenoracial capitalism lens to help us historicize, unpack, and understand this system in a comprehensive manner.

²⁵⁹ *Ibid.*

Chapter Four – Neocolonial wealth expropriation and labour exploitation in Canadian postsecondary education

As the number of individuals with a study permit in Canada breached the million mark for the first time in 2023, education has emerged as a key site by which Canada extracts surplus value from migrants in a variety of ways through its bordering policies. From a xenoracial capitalism lens, the heavy reliance of the Canadian state, education sector, and private capital in respect to international student policy can be analyzed from three interrelated processes¹: (1) wealth *expropriation* through education ‘head taxes’, (2) labour *exploitation* through ‘gauntlets to PR’, and (3) the reality and constant threat of *expulsion* to discipline student labour and enforce nationalist segregation of labour and education markets. Within all three of these processes, race-making and neocolonial relations play a central role in justifying differential treatment, curtailing solidarity, and limiting potential policy changes to curtail abuses. The material interests behind these structures of profit-making and race-making help explain why it is so difficult for status-excluded youth – Canada’s ‘Dreamers’ – to realize their right to education.²

The production of migrant student labour in Canada’s education-immigration complex operates through mechanisms that are functionally similar to those embedded in explicit migrant worker programs. Whereas the Temporary Foreign Worker Program (TFWP) relies on overt legal precarity (e.g. closed work permits, employer dependence, isolation and limited support services, barriers to PR), the international student pathway manufactures diffuse, privatized, and self-disciplining forms of unfreedom. Students often arrive paying astronomically high fees, become indebted to private lenders, enter highly compromised working conditions, and are dependent on maintaining full-time enrolment and satisfactory academic standing to preserve their legal status lest they become deportable.³ This embeds a double coercion: institutions extract xenoracist surplus value from students while employers gain a pliable workforce whose

¹ Carmen G Gonzalez and Athena D Mutua, “Mapping Racial Capitalism: Implications for Law” (2022) 2 Journal of Law and Political Economy 127 at 128.

² Marietta Armanyous and Graham Hudson, “Barriers vs. bridges: Undocumented immigrants’ access to post-secondary education in Ontario” (2019) RCIS Working Paper No. 2019/5.

³ Shlok Talati, “Indebted: The growing weight of Canada’s education system is crushing international students” (13 July 2023), The Signal, online: <https://perma.cc/YSE9-QWEJ>.

right to remain in Canada hinges on demonstrating ‘Canadian experience’, continuous stable, skilled, and full-time employment, and good moral conduct.

Crucially, the promise of future PR intensifies compliance for international students both in the education space and the labour market. Because the stakes are framed as individual mobility and self-improvement rather than labour extraction, the state offloads discipline of international students to colleges, immigration consultants, landlords, and employers, producing a system where migrant student workers discipline themselves to avoid jeopardizing a pathway that is structurally designed to be inaccessible for many.⁴ In this sense, the education-immigration apparatus does not merely mirror the TFWP; it obscures the conditions of unfree labour by masking coercion as educational opportunity, normalizing discriminatory value extraction, and generating a constantly renewable supply of precarious workers who cannot risk asserting their rights for fear of jeopardizing their future. The following chapter historicizes the development of international student policy and unpacks its key role in the xenoracial capitalist order undergirding Canadian political economy.

I. Historicizing international student law and policy in Canada

In attempting to understand what accounts for the emergence of international students, migrant student labour, and status-excluded labour as the new engine of expropriation and exploitation within the contemporary Canadian immigration system, we must first better understand the history of international student law and policy in Canada. Given the relative

⁴ The dominant pathways to permanent residency for international student graduates (e.g. the Canadian Experience Class (CEC) within Express Entry, Provincial Nominee Programs (PNPs) oriented toward “in-demand” occupations) presuppose stable, skilled, full-time employment. But this presumption obscures the structural constraints that shape migrant students’ labour trajectories. The labour markets that international students disproportionately are funneled into (e.g. precarious service, care, logistics, and gig sectors) rarely translate into the NOC-classified ‘skilled’ roles that confer competitive Express Entry scores or satisfy PNP criteria, creating a PR requirement mismatch that pushes many migrant students and post-graduates out of status. See Sandra Schinnerl and Antje Ellermann, “The Education-Immigration Nexus: Situating Canadian Higher Education as Institutions of Immigrant Recruitment” (2023) 24 *Journal of International Migration and Integration* 599; Chen Wang, “Immigration Gridlock: Assessing Whether Canada’s Express Entry is an Effective Immigration System for International Students’ Transition into Permanent Residency?” (2018) 8:2 *Journal of International Students* 1059.

dearth of scholarship on this question, this section leans heavily upon the work of historian Dale M. McCartney in tracing this history and its various changes and evolutions from 1945 to the early 2020s. Though international students existed in Canada before the end of World War II, international student policy remains under-researched in the existing literature and regrettably, that much needed primary historiography is outside the scope of this dissertation.

A. International students as Cold War sojourners and the Sir George Williams University Affair (1945-1969)

International student policy in Canada has evolved significantly over time and has been affected by broader trends in understandings of Canadian national identity, geopolitical interests, and economic interests. In the two and a half decades following the end of World War II, Canadian policy towards international students was directed primarily by Canada's broader foreign affairs goals in an era of Cold War tensions and Canada's emergence as an international economic power.⁵ While there were both white and non-white international students in the post-war period, the fact that the latter was largely prohibited by immigration law from acquiring permanent resident status⁶ structured the terms by which international students from the Global South were admitted to Canada as a larger extension of Canadian soft power.

Concerns related to education or immigration were largely subordinated to foreign affairs priorities and international students were seen as 'child-like' outsiders to be funded from the public purse to promote the West's economic, strategic, political, commercial, and humanitarian goals. In this framework, international students were thus expected to return to develop their home countries and "learn to dislike communism and value liberal capitalism" in a soft power approach to formerly colonized or actively decolonizing nations that often "exhibited a neo-

⁵ Dale M McCartney, "Inventing International Students: Exploring Discourses in International Student Policy Talk, 1945–75" (2016) 28:2 *Historical Studies in Education* 1 at 4 ["Inventing International Students"].

⁶ Triadafilos Triadafilopoulos, "Dismantling White Canada: Race, Rights, and the Origins of the Points System" in Triadafilos Triadafilopoulos, ed, *Wanted and Welcome?: Policies for Highly Skilled Immigrants in Comparative Perspective* (New York: Springer, 2013) at 21-30.

colonial paternalism”.⁷ During this time, it was not popularly imagined that international students ought to be subject to adverse differential tuition rates as compared to citizens.

Within Parliamentary debates, international students were not considered potential Canadians (nor as potential permanent immigrants) and imagined entirely as students from the “underdeveloped” Third World. This construction aligned with immigration law at the time where migrants from preferred nations could naturalize quite easily if they wanted to (and thus would not be discursively considered as international students, even though about half of international students were actually from Europe and the US⁸) and students from non-preferred, non-white countries could not land at all and thus were naturally excised as potential immigrants. For some MPs, such as Progressive Conservative Frank McGee, inviting international students from non-preferred nations was a key prong in ensuring Canada’s standing in the world, spreading democratic values, and serving as a bulwark against communism:

As I have indicated, there are approximately five thousand young men and women coming to Canada from Africa, from Asia, and the West Indies and other similar areas. It is the flavor of democracy which they acquire during their experience here which will be of greater value to Canada and certainly to the cause of democracy generally than perhaps many of the millions of dollars spent in other ways.

[...]

By continuing the good work in this direction, already to no little extent commenced, we can provide the bulwark of education in democracy and counteract the propaganda on the part of the communists.⁹

Yet, this post-war consensus of international students as developmental aid targets, geo-strategic anti-communist bulwarks, and sojourners rather than potential immigrants would begin to fray significantly towards the end of the 1960s. By then, as we have examined in detail in

⁷ McCartney, “Inventing International Students”, *supra* note 5 at 5.

⁸ *Ibid* at 19, citing Dominion Bureau of Statistics, Education Division, “University Student Expenditure and Income in Canada, 1961–62, Part 1: Non-Canadian Students” at 15–17.

⁹ *Ibid* at 8, citing Canada, Parliament, *House of Commons Debates*, 24th Parl, 4th Sess, No 8 (11 September 1961) at 8193 (Frank McGee), online: <https://perma.cc/XPV8-7C64>.

Chapter Two, domestic and international anti-racist and anti-colonial movements had forced the Canadian government to end the era of overt white nationalism in Canadian immigration policy. Rather than a policy which actively and explicitly prioritized “American, British, French, Belgian, Dutch, Swiss, German, Scandinavian, and Icelandic settlers”¹⁰ over others, the new policy moved to a points system, allowing for significant non-white immigration for the first time in the 20th century. This seismic shift in racial demographic composition from a previously white nationalist model of immigration catalyzed the beginnings of the political construction in the late 60s and early 70s of “migrants” as negatively racialized foreigners who were by default social and economic threats to the Canadian nation and whose existence and incorporation was viewed with suspicion and had to be strictly controlled.¹¹

International student policy was not immune to these broader shifts in political, legal, and social understandings within Canadian immigration policy. International students and immigrants were previously entirely siloed and discrete administrative categories, but with the immigration reforms of the 1960s, this was beginning to change. As McCartney notes, “[t]he confidence that parliamentarians had had in the civilizing mission of programs that brought international students to Canada was eroded by the claim that those students were no longer going home after graduation.”¹² Indeed, by 1967, international students were able to apply independently for PR status during their studies, and their education meant that they would be strong candidates in Canada’s new point system for immigration selection.

Yet by 1969, the policy consensus around international students shifted to danger and fear that international students would take funding, seats, and jobs away from (white) Canadian students, that they would be bad influences on Canadian educational institutions and, as potential immigrants, on Canadian culture and society.¹³ The catalyzing event which permanently shifted

¹⁰ Robert Harney, “‘So Great a Heritage as Ours’: Immigration and the Survival of the Canadian Polity” (1988) 117:4 *Daedalus* 51 at 54.

¹¹ See Nandita Sharma, *Home Economics: The Making of ‘Migrant Workers’ in Canada* (Toronto: University of Toronto Press, 2006) at 74-103 [*Home Economics*].

¹² McCartney, “Inventing International Students”, *supra* note 5 at 11.

¹³ *Ibid* at 12.

the previous Cold War developmental consensus on international students to that of nationalist anxiety about potentially dangerous foreigners was the Sir George Williams University Affair.

In the 1960s, Montreal became the focal point for Black activism in Canada, in part influenced by the US civil rights movement as well as anti-colonial movements in Africa, the Caribbean, and elsewhere among former European colonial possessions. Notably, the immigration changes that Black groups in Canada such as the Negro Citizenship Association had successfully agitated for in the 50s and 60s were immediately bearing fruit as an increasing number of young Black scholars began to immigrate to Canada and attend university, particularly from the Caribbean. They brought with them anti-colonial and anti-racist ideas and knowledge, some fresh from successful national independence campaigns abroad.¹⁴ The 1968 Congress of Black Writers and Artists at McGill University, organized by the Caribbean Conference Committee, brought together some of the leading Black intellectuals of the time, including luminaries such as Michael X, James Forman, Rocky Jones, Stokely Carmichael, C.L.R. James, and Walter Rodney.¹⁵

Within this milieu of new immigration, intense political and cultural debate, and anti-colonial and civil rights organizing, six Black Caribbean students¹⁶ at Sir George Williams University filed a racial discrimination complaint against biology professor Perry Anderson in the spring of 1968, alleging that all of the students that he had failed were Black students and these decisions were not made in accordance with the quality of their work.¹⁷ These were not just incidents of alleged unfair grading with racially disproportionate impacts, but because they were failures from a core required biology class, the students would be completely stymied in their pursuit of a career in science and medicine. Students demanded that a Hearing Committee be struck up to seriously investigate the matter. When the Hearing Committee rejected the complaint and upheld the failing grades on January 29th, 1969, the six complainants alongside

¹⁴ Maude-Emmanuelle Lambert, “Sir George Williams Affair” (20 December 2016), The Canadian Encyclopedia, online: <https://perma.cc/9K2K-8T87>.

¹⁵ Phillip Dwight Morgan, “In the 1960s Montreal was a centre of Black radicalism” (17 January 2019), Rabble, online: <https://perma.cc/DKJ8-UQFR>.

¹⁶ These students were Terrence Ballantyne, Rodney John, Wendel K. Goodin, Kennedy (Omowale) Frederick, Allan Brown, and Douglas Mossop.

¹⁷ Lambert, *supra* note 14.

some 200 supporters protested by staging an occupation of the computer centre on the ninth floor of the Henry F. Hall Building.¹⁸ The protesters perceived their struggle as part of broader pro-democratic, anti-imperialist, and anti-racist struggles of the 1960s.¹⁹

The occupation lasted nearly two weeks in total. During that time, the standoff drew widespread public attention. Opposition Parliamentarians took pains to frame the occupation as primarily a problem of disorderly and dangerous foreign students. For instance, Conservative MP Wally Nesbitt asked:

whether the government is giving consideration to the curtailment of grants to foreign students attending Canadian universities under government auspices who engage in activities involving breaches of the peace, bloodshed and other acts of disorder?”²⁰

Given the broader political and immigration context, the incident “revealed a real mistrust of international students, one that appeared to be both racialized and linked to the changing social location of international students from visitors to potential immigrants.”²¹

By February 10th, the two parties negotiated a settlement where protesters would leave on the condition that a new committee be formed to re-examine the complaint. But during the night, the agreement fell apart and remaining protesters barricaded themselves in and took the elevators and telephones out of service. In response, riot police were sent to the campus to directly intervene. This demonstration, previously peaceful, escalated as riot police broke down the doors and arrested 97 people. In the confusion, a fire broke out, and computers were destroyed. Groups of white nationalists had also gathered at the site and could be heard chanting anti-Black hate slogans. Soon after, Professor Anderson was reinstated, and the university exonerated him of all complaints of anti-Black racism.²²

¹⁸ *Ibid.*

¹⁹ McCartney, “Inventing International Students”, *supra* note 5 at 14.

²⁰ McCartney, “Inventing International Students”, *supra* note 5 at 13, citing Canada, Parliament, *House of Commons Debates*, 28th Parl, 1st Sess, No 5 (30 January 1969) at 4936 (Wally Nesbitt), online: <https://perma.cc/5BFP-CAWT>.

²¹ *Ibid* at 14.

²² Lambert, *supra* note 14.

While the Sir George Williams University affair was an immensely important rallying point for Black racial justice and community organizing in Canada, it also permanently shifted the role of international students within the political economy of Canadian immigration policy. After the occupation, the next six years of policy discussion regarding international students was defined by newly crystallized discourses of foreign risk and danger, even though international students only constituted a small number of those involved with the occupation. Specifically, a discourse of “Racial McCarthyism”²³ emerged which combined domestic white nationalist anxieties around the incorporation of Black immigrants to Canada with international anxieties around the perceived dangers of global communism and Marxism. For instance, Conservative MP Duncan Beattie directly linked international student entry and refugee requirements to the threat of left-wing political radicalism:

Is there some magic formula for deciding who is a bona fide refugee [...] or is it only necessary for a person to sidle up to a Canadian immigration officer and say: ‘I am a Marxist terrorist and the present government in Chile won’t let me engage in subversive activities?’²⁴

The Canadian political establishment’s response to the Sir George Williams affair thus crushed the prevailing consensus that “foreign students were going to benefit *from* Canada — that Canadians would shape their views and behaviour, and in doing so would advance Canada’s interests in the Cold War” [emphasis added].²⁵ Instead, it was clear that, in the context of global anti-racist and decolonial struggles, international students from the Global South were a potential vector of ideas and political agents in their own right who could challenge the colonial status quo. Thus, a new consensus began to develop out of the affair which framed international students as migrants from the Global South who presented political and criminal risks, economic competition for Canadian citizens, and occasionally threats to academic standards — a consensus that largely remains unchallenged today in international student policy discourse.²⁶

²³ Vincent Wong, “The Hunt for Red October: Critical Race Theory and Racial McCarthyism” in Karen Drake, et al, eds, *Critical Conversations in Canadian Public Law* (Ottawa: University of Ottawa Press, 2025) at 207-232.

²⁴ McCartney, “Inventing International Students”, *supra* note 5 at 16, citing Canada, Parliament, *House of Commons Debates*, 29th Parl, 2nd Sess, No 1 (11 March 1974) at 372 (Duncan Beattie), online: <https://perma.cc/DUG4-MU4B>.

²⁵ *Ibid* at 15.

²⁶ *Ibid* at 16-19.

B. Discriminatory tuition fees and W5's 'Campus Giveaway' (1970-1985)

International Student Enrolment Rates in Universities			
	International Students	All Students	Percentage
1958–59	5,988	94,400	6.3
1961–62	7,900	128,864	6.1
1973–74	14,246	479,686	3.0
1976–77	28,744	543,489	5.3

*Figure 8: International Student Enrolment Rates in Canadian Universities (1958-1977)*²⁷

Prior to 1970, there had been very little attention paid specifically to Canadian international student policy. Indeed, there was a complete dearth of specific rules for obtaining a student visa at the time.²⁸ As Figure 8 illustrates, the number of international students at Canadian universities increased from 5,988 in 1958 to 28,744 by 1976, but decreased in terms of relative percentage of total university students from 6.3% to 5.3%. Additionally, prior to 1976, international and domestic tuition rates were the same. However, throughout the 1970s and early 1980s, a new policy consensus emerged for international students in the aftermath of the Sir George Williams University affair, which consisted of three key elements:

- (1) Classifying international students as “non-immigrant” migrants, and therefore undeserving of taxpayer support;
- (2) Adopting discriminatory tuition fees for non-immigrant students; and

²⁷ *Ibid* at 19, citing Dominion Bureau of Statistics, Education Division, “University Student Expenditure and Income in Canada, 1961–62: Part 1 — Non-Canadian Students Catalogue number 81–519” (Ottawa, 1963); Max von Zur-Muehlen, “The Foreign Student Issues in 1976–77” (Ottawa: Canadian Bureau for International Education, 1977) at 30–31.

²⁸ Julius H Grey, “The Status of Foreign Students under the Immigration Act, 1976” (1982) 27:3 McGill Law Journal, online: <https://perma.cc/L63U-6Q9K>.

- (3) Standardizing the notion of international students as relatively wealthy foreigners, in contrast to sojourners from undeveloped countries in need of aid and direction.²⁹

Just as the backlash to post-1967 racial diversity in immigration paved the way for the creation of the NIEAP in 1973 – producing a class of “non-immigrant” workers and legitimizing legally segregated labour markets with differential rights and entitlements – so too did this occur for international students vs. domestic students. The *legal* construction and expansion of the category of non-immigrant was incredibly important since without it, post-1967 reform, any non-white residents living, working, and studying in Canada could potentially apply for landed status and become a permanent Canadian citizen. The construction and acceptance of the two-tier system in the labour and education sectors has been consequential for the transitions of Canadian immigration policy from a period of racial exclusion, to a short window of relative racial equality, to the contemporary system of racial adverse incorporation.

After several years of hostile political discourse around international students, amendments to immigration policy in 1973 consigned international students to the separate class of “non-immigrants” so that they could no longer apply for permanent residency directly while in Canada for their studies.³⁰ The *Immigration Act* of 1976 formally codified this non-immigrant status by introducing conditions that treated “permission to study in Canada in a way which is almost identical to its [new] treatment of permission to work”³¹ – directly mirroring the policy elements of the recently introduced 1973 NIEAP. Section 10 of the Act made it more difficult for migrants in Canada to alter their status by disallowing prospective students from obtaining a student visa within Canada.³² Section 26 provided that any visitor caught studying without authorization would automatically lose their visitor status and become subject to deportation.³³

²⁹ Dale M McCartney, ““A question of self-interest”: A brief history of 50 years of international student policy in Canada” (2021) 51:3 Canadian Journal of Higher Education 33 at 36 [“A question of self-interest”].

³⁰ *An Act to amend the Immigration Appeal Board Act*, SC 1973-4, c 27 at s 5.

³¹ Grey, *supra* note 28.

³² *An Act Respecting Immigration to Canada*, 1976, SC Elizabeth II 25-26, C 52 at s 10 [*Immigration Act 1976*].

³³ *Ibid* at s 26.

International students were also barred from working in Canada and unauthorized work while on a study visa was formally designated a ground for automatic loss of status.³⁴

In addition, new 1978 immigration regulations imposed a proof of financial means test³⁵ and closed visa requirements that tied student authorization to a specific school and subject³⁶ – again mirroring the new closed NIEAP work visa conditions. Thus, the imposition of a much harsher set of laws and policies on international students in the mid-1970s aligned with the hostile discourse of the preceding years alongside a parallel creation of a two-tier system of rights for ‘non-immigrants’ in *both* the education sector and labour market. Both ‘temporary foreign workers’ and ‘international students’ were made into subspecies of the category of ‘migrant’ – outsiders to the Canadian nation but incorporated within territorial space. This sociolegal category laid the foundation for further policy changes in the future. Behind these policy shifts, xenoracial anxiety regarding the social, political, and economic location of whites within a new multicultural Canada played an important role in this restructuring.

The most consequential of these 70s-era international student policy changes was that of discriminatory tuition fees. While immigration policy was normally within the ambit of federal jurisdiction and tuition fees provincial jurisdiction, the sharp turn towards framing international students as non-immigrants and potential dangers to students with citizen and permanent resident status would influence both levels to move in lockstep. In the same year of the 1976 *Immigration Act*, Ontario’s Ministry of Colleges and Universities moved to introduce discriminatory fees, *tripling* tuition fees for international students. The Minister clarified that the fee surge would only apply to “non-immigrant foreign students” and that those with permanent resident status, citizenship, families of diplomats, and grant recipients from the Canadian International Development Agency (CIDA) would be spared.³⁷

³⁴ *Ibid.*

³⁵ *Immigration Regulations*, 1978, SOR/78-172 at s 15.

³⁶ *Ibid.*

³⁷ McCartney, “A question of self-interest”, *supra* note 29 at 36-37, citing HC Parrott, *Letter to Dr. F.C. Peters* (4 May 1976), Waterloo, Wilfrid Laurier University Archives (RG 2.0.1, bound volume).

While some Ontario post-secondary institutions expressed hesitancy, by 1977 all of them implemented the new discriminatory tuition fee structure, with the exception of McMaster and Trent.³⁸ Other provinces quickly followed suit: e.g. Alberta (1977), Quebec (1977), New Brunswick (1979), Nova Scotia (1979), and Prince Edward Island (1979).³⁹ Schools in British Columbia resisted for the first few years, but this resistance fell in the face of provincial budget cuts to higher education by the Social Credit government in 1982.⁴⁰

³⁸ *Ibid* at 37, citing SC Roberts and Kogila Adam-Moodley, “Institutional policies: Admissions, fees and quotas for foreign students at Canadian post-secondary institutions” (1977) Canadian Bureau for International Education.

³⁹ *Ibid* at 37, citing Canadian Bureau for International Education, “The right mix: The report of the Commission on Foreign Student Policy in Canada” (Ottawa: CBIE, 1981).

⁴⁰ *Ibid*. However, despite provinces authorizing discriminatory tuition fees for international students in the 1970s-80s, some postsecondary institutions resisted for many years. For instance, the University of British Columbia (UBC) only began charging international students discriminatory tuition in 1996 as they sought alternative revenue sources amid decreasing government funding for higher education. Additionally, UBC's policy at the time stipulated that the number of international students admitted to any undergraduate program could not exceed 15% of the number of domestic students admitted in the previous year. See Peter Wylie, “The University of British Columbia’s International Student Initiative Implications for Provincial Public Higher Education” (2020) 11:2 Critical Education 1 at 4.

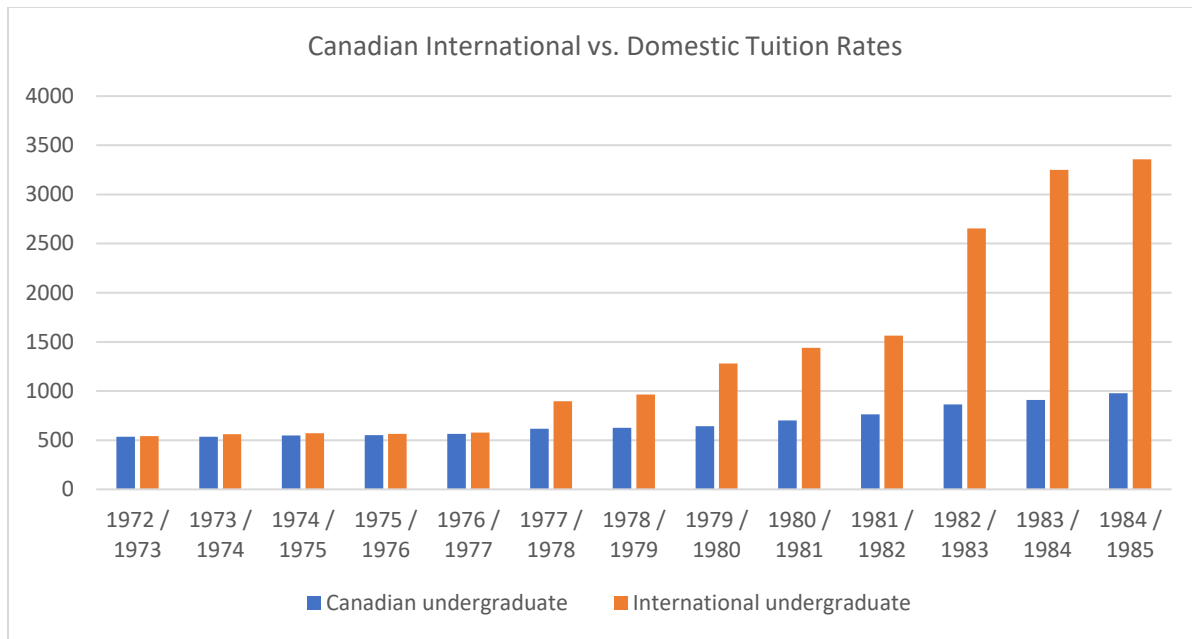


Figure 9: Average Canadian International and Domestic Undergraduate Tuition Rates (1972-1973 to 1984-1985)⁴¹

The introduction of discriminatory migrant tuition fees relied heavily on policy reports generated by the newly formed Canadian Bureau for International Education (CBIE), which received a significant grant from the federal government to conduct a national study of international students and related policy. Since the prior consensus of international students as Cold War developmental aid targets did not lend easily to justifying differential fees, the CBIE reports shifted the Canadian public’s perception of international students towards the idea of a cosmopolitan elite from “status privileged sectors of their own societies”, the bulk of who were “children of either entrepreneurs or businessmen”.⁴² Thus, by the late 1970s, the hostile discourse of international students that emphasized danger, risk, and racial, cultural, and ideological non-belonging was married with the idea that they were simultaneously rich,

⁴¹ Statistics Canada, “Table 37-10-0160-01: Canadian and international tuition fees by level of study” (last access 1 July 2025), online: <https://perma.cc/VQA8-8UQK>.

⁴² McCartney, “A question of self-interest”, *supra* note 29 at 37, citing David C Neice and Peter H Braun, “A patron for the world?: a descriptive report of the CBIE survey of foreign students at post-secondary institutions in Canada” (Toronto: York University Survey Research Centre, 1977).

wealthy, and privileged elites. It was this combination that was crucial to justifying discriminatory migrant tuition to achieve “an immediate financial return” from students.⁴³

However, the implementation of discriminatory migrant tuition policies was resisted by many and its intensification of racial inequality was not lost on its opponents. For instance, at Carleton University, President Michael Oliver stated that the policy was “regrettable” and that “it now appears that only certain qualified students are going to be welcome in the future.”⁴⁴ The Ontario Federation of Students went further by denouncing the xenoracist nature of the changes, characterizing them as “discriminatory moves” which “smack of racism” and appeared to be motivated by a “political desire to appear to be ‘cracking down’ on foreigners”.⁴⁵ Similarly, the Alberta Federation of Students called the proposal “fiscally and morally indefensible”, pointing out that international students were being treated as “scapegoats”.⁴⁶ International student service professionals actively and publicly opposed the discriminatory fee structure, writing letters and lobbying political representatives to scrap the policies.⁴⁷ Even opposition MPs pointed out the hypocrisy of the policy rationale, given that Prime Minister Pierre Trudeau had himself not paid a discriminatory tuition rate when he attended school abroad at the Sorbonne or Harvard.⁴⁸

The discursive and policy shift towards constructing international students as political, economic, and racial risks also supercharged political anxieties about international students stealing university positions from ‘real’ (specifically white) Canadians, which sparked an upsurge of anti-Asian racism on Canadian campuses. This anti-Asian sentiment reached a crescendo with the W5 Campus Giveaway incident. Broadcasted on September 30th, 1979, the flagship CTV investigative journalism program W5 aired an episode entitled “Campus Giveaway” which asserted that foreign students were taking spots from deserving Canadians in postsecondary institutions.

⁴³ *Ibid* at 10, citing Canadian Bureau for International Education, “A question of self-interest: A statement on foreign students in Canada” (Ottawa: CBIE, 1977).

⁴⁴ Canadian University Press, “Fees up for foreign students: regrettable, racist” (July 1976) 6:2 *The Charlatan* at 4, online: <https://perma.cc/G9AY-BCL4>.

⁴⁵ *Ibid*, “Alberta follows suit”.

⁴⁶ *Ibid*.

⁴⁷ McCartney, “A question of self-interest”, *supra* note 29 at 37.

⁴⁸ *Ibid*.

All the students represented by W5 as ‘foreign’ were of Chinese descent, emphasizing the perpetual foreignness of Chinese people vis-à-vis notions of a white Canada.⁴⁹ The program started by introducing Barbara Allen, a white Canadian woman from St. Catharines who graduated with a 79.5% high school average, as an example of a Canadian student who could not pursue her dream of study pharmacy because a “foreign student” was taking her place.⁵⁰ W5 producers then mobilized film footage of the orientation program of the University of Toronto’s Chinese Student Association (UTCSA). As the camera revealed an auditorium full of Chinese students attending UTCSA orientation, W5 host Helen Hutchinson commented that “Oriental foreign students [...] rarely mix with their Canadian classmates,” noting that “certainly those Chinese students still attract a full house, but not one Canadian student attended.”⁵¹ In reality, all but four of the Chinese identified as foreign students in the program were Chinese Canadian citizens or had permanent status.⁵²

In the words of Norman Kwan, a second-year UofT dentistry student at the time:

When I saw the program, I was just hopping mad, because basically they were saying that all the foreign students — when they said ‘foreign students,’ they had the camera show all the Asian-looking faces — were taking ‘our’ spaces in professional schools. Therefore, all these ‘Canadians’ — and they showed all these white Canadian students — couldn’t get in.⁵³

Echoing CBIE’s characterization of international students as class-privileged racial and cultural others to justify discriminatory international student fees, Campus Giveaway argued that the international students in question were primarily elites from Southeast Asia and Hong Kong who stood as beneficiaries of a Canadian “giveaway”. After coast-to-coast complaints about racist stereotypes advanced in the program, W5 doubled down on this framing in their statement entitled “W5 Reply: Foreign Students in Canada”, conflating all Chinese with international

⁴⁹ Patrick Wen Rui Leong, “Coded Racism and Community Resistance in the Anti-W5 Movement” (2021) University of British Columbia Thesis at 23.

⁵⁰ *Ibid* at 25.

⁵¹ Barry Cranstoun, “An Audio-Visual Analysis of W5 – ‘Campus Giveaway’” (Toronto: The Council of Chinese Canadians in Ontario, 1980), YouTube, online: <https://perma.cc/2BCZ-2TYS>.

⁵² Leong, *supra* note 49 at 24.

⁵³ *Ibid*.

students and maintaining their position that most international students were wealthy Hong Kong elites who were draining Canadian taxpayer dollars.⁵⁴

It turned out that the percentages cited by W5 – alleging at least 100,000 foreign students in campuses across Canada, with 60% supposedly from Southeast Asia and 30% from Hong Kong – were inaccurate and wildly overstated. According to the Association of Universities and Colleges of Canada, there were 18,304 international students with 21.5% hailing from Hong Kong and a far lower number hailing from Southeast Asia.⁵⁵ In addition, the allegation that Barbara Allen’s place at UofT pharmacy was taken by an international student could not have been possible given that the Faculty of Pharmacy at the time did not even admit international students and only admitted Ontario residents.⁵⁶

The egregiously racist nature of W5’s Campus Giveaway helped catalyze the emergence of a new network of Chinese community organizations and the development of a nationwide network of students and civil society institutions to organize against anti-Chinese and broader anti-Asian racism. The anti-W5 campaign constituted what was likely the largest Chinese Canadian protest movement in history up to that point. After six months of hard work organizing, coalition building, raising awareness, demonstrating, and lobbying, CTV eventually conceded to the Toronto Ad Hoc Committee’s demands in April 1980 and issued an apology, acknowledging their shortcomings, and promising never to air such a racist program again.⁵⁷ The momentum of the resistance also led to the formation of the Chinese Canadian National Council for Equality, a national umbrella organization created to defend the rights of Chinese Canadians and other ethnoracial minorities.⁵⁸

⁵⁴ David Marshall, “W5 lies promote racism” (14 March 1980), *The Ubyyssey* at 6, online: <https://perma.cc/RPN4-QBEZ>.

⁵⁵ Canadian University Press, “Foreign students and W5: Protest grows” (12 October 1979), *The Peak* at 1, online: <https://perma.cc/BHD5-T5XR>.

⁵⁶ Leong, *supra* note 49 at 27, citing Alan Earp, “W5 Program—AUCC objects strongly to ‘inaccuracy and distortion offered in the guise of truth’” (Ottawa: Association of Universities and Colleges of Canada, 1979), Ramona Mar Collection.

⁵⁷ Rick Groen, “W5 apology raises new questions”, *The Globe and Mail* (8 December 1980).

⁵⁸ Leong, *supra* note 49 at 2.

However, what the anti-W5 movement failed to effectively challenge was the *xenoracist* demonization and discrimination of international students through the new differential tuition policies and non-immigrant categorization and controls implemented in the years leading up to 1979's "Campus Giveaway". Behind this failure was leaning into Canadian nationality as the precondition for racial justice. This strategy asserted equality of Canadian citizenship and permanent resident status on one hand while simultaneously normalizing and hardening the lines between citizen and non-immigrant on the other, the latter which firmly included international students. In other words, to make an effective claim for equality, Chinese Canadians leaned into the *Canadian* portion of the hybrid identity to organize. This "possessive hinging of equality upon Canadian citizenship excluded international students – who were the direct targets of W-5 – from the CTV apology, solely due to their status as non-citizens."⁵⁹ As a result, international students were ultimately excluded and left behind by the anti-W5 campaign.

To be clear, this was not the position of everyone within the broad anti-W5 coalition. For instance, a public forum on the W5 issue hosted by the International Committee Against Racism and the International Students Association at the Ontario Institute for Studies in Education (OISE) called for a retraction of "Campus Giveaway", equal airtime and compensation for Chinese students from CTV, the right to work and an end to quotas and differential fees for international students, and the "active recruitment of minority students."⁶⁰ Immediately after the W5 apology, Dr. Donald Chu of the Council of Chinese Canadians in Ontario (CCCO) expressed his regrets on this issue during a press conference on April 20th, 1980:

I regret that the international students' issue has not been explicitly addressed, though it was alluded to in CTV's apology. International students have not proven to displace Canadians from their places in our universities. Their presence only contributes to the richness of our culture. If there is any hostility created towards them by this incident, I am sure we all sincerely express our regrets.⁶¹

⁵⁹ *Ibid* at 62.

⁶⁰ *Ibid* at 34, citing International Committee Against Racism, "Protest W-5 Racism" (14 November 1979), poster, Dinah Cheng and Jenny Lee Collection.

⁶¹ *Ibid* at 63, citing Donald Chu, "OFFICIAL RESPONSE TO CTV'S APOLOGY" (1980), Chinese Canadian Archive at Toronto Public Library (Cheuk Kwan fonds CHI201715).

Thus, the choice of strategy to lean into the claim of nationalized racial equality in a way that sidelined justice for international students could be understood as a missed opportunity that has influenced the future siloing of anti-racist movements (at least in terms of anti-Asian and anti-Chinese racism) from movements for migrant justice – ‘domesticating’ anti-racism.

C. Neoliberal cuts, institutionalization, and the development of international education as a vital Canadian export industry (1985-present)

As noted in the previous section, the introduction of discriminatory tuition fee policies for international students was initially justified within a political environment that simultaneously emphasized their foreignness; reframed them as potential political, economic, and racial dangers to Canadian society; and characterized them as privileged, wealthy, and elite migrants with many global opportunities at their disposal. Under this model, international students were reluctantly accepted by Canadian academic institutions, little in terms of recruitment efforts were made, and the number of international students did not really take off. Many schools limited international student admissions, with some such as UofT implementing explicit percentage quotas.⁶²

This situation would begin to change in the mid-1980s, as Canadian institutions began to realize the potential profit that could be made from discriminatory migrant tuition fees and international education began to develop as a Canadian export industry.⁶³ In Ontario, the institutionalization of international student recruitment began in the mid-1980s with a change to allow post-secondary schools to keep the surplus funds from discriminatory tuition fees rather than return the surplus to the provincial government to put towards public costs of post-secondary education.⁶⁴ This caused Canadian post-secondary institutions to revisit their previous position of strictly limiting international students. As a UofT task force noted, the \$6.6 million that UofT would gain from international students in 1984–85 was money the university could not

⁶² McCartney, “A question of self-interest”, *supra* note 29 at 38.

⁶³ *Ibid* at 39.

⁶⁴ *Ibid* at 38.

“afford to lose” and, as general revenue of the university, could be extracted to supposedly benefit “all students, including foreign students”.⁶⁵

Still, through the 80s and early 90s, the number of international students admitted varied widely. Declines in enrolment in the early 90s meant that by 1995 there were only 25,500 full-time international students in Canada – a similar number to that of 1980.⁶⁶ However, by the mid-1990s, Canadian post-secondary institutions began to create specific administrative positions and offices to aggressively market their offerings to potential students abroad, such as the International Student Initiative at the University of British Columbia.⁶⁷

The key development of the 1990s was the introduction of neoliberal policy in education which resulted in severe cuts to public funding of education, among other areas of social provision. Between 1995-1998, the federal government had rolled back nearly \$8 billion annually from provincial transfers for education and healthcare to deal with temporary deficit issues.⁶⁸ This political opportunity was leveraged to great effect by Ontario Conservative Premier Mike Harris to enact a permanent provincial set of funding cuts to public education, both K-12 and post-secondary. By the end of the decade, Ontario had seen a 21% decrease in post-secondary funding even as enrolment increased by 8%.⁶⁹

Meanwhile, Ontario crucially deregulated international tuition fees for universities and colleges in 1996, allowing them to charge international students (unlike domestic students) whatever they wanted and pocket the proceeds.⁷⁰ On the cost ledger, public expenditure for the welfare of international students was restricted as Ontario excluded international students from

⁶⁵ *Ibid* at 38-39.

⁶⁶ Association of Universities and Colleges of Canada, “Trends in Higher Education: Volume 1 – Enrolment” (Ottawa: AUCC, 2011) at 15, online: <https://perma.cc/7Y62-GKA5>.

⁶⁷ Kedra Ishop and Carmel Murphy, “International Student Initiative: External Review” (August 2016) at 3, online: <https://perma.cc/7ZZC-F9LV>.

⁶⁸ Roger Martin, “Who Killed Canada’s Education Advantage?” (12 August 2009), *The Walrus*, online: <https://perma.cc/VV5J-B6AR>.

⁶⁹ *Ibid*.

⁷⁰ Ontario Ministry of Training, Colleges and Universities, “Tuition and Ancillary Fees Reporting” (1 April 2003) at 4, online: <https://perma.cc/2LNV-T8LL>.

Ontario Health Insurance Program (OHIP) coverage in 1994.⁷¹ Thus, though international students remained foreigners who were legally segregated as non-immigrants, from a neoliberal governance angle they were attractive to schools looking to extract excess economic rents from discriminatory tuition while allowing them to advertise themselves as having a diverse student body ready for a globalized economic environment.

By the 2000s, pre-existing school-based efforts to generate increased international tuition revenue in the face of public funding cuts were finally supported by federal immigration policy changes that increasingly saw attracting international students as part of Canada's national interests – both in terms of extracting discriminatory fees but also as part of supplementing Canada's labour and skills needs as potential highly-skilled immigrants. Importantly then, a policy 'carrot' was added: immigration policy was revised so that studying in Canada could become the first step towards potentially regularizing as a landed immigrant post-graduation under a two-step immigration process.⁷²

This two-step model was further institutionalized with the creation of the PGWP and the Canadian Experience Class category in 2008, which favoured previous *employment experience in Canada* in applications for PR.⁷³ Using the prospect of future PR as a carrot proved very effective for incentivizing greater numbers of international students and maximizing tuition revenue. A CBIE study from 2015 found that over half of international students intended to eventually apply for PR while more than two-thirds were motivated to come for the ability to work after graduation on the PGWP.⁷⁴

⁷¹ Alyanna Denise Chua, "The true cost of a Canadian education: precarity" (25 March 2022), The Varsity, online: <https://tinyurl.com/43hhvkzu>.

⁷² Notably, the Association of Universities and Colleges of Canada was active in lobbying for such two-step process when Bill C-11 implementing the *IRPA* was being debated in 2001. See Association of Universities and Colleges Canada, "Recognizing the Importance of International Students to Canada in the Immigration and Refugee Protection Act. A Brief Submitted to the House of Commons Standing Committee on Citizenship and Immigration Canada Regarding Bill C-11, the Immigration and Refugee Protection Act and Its Regulations" (2 March 2001).

⁷³ Rupaleem Bhuyan, et al, "Branding 'Canadian Experience' in Immigration Policy: Nation Building in a Neoliberal Era" (2017) 18 *International Migration & Integration* 47.

⁷⁴ Canadian Bureau for International Education, "A World of Learning: Canada's Performance and Potential in International Education" (2015) at 7, online: <https://perma.cc/5PTE-KA3V>.

The increasing confluence of state, school, and for-profit private interests in leveraging student recruitment to maximize capital accumulation would lead to the emergence of international education as a crucial Canadian export industry. Indeed, as early as 1998 the Minister of International Trade Sergio Marchi remarked that “education is now an industry. Canada needs to approach the international marketplace for education services with the same discipline and commitment that we bring to other sectors.”⁷⁵ In 2010, an external consultancy report prepared for the Department of Foreign Affairs and International Trade (DFAIT) estimated that international students in Canada “spent in excess of \$7.7 billion on tuition, accommodation and discretionary spending”, making international education a larger export industry than helicopters, airplanes, and spacecraft (\$6.9 billion).⁷⁶ By 2018, that figure had skyrocketed to \$22.3 billion.⁷⁷

From the government side, alongside reforms in immigration policy, the state began to assist in actively advertising Canadian education to foreign countries. A dedicated educational marketing unit was created in 1998 within DFAIT as a one stop shop for education promotion, which would be rebranded in 2008 as “EduCanada”. Currently as of the time of writing, EduCanada is run as a partnership between the International Education Division of Global Affairs Canada and the provincial/territorial Council of Ministers of Education, Canada (CMEC).⁷⁸ EduCanada is described as a trademarked “brand”, whose main objective “is to enable Canadian federal and provincial governments, educational institutions and other stakeholders in the education sector to promote Canada as a study and research destination using a consistent voice.”⁷⁹

Through EduCanada marketing efforts, Global Affairs Canada hosts and participates in branded international education events through the coordination of its embassies and consulates

⁷⁵ Roopa Trilokekar and Zainab Kizilbash, “Higher Education: For What and for whom?” (2011) SHRE Conference Wales at 2, online: <https://perma.cc/R5Y7-CZBC>.

⁷⁶ Roslyn Kunin & Associates, “Economic Impact of International Education in Canada -- An Update: Final Report” (May 2012) at 3, online: <https://perma.cc/5N53-3T4M>.

⁷⁷ Canmac Economics Limited, “Economic impact of international education in Canada - 2020 update” (August 2020), online: <https://perma.cc/9Z2M-79QQ>.

⁷⁸ Kunin & Associates, *supra* note 76 at 3.

⁷⁹ EduCanada, “Brand Overview” (last accessed 2 July 2025), online: <https://perma.cc/84VN-FA7E>.

around the world.⁸⁰ For-profit and public Canadian educational institutions can go through a Brand Eligibility Process to participate in these events and gain access to prospective students, parents, and educational brokers, or alternatively go through a more stringent Brand Authorization Process in order to use the EduCanada brand logo in their own marketing materials. By 2014, more than 80% of Canadian educational institutions were participating in overseas recruitment fairs.⁸¹ Meanwhile, the for-profit student recruitment industry has seen a massive boon, with nearly all Canadian educational institutions employing or contracting with student recruiters and agents to increase their numbers.⁸²

As Sharon Stein notes, EduCanada “emphasizes positive elements of Canada’s global reputation as ‘selling points’ for potential customers”⁸³ and markets Canadian education in a way that appeals “to international students’ desires to obtain educational capital, and ultimately, positional advantage within the global labour market.”⁸⁴ Yet critics have argued that such an aggressive rose-coloured selling approach exaggerates the protections and supports that international students can expect upon arrival as well as the perceived value of a Canadian credential in the labour market, while simultaneously making migrant students ill-prepared for the xenoracism they structurally face.⁸⁵

Another important aspect of the development of international education as a key export industry has been the emergence of “pathway colleges”. Pathway colleges are “institutions, or segments of larger institutions, that are specifically constructed to recruit international students who would not otherwise be eligible for entry to a Canadian university, and then prepare them for entry to the larger institution.”⁸⁶ In 2017, 72% of public universities in Canada had pathway

⁸⁰ EduCanada, “Brand Use Authorization” (last accessed 2 July 2025), online: <https://perma.cc/ZHA3-CJEP>.

⁸¹ McCartney, “A question of self-interest”, *supra* note 29 at 40.

⁸² International Consultants for Education and Fairs, “Education agents poised to play a greater role in international student recruitment” (3 November 2021), ICEF Monitor, online: <https://perma.cc/NPW8-XWXD>.

⁸³ Sharon Stein, “National exceptionalism in the ‘EduCanada’ brand: unpacking the ethics of internationalization marketing in Canada” (2018) 39:3 *Discourse: Studies in the Cultural Politics of Education* 461 at 467.

⁸⁴ *Ibid* at 470.

⁸⁵ *Ibid* at 469, citing Roland Sintos Coloma, “‘Too Asian?’ On racism, paradox and ethno-nationalism” (2013) 34:4 *Discourse: Studies in the Cultural Politics of Education* 579.

⁸⁶ Dale M McCartney and Amy Scott Metcalfe, “Corporatization of higher education through internationalization: the emergence of pathway colleges in Canada” (2018) 24:3 *Tertiary Education and Management* 206 at 209.

college affiliations, with about one-third of these owned by multinational education companies such as Navitas, Study Group, and Kaplan International.⁸⁷

Though marketed as a solution to the large number of students who are screened out of Canadian universities “due to entrance criteria that may penalize otherwise academically prepared students who do not meet English language requirements”⁸⁸, pathway colleges exist in an unregulated and highly predatory environment. Pathway college students are segregated from both domestic as well as other international students in academic programs. One study of students at pathway colleges found that respondents experienced severe isolation, found the programs at turns too easy and too difficult, and ultimately inadequate to prepare them for the skills necessary for success at the academic parent institution.⁸⁹ As pathway colleges usually market the potential (and indeed ease) of obtaining Canadian PR through their programs, students often complain that they had been placed at an unreasonably low level so as to extract additional semesters of tuition fees from them, extending their period of vulnerability, isolation, legal disenfranchisement, and economic exploitation.⁹⁰ Indeed, if ‘regular’ international students are on a two-step path to PR, it can be said that pathway college students are on a ‘three-step’ path which allow Canadian educational institutions to double-dip on discriminatory tuition revenue and employers access to a larger pool of cheapened and precarious migrant labour for a longer period of time than with ordinary international student workers.

Finally, the third key aspect of the international education export industry is the private recruitment industry. The unprecedentedly high number of international students seen in recent years relies on a large amount of recruitment work, much of which has been serviced by an unregulated ecosystem of private education agencies and brokers working primarily in source countries such as India. According to a 2021 estimate by International Consultants for Education and Fairs (ICEF), around half of all international students arriving in Canada were referred by or

⁸⁷ *Ibid.*

⁸⁸ *Ibid.*

⁸⁹ Peiyu Wang, “A Study of Drop-out Chinese International Students from a Canadian Pre-University English Language Improvement Program: Acculturation Experiences and Challenges” (2016) University of Windsor Thesis, online: <https://perma.cc/9BMH-R564>.

⁹⁰ *Ibid* at 55.

used private education agents.⁹¹ These agents provide services in the form of consultancy advice, visa application support, and making travel, accommodation, and other arrangements.

As Elizabeth Redden writes in the context of the international education recruitment in the US, “[t]he growth of third-party pathway programs has been entwined with growth in the adoption of commission-based agency recruitment, in which agents are paid a per capita commission for each student recruited to an institution or program.”⁹² Compensation information can be hard to come by as many companies view their pay structure as proprietary, but commission-based structures are commonplace with some agents reporting fees to be 15-20% of a first-year tuition per student.⁹³ At the University of Toronto, where 2025-2026 first year undergraduate tuition is \$63,570, this works out to a lucrative commission range of approximately \$9,536-\$12,714 per student.⁹⁴

In an environment where Canadian universities and colleges are increasingly competing for international tuition revenue to keep financially afloat, institutions “may be reluctant to confront agent misconduct for fear of having them refer students elsewhere.”⁹⁵ Further, heavy reliance on international student recruitment for revenue has not been accompanied by corresponding investments in supports for international students. In 2018, the Board of Governors at Kwantlen Polytechnic University in BC noted that “while year-over-year international revenues have increased by approximately 70%, agent commission fees have increased over 220%. These fees...are now more than we spend on the international division itself.”⁹⁶ Thus, not only are Canadian universities and colleges engorging themselves through

⁹¹ International Consultants for Education and Fairs, *supra* note 82.

⁹² Elizabeth Redden, “Commissions and Incentives” (19 June 2018), Inside Higher Ed, online: <https://perma.cc/UZ5L-444C>.

⁹³ Matthew Halliday, “The murky world of unregulated international student recruiters” (2 November 2022), University Affairs, online: <https://perma.cc/3DRZ-CW5G>.

⁹⁴ University of Toronto Scarborough, “Tuition & Fees” (last accessed 2 July 2025), online: <https://perma.cc/UZ48-SNUJ>.

⁹⁵ Robert Coffey and Leanne M Perry, “The Role of Education Agents in Canada’s Education Systems” (Toronto: Council of Ministers of Education, Canada, 2013) at 2, online: <https://perma.cc/AW9Q-DEHG>.

⁹⁶ Lilach Marom, “Market mechanisms’ distortions of higher education: Punjabi international students in Canada” (2023) 85 Higher Education 123 at 131.

mass influx of discriminatory tuition, but private recruitment agencies are also increasingly profiting – all to the detriment of international students and their families.

From 2005 to 2021, U of T's international tuition has far outpaced the increase in domestic tuition.

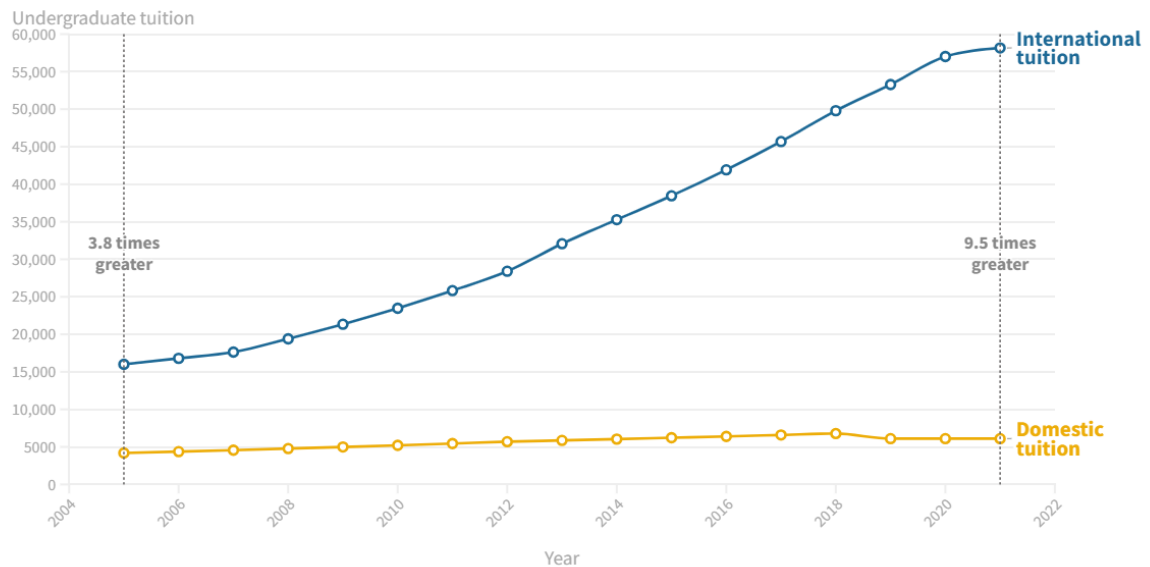


Figure 10: University of Toronto International and Domestic Undergraduate Tuition Rates (2005-2021)⁹⁷

To maximize profit in a manner acceptable to domestic political priorities, the discriminatory difference between international student tuition and domestic student tuition has continued to grow as universities endeavor to keep domestic undergraduate tuition rates relatively flat. For instance, at UofT, the difference between international and domestic tuition has increased rapidly from a 3.8x multiple in 2005 to a 9.5x multiple in 2021, as illustrated above in Figure 10. In 2025, this multiple grew to 10.4x.⁹⁸ As the amount of profit that can be extracted per student has increased, the proportion of international students recruited to UofT has similarly expanded from 9% of the total student population in 2005 to 26.8% in 2020.⁹⁹ These can be seen

⁹⁷ Chua, *supra* note 71, citing University of Toronto Tuition Fee Schedules.

⁹⁸ University of Toronto Scarborough, *supra* note 94.

⁹⁹ Chua, *supra* note 71.

as representative of broader trends in Canadian international student tuition policy illustrated below in Figure 11. Between 2006 and 2022, average domestic tuition among Canadian universities increased by 55% from \$4,400 to \$6,834 whereas international tuition skyrocketed 170% from \$13,378 to \$36,123. Similarly, the difference between average international and domestic tuition rose from a multiple of 3.0x in 2006 to 5.3x in 2022.

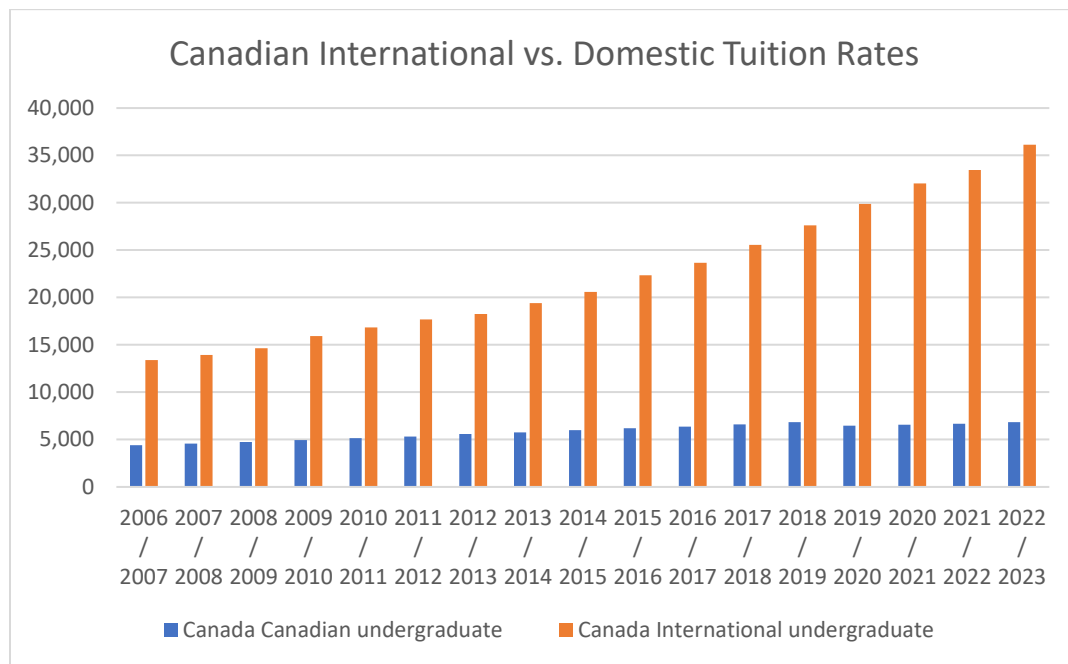


Figure 11: Average Canadian International and Domestic Undergraduate Tuition Rates (2006-2007 to 2022-2023)¹⁰⁰

Although the numbers of international students recruited as well as the magnitude of tuition discrimination has soared over the past two decades, McCartney notes that at least since 2014, there has been a significant critical turn in scholarship towards highlighting the multifaceted precarity of international students¹⁰¹ alongside scholarship which has challenged

¹⁰⁰ Statistics Canada, “Table 37-10-0045-01: Canadian and international tuition fees by level of study (current dollars)” (last accessed 2 July 2025), online: <https://perma.cc/Q78C-7KXX>.

¹⁰¹ Joan L Botorff, et al, “Correlates of food insecurity among undergraduate students” (2020) 50:2 Canadian Journal of Higher Education 15; Moira J Calder, et al, “International students attending Canadian universities: Their experiences with housing, finances, and other issues” (2016) 46:2 Canadian Journal of Higher Education 92; Lesley

underlying assumptions of growing Canada's international education export industry.¹⁰² The large number of international students brought to Canada and their widespread structural repression and exploitation has led to increased organizing in campaigns against wage theft¹⁰³ and status for all.¹⁰⁴ Conversely, it has also led to their increasing scapegoating for a worsening housing unaffordability crisis in the country.¹⁰⁵ Regardless, what is clear is that, as of the time of writing, Canada's current international student regime finds itself at a critical moment where the status quo is increasingly being perceived in public discourse as unsustainable.

II. The new head taxes: education head taxes as neocolonial expropriation

Contemporary dynamics of international student mobility, discriminatory tuition fees, and accompanying wealth transfer from Global South families to Global North educational institutions can better be understood through a postcolonial lens. The global higher education industry remains highly uneven and Eurocentric, with Western education perceived as more valuable in the global marketplace.¹⁰⁶ Further, due to international student programs serving as a key path to admission to the Global North through immigration law, postsecondary educational institutions often act as gatekeepers for socioeconomic mobility into and within the nationalized space of Global North countries such as Canada.

Frank, "‘Hungry for an education’: Prevalence and outcomes of food insecurity among students at a primarily undergraduate university in rural Nova Scotia" 48:2 *Canadian Journal of Higher Education* 109.

¹⁰² Tim Anderson, "Seeking internationalization: The state of Canadian higher education" (2015) 45:4 *The Canadian Journal of Higher Education* 166; Elizabeth Buckner, et al, "Strategic benefits, symbolic commitments: How Canadian colleges and universities frame internationalization" (2020) 50:4 *Canadian Journal of Higher Education* 20; Melody Viczko and Clara I Tascón, "Performing internationalization of higher education in Canadian national policy" (2016) 46:2 *Canadian Journal of Higher Education* 1.

¹⁰³ Caitlyn Clark, *International Students in Ontario Are Fighting Wage Theft—And Winning* (21 July 2022) Labor Notes, online: <https://perma.cc/XSH3-2ZA4>.

¹⁰⁴ Migrant Workers Alliance for Change, "BREAKING: More than 500,000 International Students Win Right to Work And Protect Themselves from Exploitation" (7 October 2022) MWAC, online: <https://perma.cc/T8XL-BL65>.

¹⁰⁵ Wendy Cox and Mark Iype, "Western Canada: Flow of international students worsening housing crisis" (2 September 2023), *Globe and Mail*, online: <https://perma.cc/E48E-MX6C>.

¹⁰⁶ Stein, *supra* note 83 at 462.

Colonial legacies have “contributed towards a geo-epistemic hierarchy, in which some countries are considered knowledge producers (metropolis), while others (colonies) are deemed to be knowledge consumers and fieldwork destinations.”¹⁰⁷ Long-standing European colonial logics portrayed natives in colonies as inferior, ignorant, backwards, and uncivilized, whereas those from the metropolis were seen as superior, clever, modern, and civilized. As a result, knowledge and education systems from the metropolis were reified and those from the colonies were delegitimized, which echo today in the valorization of qualifications from Global North educational institutions and the delegitimization of qualifications from the Global South.¹⁰⁸

In a context where higher education has become increasingly internationalized, competitive, and commodified, neo-colonial hierarchies of knowledge and recognition have significant material effects. As Thais França, Elisa Alves, and Beatriz Padilla argue, “current flows of international students to the ex-metropolis are ‘(...) rooted in the structures of academic imperialism that emanated from the colonial period, in which a qualification gained from the ‘mother country’ attained considerable cultural, economic and emotional value’”.¹⁰⁹ European ex-metropolises and their settler colonial offspring, such as Canada, are able to perpetuate and exploit these old power asymmetries to attract and extract extreme economic rents from young people and their families in formerly colonized nations desperate to be competitive and to have access to Global North labour markets that would otherwise be denied to them by virtue of having a weaker passport with fewer mobility rights.

These power asymmetries have in turn allowed the Canadian state and its institutions of higher education to slowly build and perpetuate “an unjust, unidirectional stream of benefits to the host institutions that is grounded in the ongoing colonialist practice of treating international

¹⁰⁷ Thais França, Elisa Alves, and Beatriz Padilla, “Portuguese policies fostering international student mobility: a colonial legacy or a new strategy?” (2018) 16:3 *Globalisation, Societies and Education* 325 at 326, citing Walter Mignolo, “Geopolitics of Sensing and Knowing: On (De)Coloniality, Border Thinking and Epistemic Disobedience” (2011) 14:3 *Postcolonial Studies* 273 and Anibal Quijano, “Colonialidade Do Poder E Classificação Social” in Boaventura Santos and Maria Paula Menezes, eds, *Epistemologias Do Sul* (Colimbra: Almedina – CES, 2009) at 73–117.

¹⁰⁸ *Ibid.*

¹⁰⁹ *Ibid* at 327.

students as an extracted resource for institutional gain.”¹¹⁰ The rest of this subsection maps out the key elements of a postcolonial analysis of this discriminatory wealth transfer from the Global South to the Global North: (1) conceptualizing discriminatory international tuition as a type of education ‘head tax’, (2) situating the expansion of the education head tax as a logical outgrowth of the emergence of the neoliberal university, and (3) understanding the economic interests involved in neocolonial wealth expropriation that undergird why Canadian universities and colleges are, on the whole, unwilling to substantively extend the right to education to undocumented, status-excluded youth – Canada’s ‘Dreamers’.

A. Conceptualizing discriminatory international tuition as education head taxes

Despite its dramatic name and outsized historical significance, the 1885-1923 Chinese Head Tax has garnered little serious scholarly attention in tax law and policy scholarship. Yet its historical resonance and continued legacies in debates surrounding contemporary immigration policy deserve proper grounding in taxation theory. One welcome exception to this trend is the work of Sue Yong and Rob Vosslander, who analyze 19th century Chinese head taxes (or “poll taxes” in their parlance) across the jurisdictions of several white settler colonies.¹¹¹ In this section, I draw upon the landmark work of Yong and Vosslander on historical Chinese head taxes to assist with the analysis of discriminatory international tuition fees from the perspective of race, immigration, and taxation.

In their 2018 article, *Race and tax policy: The case of the Chinese poll tax*, Yong and Vosslander adopt a definition of taxation as “any non-penal yet compulsory transfer of resources from the private to the public sector, levied without receipt of a specific benefit of equal value and on the basis of predetermined criteria, in order to accomplish some of a nation’s economic

¹¹⁰ Mathew H Gendle and Amanda Tapler, “International Undergraduates are Not a Resource for Neocolonial Exploitation” (2023) 29:1 *Essays in Education*, Article 5 at 2.

¹¹¹ Sue Yong and Rob Vosslander, “Race and tax policy: The case of the Chinese poll tax” (2018) 20:1 *Journal of Australian Taxation* 147.

and social objectives”.¹¹² In other words, taxation is in part understood as a resource sacrifice that is compelled for a collective benefit, sometimes for general national revenue but sometimes to achieve certain socioeconomic goals or for behaviour modification. Further, taxation is a “social and institutional practice” that reflects shifting societal norms and political struggles.¹¹³

A head tax (or poll tax) is a per-person levy that is usually targeted at a subject people for redistribution to a more politically powerful populace. Unlike an income tax, they are not based on how much one earns nor tied directly to economic activity like a sales tax. Head taxes have frequently been used historically as tools of social and racial discrimination, both in race-explicit and race-neutral terms (such as US poll taxes as pre-conditions for voting, which were used to disenfranchise Black American voters, even though they also had the effect of disenfranchising some poor non-Black voters).¹¹⁴ Whereas the Chinese head tax was levied for any Chinese person who wanted to enter Canada, US poll taxes were indirectly racial in that they were levied for anyone who wanted to vote.

What then, were the justifications for imposing Chinese head taxes specifically? Put another way, what were their social, economic, and political objectives? For Yong and Vosslander, the Chinese head tax, in deterring Chinese migration through a mandatory per-capita levy, attempted to respond to three distinct, but interrelated factors:

- (1) **Racialized economic competition:** Chinese workers were alleged to be economic threats to the Canadian nation, stealing jobs from rightful European white workers, breaking strikes, and driving down wages because of a perceived inherent willingness to work under conditions unacceptable to whites.¹¹⁵ Such an argument relied heavily on the premise that labour markets were naturally segregated on both a racial and national basis.
- (2) **Threat to white nationalism:** Chinese people represented a cultural threat to the national character of European traditions, sexual norms, language, religion, and values that were

¹¹² *Ibid* at 149, citing Ray Sommerfeld, Silvia Madeo and Valerie Milliron, *An Introduction to Taxation 1991* (New York: Harcourt Brace Jovanovich, 1991) at 4.

¹¹³ Lynne Oats, “Tax as a Social and Institutional Practice” in Lynne Oats, ed, *Taxation: A Fieldwork Research Handbook* (London: Routledge, 2012) at 5.

¹¹⁴ Yong and Vosslander, *supra* note 111 at 150.

¹¹⁵ *Ibid* at 157.

presumed to undergird the national character of white Canada. As such, references to the dangers of racial miscegenation and predisposition to opium, gambling, and prostitution were common when discussing the need for legal tools to deter and exclude Chinese.¹¹⁶

(3) **Sojourners' obligation to pay their "fair share":** Since Chinese workers were considered sojourners not expected to stay permanently in settler colonial space, a tax could be justified on a transactional basis to *compensate* settler society for (a) the supposed benefits received by Chinese for the privilege of "being here"¹¹⁷ as well as (b) for the supposed social, economic, and cultural costs they inflicted on settler society.¹¹⁸ Evidence of accompanying remittances to family members excluded back home were further framed as sojourner "wealth extraction" from Canadian society that required compensation.¹¹⁹ In circular logical fashion, Chinese were thus forced to pay reparations for the very conditions of racial and gendered exclusion that was imposed on them by Canadian law and which socially categorized them as sojourners (although the condition of 'permanently temporary' resident had not been popularized then).

In total, from 1885 to 1923, the Chinese Head Tax expropriated \$23 million from Chinese in Canada for the benefit of Canadian federal and provincial governments – an amount valued at \$1.2 billion after inflation by the mid-2000s when the Canadian government finally apologized for the head tax and subsequent Chinese Exclusion Act.¹²⁰ The historical spectre of the head tax has been invoked at various times to highlight racially unjust immigration fees. For instance, as covered in a prior section on neoliberal immigration, critics of the \$975 right of landing fee introduced in 1995 highlighted its racially disparate impacts and logics of wealth extraction by labelling them "modern head taxes".¹²¹ As Sedef Arat-Koc notes:

¹¹⁶ *Ibid* at 159.

¹¹⁷ For further discussion about the "right to be here" as compensation for racial injustice inflicted on Chinese by exclusionary and discriminatory immigration provisions, see Mary Anne Vallianatos, "When redress is being here: myth, history, and bias in *Mack v Canada*" (2025) Work-In-Progress.

¹¹⁸ Yong and Vosslander, *supra* note 111 at 160-161.

¹¹⁹ *Ibid* at 161.

¹²⁰ "Chinese Head Tax FAQs" (11 October 2006) CBC News, online: <https://perma.cc/WTC7-UB7S>.

¹²¹ Sedef Arat-Koc, "Neo-liberalism, State Restructuring and Immigration: Changes in Canadian Policies in the 1990s" (1999) 34:2 *Journal of Canadian Studies* 31 at 45.

Symbolically, the presence of a head tax tends to emphasize immigrants as being burdens on, rather than contributors to, Canadian society. It also underlines a definition of immigration to Canada as a “privilege” that involves some costs. Indeed, the discourse of privilege was very explicit in the way Sergio Marchi, then minister of Immigration, introduced the “right of landing fee” when he called it “a small price to pay to come to the best country in the world”.¹²²

Like the original Chinese head taxes then, these were mandatory fees paid by migrants considered to be outsiders to the Canadian nation. Also like the Chinese head taxes, these “modern head taxes” were justified from a spurious theory of sojourner compensation that presumed new immigrants should compensate settler society both for the privilege and benefits of “being here” as well as the supposed social, economic, and cultural harms that their existence would impose on settler society. The difference of course was that these mandatory levies were facially race-neutral, although given that the sources of Canadian immigration had by then shifted significantly towards non-white-majority countries, it stands to reason that race did much of the heavy lifting in echoing these similar compensatory justifications. It is worth asking then, what is distinctly morally abhorrent about Chinese Head Taxes as compared to mandatory migrant taxes, particularly given that it is disproportionately racialized migrants from the Global South who (again) bear the burden of paying discriminatory levies?

Thus, from a xenoracial capitalism perspective, migrant head taxes in the Canadian context act as a formally race-neutral policy tool that rehearse many of the same policy goals and justifications as Chinese head taxes in terms of racialized wealth expropriation. Discriminatory international tuition fees should thus be properly understood as a type of *education head tax*: a compulsory transfer of resources targeted at a disenfranchised ‘sojourner’ people (those categorized as international students) for redistribution to a more politically powerful populace (specifically the Canadian state and public and private Canadian postsecondary educational institutions) but for which there is no receipt of a specific benefit of equal value.

¹²² *Ibid.*

The amount of this education head tax can be calculated as the difference between domestic tuition rates and international tuition rates (education head tax = international tuition rate – domestic tuition rate). Understood in these terms, it becomes possible to get a comparative sense of *scale* when it comes to the amount of wealth expropriation that Chinese head taxes and contemporary education head taxes accrue for Canadian national interests from (predominantly) racialized migrants and their families. Whereas the mid-2000s inflation-adjusted amount collected from Chinese head taxes was \$1.2 billion CAD throughout the 39 years in which the head tax was enforced, \$9.6 billion CAD was collected by Canadian institutions from international tuition fees in 2020.¹²³ When adjusting for the average difference between international and domestic fees then, Canadian institutions can be said to have expropriated \$7.3 billion through education head taxes in 2020 – an *annual* amount that is over five times the entire inflation-adjusted amount collected under the Chinese head tax *throughout its four decades of operation*.

Head tax justifications based on ‘sojourner compensation’ undergird many of the same rationales offered nearly a century later when Ontario and other provinces began the practice of discriminatory tuition fees in 1976¹²⁴ which include, *inter alia*:

- That international students are primarily the children of wealthy elites and thus have a greater ability to pay than domestic students¹²⁵;

¹²³ Kaitlyn Smith and Serena Austin, “International student face unlimited tuition increases at most Canadian institutions” (8 August 2023) New Canadian Media, online: <https://perma.cc/MBC8-5HTG>.

¹²⁴ Although it is acknowledged that policymakers’ intent was quite different between the Chinese Head Tax (implemented to deter undesirable migration) and discriminatory education head taxes (implemented not to deter but to compensate citizens for migrant students’ presence in Canadian education institutions). Despite differences in stated intention, a materialist analysis reveals that both are examples of how the Canadian state manages those physically present but excised legally and socially from nationhood by alternating between incorporation for extraction and exclusion for control. It is also important to note that the Chinese Head Tax was never meant to block all Chinese migration, but rather to impose a socioeconomic filter on those who wished to come (just as education head taxes do). Specifically, the 1885 Royal Commission on Chinese Immigration recommended the Chinese Head Tax as a necessary part of a “policy of judicious selection” in determining “how the beneficial immigration is to be separated from the injurious” and “by which the expenses incident to the plan proposed are to be borne.” Report of the Royal Commission on Chinese Immigration: Report and Evidence (1885), Sessional Paper no. 54a at LXXXVI, online: <https://perma.cc/9AJV-WAGQ>.

¹²⁵ Ian Indiano, “Why is international tuition so expensive in Canada?” (7 January 2022), Interrobang, online: <https://perma.cc/UJ3A-TMPQ>.

- That federal and provincial governments do not subsidize international students like domestic students and thus cost differentials need to be passed on to international students¹²⁶;
- That discriminatory tuition is required to keep a national public good – Canadian post-secondary educational institutions – afloat in the face of declining government funding¹²⁷; and
- That international students have not contributed to Canadian tax pools and should thus be compelled to “make up the cost”.¹²⁸

These justifications will be analyzed in turn. As covered in the prior section on the history of international student policy, the shift in the Canadian public’s imaginary of international students from subjects of public subsidy under Cold War-era soft power strategy to a wealthy cosmopolitan elite in the 1970s helped provide an initial justification for education head taxes.¹²⁹ Of course, exorbitant international student tuitions, high costs of living, exclusion from Canadian financial aid and scholarships, and minimum liquidity requirements for obtaining student visas create significant financial barriers that filter out lower income prospective students from source countries. However, like the victim-blaming sojourner compensation justifications for the Chinese head tax, international students are perversely stereotyped for the very discriminatory barriers imposed by the Canadian government through its immigration policy.

In addition, international students are highly heterogeneous in terms of socio-economic background. Indeed, if international students were predominantly wealthy elites, we would not see extremely high levels of food insecurity and labour exploitation among international students as they would ostensibly be able to mitigate cost of living issues with financial abundance.¹³⁰ Nor can wealth as a factor by itself justify *discriminatory* tuition fees since wealthy domestic

¹²⁶ Smith and Austin, *supra* note 123.

¹²⁷ Supreena Sekhon, “Post-secondary institutions have no choice but to rely on China for funds” (29 December 2022), Policy Options, online: <https://perma.cc/ZK2D-KVHF>.

¹²⁸ Smith and Austin, *supra* note 123.

¹²⁹ Neice and Hamm, *supra* note 42.

¹³⁰ For instance, Lesley Frank found a 38.1% prevalence of food insecurity in a survey of 1,030 international students in Nova Scotia in 2015. Qualitative analysis revealed four themes related to insufficient money for food: inability to cover basic needs, health-related outcomes of persistent worry, loss of time from learning, and impacts on social life. Frank, *supra* note 101.

students do not similarly face tuition levels that are multiples higher than other domestic students.

The next three justifications can be analyzed within the political economy of neoliberal immigration law. There is a ‘passing the buck’ discourse between the Canadian postsecondary sector and Federal and provincial governments which obfuscates the central question of whether it is fair or just to severely discriminate against international students. The common refrain is that if governments had not pulled back from public funding of postsecondary education, then discriminatory tuition would not have been necessary. However, once discriminatory tuition policies were implemented, they were never pulled back or repealed during years in which postsecondary public funding increased.¹³¹

It may more convincingly be argued that governments find it politically tenable to cut back on public funding for postsecondary education *for the very reason that* they know expropriation of international students through education head taxes would more than underwrite the difference and that nationalist segregation of educational rights will be politically popular with their voting bases. In this way, the discriminatory international tuition regime plays a crucial political role in ensuring the continued survival of neoliberal education policy which seeks to privatize and commodify education while cutting back on public funding. This synergistic relationship between public cuts and private educational wealth accumulation thus complicates the perceived dichotomy between public and private interests when it comes to Canadian international student policy.

Finally, the tax fairness argument falls flat given that many immigrants (particularly those who are wealthy and/or have high levels of formal education, training, high-waged work experience, and language skills – factors that are all highly correlated with wealth) are granted PR on arrival through economic immigration programs. Indeed historically, PR on arrival was the default condition in Canada until the introduction of the NIEAP in the early 1970s. In terms

¹³¹ See, for the example of Ontario, Diarra Sourang and Peter Harrison, “The Funding of Postsecondary Education in Ontario” (8 September 2016), Financial Accountability Office of Ontario at 1, online: <https://perma.cc/5R7S-RQND>.

of tax, migrants with temporary status and status-excluded migrants still are required to pay sales and income taxes (alongside other required deductions and contributions) yet are disadvantaged by not being able to receive collective social supports such as healthcare, social assistance, or employment insurance. On top of that, the resilient head-tax era idea of the sojourner – that their very presence is a cost to Canadian society – leads to the conclusion that they must compensate for this harm by paying onerous education head taxes on top of the taxes that they already pay.

These unjust and exploitative policies as well as their inadequate rationales point to a particular pattern of political desensitization and normalization of discrimination against migrant bodies who are structurally excluded from permanent status by Canadian immigration law since the early-mid 1970s. Even though migrants live, work, and study in Canada, through legal exclusion from the state category of permanent residency, they are created as a “people out of place”.¹³² In turn, people out of place are constructed as outside the liberal social contract and may therefore be subject to adverse and discriminatory terms and conditions that would be clearly unconstitutional if applied to Canadian citizens – conditions that are perfect for wealth expropriation and labour exploitation under xenoracial capitalism. Liberal multicultural rhetoric therefore obscures and normalizes the discriminatory nature of adverse incorporation of migrants (including international students) while providing a convenient post-racial narrative to disavow the continued role of white supremacy and neocolonialism that underlies adverse incorporation in Canadian international student policy.

B. The university as hedge fund: private equity and neocolonial wealth accumulation

Unlike the Chinese head taxes, the surplus value from education head taxes does not directly accumulate in the coffers of Canadian governments. Rather, they go to universities and colleges that are certified as Designated Learning Institutions (DLIs). A DLI is a school given

¹³² Nandita Sharma, “The ‘People Out of Place’: State Limits On Free Mobility and the Making of (Im)Migrants” in Sarah B Horton and Josiah Heyman, eds, *Paper Trails: Migrants, Documents, and Legal Insecurity* (Durham: Duke University Press, 2020) at 31-52.

official approval by a provincial or territorial government to host international students. As such, only international students accepted at DLIs can be approved for study visas by the IRCC. The DLI designation is thus the ‘golden egg’ that unlocks the ability of individual schools to extract surplus value from international student tuition. Primary and secondary schools in Canada can also be DLIs.¹³³ As demonstrated in Figure 12 below, discriminatory tuition fees have become an increasingly lucrative revenue source in K-12 education as well, with total K-12 international tuition revenue in Ontario more than tripling from \$51.7 million in 2011-2012 to a whopping \$161.7 million in 2018-2019.

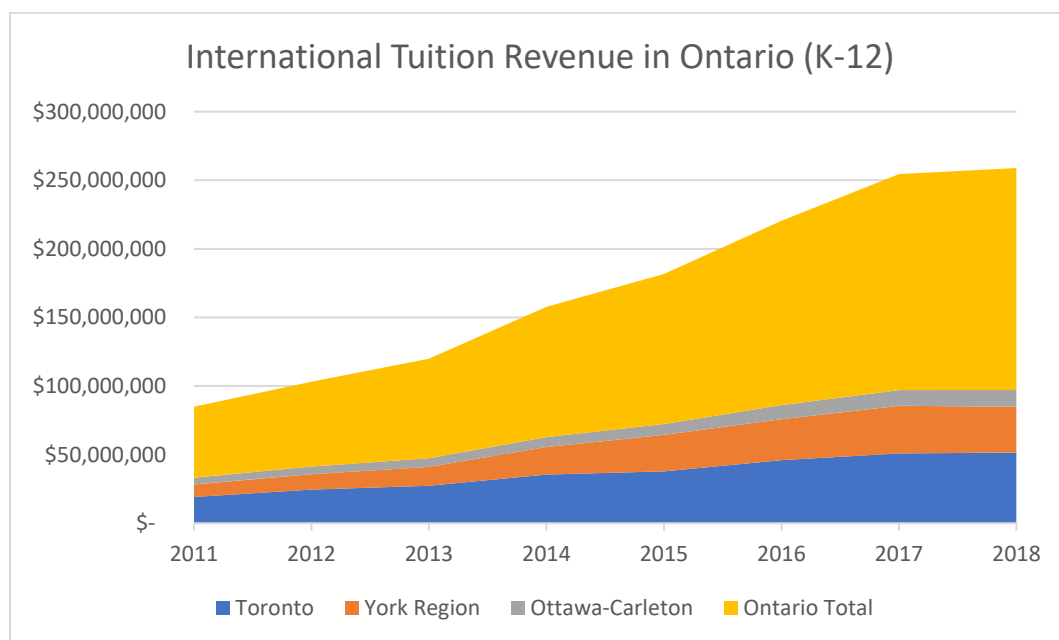


Figure 12: International Tuition Revenue for K-12 in Ontario (2011-2012 to 2018-2019)¹³⁴

DLI schools may also be situated at different points within the public-private education spectrum. As detailed earlier, educational reforms in Ontario in the mid-1980s allowed post-

¹³³ Government of Canada, “Designated learning institutions list” (last accessed 3 July 2025), online: <https://perma.cc/P6B5-HQFQ>.

¹³⁴ Ontario Ministry of Education, “Freedom of Information Access Request Number EDU-210103” (2021), archived with author. Note that Toronto, York, and Ottawa-Carleton numbers combine both Catholic School Board and District School Board figures.

secondary institutions to, for the first time, keep and accumulate the surplus value from discriminatory international student tuition fees.¹³⁵ This occurred while Federal and Provincial governments began the process of implementing neoliberal policies that aimed to reduce the role of the state and increase the influence of the private sector across the board, including in education.¹³⁶ Thus, as government spending towards public universities as a percentage of government revenue began to be rolled back, increasing tuition fees, particularly for disenfranchised migrant students, became one of the easiest ways to make up for public cuts (and then some), alongside a structural financial shift towards private donors and corporate money.¹³⁷

A key and growing revenue-generation tool within this broader neoliberal shift from public to private sources of postsecondary funding was the massive increase in scale and scope of international student wealth expropriation. Surplus value from education head taxes was thus used to *subsidize* domestic public budget cuts to postsecondary education. Therefore, although discriminatory tuition fees do not go directly to the general taxation purse, the direct relationship between discriminatory international student tuition and provincial tax ‘savings’ is clear and unambiguous – supporting its characterization as a type of head tax.

The process of privatizing Canadian postsecondary education also ushered in another key structural change: the entry of private equity into Canadian universities.¹³⁸ In addition to tuition and government funding, universities are funded by endowments — agglomerations of tax-sheltered donations that are invested to grow over time.¹³⁹ They also run large pension funds to meet faculty and staff pension obligations. Prior to the 1980s, virtually all universities and colleges in North America restricted their endowment and pension fund investments to domestic

¹³⁵ McCartney, “A question of self-interest”, *supra* note 29 at 38.

¹³⁶ Duncan MacLellan, “Neoliberalism and Ontario Teachers’ Unions: A “Not-So” Common Sense Revolution” (2009) *Socialist Studies* 51.

¹³⁷ Marshal Wang, “A discussion about privatization of universities across Canada” (25 March 2023), Toronto.com, online: <https://perma.cc/8GYM-F3U9>.

¹³⁸ Private equity here is used as a broad term to non-publicly traded (private) capital that raises money from institutional investors (such as pension funds, hedge funds, university endowments, high net worth investors) to pursue for-profit investment strategies. Private equity firms typically operate with limited public scrutiny that allows them to benefit from a flexible variety of strategies that capture wealth. See Kevin Morrel and Ian Clark, “Private Equity and the Public Good” (2010) 96 *Journal of Business Ethics* 249.

¹³⁹ Catherine Liu, “How universities became giant piggy banks for hedge-fund billionaires” (8 March 2023), Business Insider, online: <https://perma.cc/X43T-HGYA>.

equities, bonds, and cash.¹⁴⁰ Throughout the subsequent decades, university endowment and pension funds would become increasingly financialized and transform themselves into large for-profit institutional investors. This troubling intersection between high finance and high education has skewed the purpose and mission of universities from learning, knowledge-advancement, critical thinking, and community service to the objectives and interests of profit-maximization. This institutional shift in priorities in turn influences international student policy, including student recruitment, tuition, and expenditure policies.

In Canada, the widespread introduction of private equity into university endowment and pension fund management was foreshadowed by its initial entry into broader public sector pension asset investment. This has been characterized by Jamie Shilton as financialized “pension fund capitalism” that adopts investment strategies consistent with private financial actors, but benefits from a type of public ownership veneer.¹⁴¹ Of particular importance was the establishment in 1990 of the Ontario Teachers’ Pension Plan (OTPP). Teachers in Ontario have had a pension plan in place since at least 1917¹⁴² which for many decades was run as an extension of the Ontario Treasury with investments limited to Ontario government bonds.¹⁴³ This changed significantly when the OTPP was established in 1990 and a substantial amount of the pension fund was moved into higher-risk, higher-return investments such as derivatives, private equity, venture capital, hedge funds, and real estate.¹⁴⁴ This institutional pivot was followed by other large pension funds such as the Canada Pension Plan Investment Board (CPPIB) and later university pension and endowment funds.

One of the earliest postsecondary adopters in the transition to private equity investments was the University of Toronto, which in 2000 established its own semi-autonomous professional

¹⁴⁰ William N Goetzman and Sharon Oster, “Competition among University Endowments” in Jeffrey R Brown and Caroline M Hoxby, eds, *How the Financial Crisis and Great Recession Affected Higher Education* (Chicago: University of Chicago Press, 2014) at 100.

¹⁴¹ Jamie Shilton, “Who Owns the City? Pension Fund Capitalism and the Parkdale Rent Strike” (2021) 35 *Journal of Law and Social Policy* 1, online: <https://perma.cc/S4LR-38ZS>.

¹⁴² Ontario Secondary School Teachers’ Federation, “The Ontario Teachers’ Pension Plan: A Brief History” (March 2012) 39:7 *Update: Ontario Secondary School Teachers' Federation* 6-7.

¹⁴³ Leo de Bever, “The Business Economist At Work: Ontario Teachers’ Pension Plan Board” (1998) 33:2 *Business Economics* 49 at 50.

¹⁴⁴ Julie Segal, “From Debentures to Derivatives: A Brief History of Ontario Teachers” (21 September 2012), *Institutional Investor*, online: <https://perma.cc/5Q5F-7T43>.

financial management unit – the University of Toronto Asset Management (UTAM) corporation.¹⁴⁵ While its endowment and pension funds were initially invested in traditional assets such as stocks and bonds in the 1980s and 1990s, UTAM expanded its investments to include “alternative products” such as private equity and hedge funds which could engage in riskier short sell and arbitrage strategies.¹⁴⁶ Other major universities, such as the University of British Columbia and McGill University, soon followed suit, developing a similar model and investing in similar assets. As of 2024, the endowment of UTAM was estimated to be worth \$3.6 billion CAD.¹⁴⁷ Additionally, the university’s pension fund assets were estimated to be worth \$6.6 billion CAD at the time they were transferred to the custody of the University Pension Plan (UPP) in 2021.¹⁴⁸

Commenting on the political economy impact of this financial shift in the context of higher education in North America, Garrett Shishido Strain argues that:

[B]y funneling money to hedge funds, public universities are, incongruously, supporting the antisocial policies hedge fund managers are notorious for rallying behind: rolling back corporate regulation, slashing the minimum wage, eliminating pensions, privatizing public schools, trammeling unions, cutting taxes for the wealthy, and forcing broke nations further into insolvency (through “vulture” funds that specialize in distressed sovereign debt).¹⁴⁹

Thus, maximizing profit through increasingly expropriative and expanded international student programs are not an aberrational policy choice, but rather an extension of the broader transition of the Canadian university from a publicly oriented learning and research institution to effectively a for-profit private equity fund with a school attached. In 2019, UofT student newspaper *The Varsity* reported that money from international student tuition revenue – \$928.61

¹⁴⁵ University of Toronto Asset Management Corporation, “Annual Report 2001” (2001) at 1, online: <https://perma.cc/7MS5-PMDS>.

¹⁴⁶ *Ibid* at 4 and 12.

¹⁴⁷ University of Toronto, “Endowment Report: 2023-2024” (2024), online: <https://perma.cc/RMZ5-YHKG>.

¹⁴⁸ Benefits Canada Staff, “U of T pension assets grew by 4.7 per cent in the first half of 2021: UTAM report” (5 July 2022), online: <https://perma.cc/7NS4-WBEL>.

¹⁴⁹ Astra Taylor, “Universities Are Becoming Billion-Dollar Hedge Funds With Schools Attached” (6 March 2016), *The Nation*, online: <https://perma.cc/2K72-QTV6>.

million – had become the greatest source of revenue for the university for the first time. It made up 30% of the university’s total revenue, exceeding that of provincial funding (25%) and domestic tuition (24%).¹⁵⁰ That share has almost certainly increased as in 2023, the percentage of international students shot up to 30.9% of the total undergraduate enrolment and are charged rates nearly ten times the amount of tuition paid by domestic students.¹⁵¹

Meanwhile, the percentage of international students enrolled from the “Asia and Pacific” region (excluding the Middle East) made up a staggering 80.8% of total international students in 2023-2024.¹⁵² China alone accounted for 55.3% of international students at UofT.¹⁵³ In a shocking historical echo, Mainland Chinese international undergraduate students at UofT paid approximately \$200 million in tuition fees in 2023-2024 alone, with around 80% of that captured in migrant education taxes – quite *literally* a new Chinese head tax.¹⁵⁴ In the context of the reduction in public funding and the privatization of Canadian universities across the board, elite universities such as UofT have been increasingly lining their pockets with education head taxes sourced from Global South families, particularly from Asia.

C. Economic opposition to education for all: the problem with liberal rights discourse

This leads us back to the situation of Canada’s ‘Dreamers’ – youth with precarious legal status who are attempting to pursue their dreams and ambitions through higher education despite numerous institutionalized barriers and exclusions. While late in comparison to the United States, a slowly burgeoning scholarship has developed around Canada’s ‘Dreamers’ including, *inter alia*: mapping the impact of illegalization on youth social belonging¹⁵⁵, analyzing access

¹⁵⁰ Andy Takagi, “U of T receives more money from international students than from Ontario government” (24 February 2019), The Varsity, online: <https://tinyurl.com/369p8awf>.

¹⁵¹ University of Toronto, “Budget Report 2023-24 and Long-Range Budget Guidelines 2023-24 to 2027-28” (16 February 2023) at 15, online: <https://perma.cc/NS55-2VPZ>.

¹⁵² University of Toronto, “Enrolment Report 2023-24 and Long-Range Enrolment Plans 2024-25 to 2028-29” (13 February 2024) at 38, online: <https://perma.cc/G6N2-A6DK/>.

¹⁵³ *Ibid.*

¹⁵⁴ *Ibid.*

¹⁵⁵ Francesca Meloni, “The Ambivalence of Belonging: The Impact of Illegality on the Social Belonging of

from a human right to education approach¹⁵⁶, sharing best practices from sanctuary scholar programs¹⁵⁷, and addressing common legal concerns asserted by postsecondary institutions in opposition to these programs.¹⁵⁸ Further, two small sanctuary scholar programs have emerged to assist Canadian ‘Dreamers’ in accessing postsecondary education: one at York University¹⁵⁹ and another more recent program at Toronto Metropolitan University.¹⁶⁰

The current legal framework is generally silent regarding the legality of status-excluded youth accessing higher education. With respect to minors, some provincial legislation, such as Ontario’s *Education Act*, has effectively codified the right to education as a right “to be admitted to a school” and that individuals “less than eighteen years of age shall not be refused admission because the person or the person’s parent or guardian is unlawfully in Canada.”¹⁶¹ Further, *IRPA* section 30(2) states that every “minor child in Canada, other than a child of a temporary resident not authorized to work or study, is authorized to study at the pre-school, primary or secondary level.”¹⁶² However, these laws do not contemplate the provision of postsecondary education to status-excluded individuals.

As a result, certain postsecondary institutions, such as the University of Toronto, have raised a series of legal concerns about implementing sanctuary programs that facilitate access to education for status-excluded students.¹⁶³ These concerns were addressed by a commissioned

Undocumented Youth” (2019) 92:2 *Anthropological Quarterly* 451.

¹⁵⁶ Tanya Aberman, Philip Ackerman, with members of the FCJ Refugee Centre’s Youth Network, “‘Isn’t the Right to an Education a Human Right?’: Experiences of Precarious Immigration Status Youth Navigating Postsecondary Education” in Sara Carpenter & Sharhrzad Mojab, eds, *Youth as/in Crisis: Young People, Public Policy and the Politics of Learning* (Rotterdam: Sense, 2017).

¹⁵⁷ Paloma E Villegas, “Bridging Borders: Teaching a Bridging Course with Precarious Status Students Transitioning to the University” in Francisco J Villegas & Janelle Brady, eds, *Critical Schooling: Transformative Theory and Practice* (Cham: Springer, 2019).

¹⁵⁸ Elise Mercier, Sean Rehaag, and Francisco Rico-Martinez, “Canadian “Dreamers”: Access to Post-Secondary Education” (2023) 60 *Osgoode Hall Law Journal* 699.

¹⁵⁹ York University, “Sanctuary Scholars’ Bridging Program” (last accessed 3 July 2025), online: <https://perma.cc/433K-6LZL>.

¹⁶⁰ Toronto Metropolitan University, “Sanctuary Scholars” (last accessed 3 July 2025), online: <https://perma.cc/KNH7-75VB>.

¹⁶¹ *Education Act*, RSO 1990, c E2, s 49.1; also see British Columbia’s *School Act*, RSBC 1996, c 412, s 82(2) which gives the right to free K-12 education if a student and their guardian are “ordinarily resident” in BC.

¹⁶² *Immigration and Refugee Protection Act*, SC 2001, c 27 at s 30(2) [*IRPA*].

¹⁶³ Georgia Kelly, “U of T could open its doors to Canada’s dreamers — if it wants to” (30 October 2023), *The Varsity*, online: <https://tinyurl.com/yry3dxhw>.

legal memo by the law firm Blake, Cassels & Graydon which concluded that: (1) there was no legal obligation requiring Ontario postsecondary institutions to refuse entry to applicants with precarious immigration status, (2) there was no real legal risk that a sanctuary program would risk an institution's DLI designation, and (3) postsecondary institutions likely did not have a legal obligation to proactively disclose students' legal status to the government in the absence of a specific court order.¹⁶⁴ Additionally, with respect to potential prosecutions, Elise Mercier, Sean Rehaag, and Francisco Rico-Martinez have argued that "prosecution of educators does not align with CBSA and Crown prosecution priorities" and that the penalties in *IRPA* section 125 are "unlikely to be applied to educators as a result", but even if they were, educators would have a strong humanitarian aid defense.¹⁶⁵

When confronted with these legal opinions by the UofT Working Group for Access to Higher Education for Students with Precarious Immigration Status, the University pivoted to summary rejection of the idea of a sanctuary scholars program entirely. In 2023, according to a member of the Working Group, the then Vice Provost of Strategic Enrolment Management bluntly explained that the University would "not admit people without status" who were "not lawfully able to attend university" but would instead find a few "superstar students" who were refugee claimants or who had been granted humanitarian & compassionate approval-in-principle (types of candidates who would have the formal right to study anyway) to give them scholarships.¹⁶⁶ In these discussions, UofT officials were criticized as ignoring sanctuary scholar program precedents at TMU and York out of institutional "hubris" and out of unwillingness to jeopardize their "special relationship with the Federal government and IRCC" that granted them "unique access and trust".¹⁶⁷

That these legal concerns do not hold up under close scrutiny should not be surprising, given that *all* Sanctuary City programs engage the same issues insofar as they attempt to (1) provide residents access to services regardless of immigration status, (2) not ask for information regarding immigration status, and (3) not share information identifying non-status residents to

¹⁶⁴ *Ibid.*

¹⁶⁵ Mercier, et al, *supra* note 158 at 752-753.

¹⁶⁶ Interview with NGO3, archived with author.

¹⁶⁷ *Ibid.*

Federal authorities.¹⁶⁸ Postsecondary education institutions are not differently situated in comparison to any other institution trying to implement sanctuary policies. And while the legality of sanctuary policies may change in the future if Federal and Provincial governments attempt to punish or otherwise coerce sanctuary jurisdictions and institutions into abandoning their practices, this has not yet happened in Canada.¹⁶⁹

Instead, the historical development of sanctuary scholar programs reveals that the primary obstacle to their implementation at scale is not legality, but its existential threat to the system of neocolonial wealth expropriation at the heart of contemporary international student policy. While the first pilot program at York University for status-excluded students began in 2017, its immediate precursor was a community-based program run by the FCJ Youth Network called “Uprooted University” – an open education project that offered accessible, flexible, and community-centric learning opportunities for precarious migrant and non-status youth.¹⁷⁰ Uprooted University was in turn influenced by other educational initiatives formed in response to significant institutional barriers to education such as Atlanta’s Freedom University and the University of the People.¹⁷¹

When migrant justice-minded educators began to lobby York University for sanctuary policies, the major barrier articulated by the first cohort of students was discriminatory tuition fees – education head taxes – with advocates fighting for individual students to pay domestic rather than international fees.¹⁷² Similarly, on the institutional side, York University was concerned first and foremost about the potential of the program to undermine their ability to extract economic rents from education head taxes. Within these neoliberal constraints, advocates for the York Access Program initially attempted to assuage these concerns by showing how the program would have minimal effects on the overall system of international student wealth expropriation: highlighting the case-by-case exceptional nature of admissions and the fact that, in

¹⁶⁸ Mia Hershkowitz, Graham Hudson, and Harald Bauder, “Rescaling the Sanctuary City: Police and Non-Status Migrants in Ontario, Canada” (2021) 59 *International Migration* 38.

¹⁶⁹ *Ibid.*

¹⁷⁰ Aberman and Ackerman, *supra* note 156 at 141.

¹⁷¹ *Ibid* at 142.

¹⁷² Mercier, et al, *supra* note 158 at 720.

the context of then decreased enrolment numbers, *some* domestic tuition-paying students were better for the bottom line than empty seats.¹⁷³

It is within these negotiations where the problems of liberal right to education discourses are seriously exposed. For one, characterizing the regime of discriminatory education head taxes as merely “financial barriers” for status-excluded students that must be overcome through greater inclusivity obscures scrutiny of who economically benefits from the existing system and its underlying xenoracist assumptions. As such, when dehumanizing sojourner assumptions about migrants that justify egregiously discriminatory tuition fees to Global South students (who have little other recourse in accessing PR) for the benefit of national subjects are left unchallenged, it effectively shrinks any future space for sanctuary programs to operate and expand.

Further, attempting to institutionalize sanctuary scholar programs *without* simultaneously challenging the premises of xenoracist discrimination results in awkward attempts to differentiate deserving and undeserving students by justifying why status-excluded or precarious-status students should benefit from equal domestic fees whereas migrants going through the international student program should not. For instance, Mercier, Rehaag, and Rico-Martinez have argued that unlike international students, precarious status youth often migrate involuntarily, don’t have sufficient financial resources, and are thus differentially situated as compared to international students.¹⁷⁴ However, the voluntary and involuntary binary is highly problematic in distinguishing between migrants¹⁷⁵ and many international students are themselves highly financially precarious, sometimes even more so due to enormous structural debt taken on to finance their education abroad.¹⁷⁶ These discourses of deserving and undeserving (including the originating trope of international students as primarily the children of wealthy elites) play in to bordering divide-and-rule strategies which undermine solidarity and

¹⁷³ *Ibid* at 722.

¹⁷⁴ *Ibid* at 710-712.

¹⁷⁵ See BS Chimni, “The Birth of a ‘Discipline’: From Refugee to Forced Migration Studies” (2009) 22:1 *Journal of Refugee Studies* 11; Oliver Bakewell, “Unsettling the boundaries between forced and voluntary migration” in Emma Carmel, Katharina Lenner, and Regine Paul, eds, *Handbook on the Governance and Politics of Migration* (Cheltenham: Edward Elgar Publishing, 2021) at 124-136.

¹⁷⁶ Susan Thomas, “The precarious path of student migrants: education, debt, and transnational migration among Indian youth” (2017) 43:11 *Journal of Ethnic and Migration Studies* 1873.

obscure the root of racial injustice and exploitation at the core of international student and postsecondary access policies.

However, migrant youth organizers are acutely aware of the dangers of these divide-and-rule discourses. For instance, an organizer for the S4 (Sanctuary Students Solidarity and Support) Collective, emphasized the importance within S4's work of building solidarity with international students and "not reifying difference".¹⁷⁷ At the same time, she also expressed the importance of being clear on the differences in legal situations between international students with valid study permits and those without. Ultimately, a political analysis that shifts scrutiny away from the morality of individual migrants' choices and towards a critique of "racialized, gendered, and classed" inequalities entrenched and constructed by the immigration system is essential for such solidarity work to be effective.¹⁷⁸

III. The new coolie trade: from migrant students to precarious labourers

A. 'Gauntlets' to permanent residency and status-exclusion

You have industry and low-skilled labour, whether it's big box shops or others looking for cheap labour and wanting to maintain a 40-hour work week for some of the students, [competing] with the labour gap we face in this country [...] We need those people working, and why not if they're paying a whole heck of a lot of money to come to Canada and study? Why should we deny them that right?¹⁷⁹

Marc Miller, Minister of Immigration, Refugees and Citizenship

As detailed in Chapter Three, Canada began creating new transition programs in the 2000s for certain migrant workers and international students to become permanent residents after

¹⁷⁷ Interview with NGO4, archived with author.

¹⁷⁸ *Ibid.*

¹⁷⁹ Kunal Chaudhary, "Canada's open secret: International students are here to be exploited" (28 November 2023), The Breach, online: <https://tinyurl.com/8ffznc49>.

a *de facto* probation period in Canada. Within immigration scholarship and policy discourses, this model is often referred to as “two-step immigration” where non-immigrant workers or students are brought to Canadian soil on temporary status first to work and/or study in order to attempt the transition to permanent residency at some point in the future.¹⁸⁰ This two-step model is also commonly referred to as “pathways to permanent residency”. For international students, the most common pathways involve working after graduation through a PGWP and then trying to satisfy the requirements for PR programs such as Provincial Nominee Programs and the Canadian Experience Class.¹⁸¹

These pathways typically emphasize pre-arranged job offers, work and educational experience in Canada, as well as language proficiency in English or French.¹⁸² The increasing importance of “in-Canada” work and study experience has transferred even more power to Canadian employers and schools within the PR admission/exclusion process. While in previous decades, the Canadian state directly managed the recruitment, oversight, and discipline of low-wage migrant workers, it now increasingly delegates these roles to non-state actors—most notably, private employers and educational institutions—under novel arrangements.¹⁸³

The massive increase in international student admission, heavy burden of discriminatory tuition debt loads, rising cost of living expenses, and potential PR tied to successful completion of Canadian school and work requirements thus create a large, flexible, and fearful workforce of migrant student labourers for Canadian capital to exploit. From the perspective of Canadian capital, keeping migrants in prolonged temporary status provides access to an increasingly large hyper-exploitable labour force, as these workers are denied unionization rights and have a

¹⁸⁰ Feng Hou, Eden Crossman, and Garnett Picot, “Two-step Immigration Selection: An Analysis of its Expansion in Canada” (22 July 2020) Statistics Canada: Economic Insights at 1.

¹⁸¹ *Ibid.*

¹⁸² *Ibid.*

¹⁸³ See Lisa Ruth Brunner, “International study cap: How some private companies are marketing tech and AI solutions” (30 May 2024), *The Conversation*, online: <https://perma.cc/PR73-7FDZ>; Tyler Chartrand and Leah Vosko, “Canada’s Temporary Foreign Worker and International Mobility Programs: Charting Change and Continuity Among Source Countries” (2021) 59:2 *International Migration* 89; Christopher Miller, “Testing the Boundaries of Employer-Driven Agricultural Migration: Privatization and the Temporary Foreign Worker Program, 2002-2011” (2018) Carleton University Thesis, online: <https://perma.cc/GPV2-ZEAA>; Sandra Schinnerl, “The Influence of Higher Education on Immigration Policy in Canada” (2021) UBC Thesis, online: <https://perma.cc/H3B4-H9HR>.

significantly reduced ability to protest working conditions.¹⁸⁴ Conveniently, because xenoracism positions these workers as foreign others and threats to the domestic working class, widespread knowledge of their abuse can translate into political exclusion rather than equality.

The additional value that can be extracted from this cheapened and precarious pool of migrant labour thus creates an incentive to *prolong* conditions of temporary status and get workers (including student-labourers) to work long hours for little pay. Because state-sanctioned conditions of precarity are simultaneously tied to the promise of PR at the end of the tunnel, I argue that the journeys that international student labourers face are not so much pathways as much as ‘gauntlets to permanent residency’ – a severe set of trials and ordeals that international students must endure and survive to reach the promised goal of permanent status. Additionally, these state-sanctioned conditions of precarity apply to both migrant student labourers (those on study visas) and those on PGWPs, regardless of whether the jobs they work in will directly satisfy “skilled occupation” work requirements directly helpful for their PR applications.¹⁸⁵

As mentioned in Chapter Three, unlike TFWP permits, IMP work authorizations (including PGWPs) and study visa work authorizations are Labour Market Impact Assessment (LMIA)-exempt.¹⁸⁶ As a result, employers hiring IMP workers can recruit more migrant workers at lower wages by bypassing the TFWP's requirements, such as localized median wage standards and caps on the proportions of low-wage migrant workers.¹⁸⁷ This allows employers to further

¹⁸⁴ Harsha Walia and The Breach, “‘Perfected in Canada’: the racist exploitation of migrants” (28 October 2021), The Breach, online: <https://tinyurl.com/3mth8kaw>; Harsha Walia, *Border and Rule: Global Migration, Capitalism, and the Rise of Racist Nationalism* (Chicago: Haymarket, 2021).

¹⁸⁵ For instance, the popular Canadian Experience Class requires at least 12 months of full-time Canadian “skilled” worked experience (or equivalent in part-time work experience) in occupations designated by the Canadian government as either management or those deemed as requiring a university degree or diploma. Government of Canada, “Canadian experience class (CEC): Qualifying work experience” (last accessed 3 July 2025), online: <https://perma.cc/8BF3-6WU9>.

¹⁸⁶ Globe and Mail Editorial Board, “Immigration: Canada’s economy can’t rely on temporary workers and study permits forever” (8 June 2023), online: <https://perma.cc/CE4S-4M48>.

¹⁸⁷ A Labour Market Impact Assessment (LMIA) is a document that Canadian employers need to obtain from the Government of Canada before hiring a temporary foreign worker in certain programs. To obtain an LMIA, employers typically need to show that a Canadian applicant cannot be found to fill the position and to meet certain wage thresholds depending on the position.

¹⁸⁷ Employment and Social Development Canada, “Program requirements for low-wage positions” (last accessed 3 July 2025), online: <https://perma.cc/X49P-EL6J>.

suppress wages while evading oversight from Employment and Social Development Canada – in part explaining their incredible popularity in the past decade among employers.¹⁸⁸

Another key aspect of international student-labour exploitation is *structural indebtedness*. Egregiously expensive international tuition fees, combined with Canada’s high cost of living, mean that many international students must take on substantially higher levels of education-related debt than domestic students. Further, international students are ineligible for grants, loan forgiveness, scholarships, and other post-secondary student assistance that are available for domestic students – thus necessitating private debt financing. One study of over 300 international students in Canada found that nearly 70 per cent of respondents indicated that they had familial or education-related debt and that they were expected to service that debt.¹⁸⁹

Regardless of how an international student is doing in their studies, if they can no longer pay their inflated tuition fees, their journey through the gauntlet ends as they lose their study permit status. For international students without access to familial wealth to alleviate financial pressures, the need to find work to cover education debt, housing, school expenses, food, clothing, transport, healthcare, and immigration costs becomes a daily struggle. The consequence of failing to meet these demands can result in serious financial and health impacts as well as loss of status and potential deportation. This state-created financial precarity means that international student labourers frequently enter the job market in desperate conditions, scrambling for low-paying jobs close to school, often competing with other international students. For instance, during the Fall of 2023 in Windsor, 400 mostly international student applicants lined up for hours outside Namaste Indian Supermarket where it was posted on social media that they were looking to fill seven grocery positions.¹⁹⁰ Some of the applicants “started crying [to the employer] and started explaining their financial crisis and what they were facing in Windsor”.¹⁹¹

¹⁸⁸ *Ibid.*

¹⁸⁹ One Voice Canada, “Report on the Realities for International Students: Evidenced Challenges” (January 2021) at 32, online: <https://perma.cc/G6BM-PV6Z>.

¹⁹⁰ CBC News, ““They started crying”: Ontario international students finding it difficult to land work” (21 September 2023), CBC News, online: <https://perma.cc/3C3L-XG22>.

¹⁹¹ *Ibid.*

Even when they can get jobs, international student labourers face issues with rampant labour exploitation, sexual harassment, substandard working conditions, and wage theft.¹⁹² For instance, Satinder Kaur Grewal was paid \$100 CAD daily for a 12-hour workday at Chat Hut, an Indian restaurant in Brampton, in drastic violation of minimum employment standards. As *quid pro quo*, her employer promised to support her permanent residency application, a tactic many employers use to keep student-labourers in line.¹⁹³ These untenable work situations and financial pressures also repeatedly bump into the 20-hour weekly work cap for international students, as student labourers “choose” between falling further into debt or working illegally beyond the 20-hour cap to meet payments.¹⁹⁴ Those who are forced to work under the table thus find themselves outside of labour law protections, with employers able to use the threat of deportation to steal wages from workers and prevent reprisal.¹⁹⁵

Gonzalez and Mutua theorize that racial capitalism produces “sacrifice zones”: “spaces where degraded nature, land, and humans deemed unprofitable are abandoned and left to die.”¹⁹⁶ For international students navigating the gauntlet of PR, state-sanctioned conditions of precarity and isolation often lead to high rates of food insecurity¹⁹⁷, illness, homelessness, depression, heart failure, drug abuse, and suicide.¹⁹⁸ One 2018 study estimates that around 4-5 per cent of international students are homeless, translating into tens of thousands of individuals.¹⁹⁹ Housing insecurity for international students made headlines when about 50-100 unhoused international students in North Bay protested their conditions to Canadore College, arguing the institution had taken their money but failed to honour promises of accommodation.²⁰⁰ The systemic

¹⁹² Clark, *supra* note 103.

¹⁹³ *Ibid.*

¹⁹⁴ Dakshana Bascaramurty, Neha Bhatt, and Uday Rana, “Canada’s international student recruiting machine is broken” (4 November 2021), *The Globe and Mail*, online: <https://perma.cc/PR8F-AGJD>.

¹⁹⁵ Migrant Workers Alliance for Change, “Release: Migrant Students United Responds to New International Student Rules, Demands Permanent Fairness for Students Workers, Not Temporary Policies” (7 December 2023), online: <https://perma.cc/X878-Z83X> [“Response to New International Student Rules”].

¹⁹⁶ Gonzalez and Mutua, *supra* note 1 at 128.

¹⁹⁷ Frank, *supra* note 101.

¹⁹⁸ See Rumneek Johal, “Dozens of International Students Are Dying in Canada. The Federal Government Isn’t Doing Anything.” (2 February 2023), *Press Progress*, online: <https://perma.cc/XDL8-D47Q>.

¹⁹⁹ Eric Weissman, Rebecca Schiff, and Jeannette Waagemakers-Schiff, “Student Homelessness in Post-Secondary Schools: An Introductory Case Study” (November 2018), *Homeless Hub*, online: <https://perma.cc/2W7D-68AW>.

²⁰⁰ Eric Taschner, “Homeless international students in North Bay reach agreement with Canadore” (7 September 2023), *CTV News*, online: <https://perma.cc/4KL3-2FZV>.

disenfranchisement of international students has also resulted in female students experiencing sexual harassment at the hands of landlords and employers.²⁰¹

In the most extreme cases, the sacrifice zone that international student labourers inhabit leads to disproportionate exposure to premature death. As of the time of writing, no governmental body is tracking international student deaths, which makes it difficult to diagnose and assess the scale of the problem. One funeral home in Etobicoke indicated that in 2022 alone, it repatriated the bodies of 33 youth foreign nationals back to India. Staff indicate that in many cases, deaths appear to be linked to suicide, drowning, and drug overdose.²⁰² In Surrey, one Gurdwara collecting community information reported that it had tracked at least 47 Indian international students who had died from drug overdoses and suicides in the Lower Mainland of British Columbia over two years.²⁰³ Gurdwara leader Narinder Singh Walia indicated that many students began taking recreational drugs to cope with deteriorating mental and physical health conditions, adding that many students felt trapped and “unable to go home due to familial debt.”²⁰⁴

The massive increase in international student numbers during the Trudeau administration alongside accompanying media coverage and research on international student exploitation has created widespread public awareness of the issue. However, this awareness has not necessarily been to the benefit of international students themselves. Specifically, public discourse on international student exploitation has been accompanied by a parallel discourse which scapegoats these same students for longstanding socioeconomic crises, above all housing unaffordability.²⁰⁵

Accordingly, rather than attempt to equalize rights and protections for international students, the Federal government has responded to the international student exploitation crisis

²⁰¹ Shannon Hutcheson and Addy Parsons, “International students and sexual violence” (13 April 2022), McGill University, online: <https://perma.cc/3WZQ-RR8H>.

²⁰² Kirthana Sasitharan, “Funeral home workers worry about youths’ mental health as repatriations to India increase” (24 May 2023), CBC News, online: <https://perma.cc/Q5TY-GU5A>.

²⁰³ Lorne Putman, “Financial stress, exploitation takes deadly toll on international students as temple reveals 47 deaths” (13 October 2023), New Canadian Media, online: <https://perma.cc/MG4W-8YYN>.

²⁰⁴ *Ibid.*

²⁰⁵ Mike Moffatt, “Canada is failing the grade on housing. Fixing that starts with international students, but it shouldn’t end there” (2 February 2024), The Globe and Mail, online: <https://perma.cc/B37Q-LWXE>.

with a flurry of reforms in late 2023 and early 2024 including: doubling the monetary liquidity requirement students need to show from \$10,000 to \$20,000²⁰⁶, cracking down on “bad actors” in the system (referring to certain immigration agents and private colleges)²⁰⁷, implementing an additional Provincial Attestation Letter (PAL) requirement²⁰⁸, barring PGWP eligibility for migrant students who attended private colleges licensed to deliver the curriculum of an associated public college²⁰⁹, and implementing a lowered cap of international students visas of 360,000 in 2024 (down 35% from 2023).²¹⁰ Unfortunately, many of these changes make life even more difficult for international students from working-class backgrounds. Further, the severe curtailment of status options for students and migrant workers who *are already in Canada* means that three million migrants face status-exclusion over 2025-2026 as their temporary permits are set to expire – forcing them to either leave Canada or become undocumented.²¹¹

What is obscured and erased from these prescriptions are the root causes of racial exploitation of international student-labourers: (1) the discriminatory migrant education tax, and (2) the two-tier immigration system which creates the ‘gauntlet’ to PR. Both issues are not intractable; as detailed earlier in this chapter, their emergence can be traced to reforms in the 1970s as part of xenoracist backlash imposed shortly after the elimination of ‘White Canada’ immigration policies.²¹² Further, both issues would immediately be resolved with status for all, which for years has been the primary political demand of the Migrant Rights Network, the largest network of migrant organizations in Canada.²¹³ Indeed, cross-country grassroots organization by the Status for All campaign resulted in the Trudeau Liberal administration

²⁰⁶ The Canadian Press and Charlie Carey, “Liberals double income requirement for international students, targeting ‘puppy mill’ schools” (7 December 2023), City News, online: <https://perma.cc/HH7E-RKKB>.

²⁰⁷ Valerie Ouellet and Mike Crawley, “Canada’s international student spike was blamed on private colleges. Here’s what really happened” (27 February 2024), CBC News, online: <https://perma.cc/6KQT-GUEA>.

²⁰⁸ Government of Canada, “Provincial attestation letter or territorial attestation letter” (last accessed 3 July 2025), online: <https://perma.cc/P2TB-8RY3>.

²⁰⁹ Immigration, Refugees and Citizenship Canada, “Canada to stabilize growth and decrease number of new international student permits issued to approximately 360,000 for 2024” (22 January 2024), Government of Canada, online: <https://perma.cc/9M9A-CBVN>.

²¹⁰ *Ibid.*

²¹¹ Migrant Rights Network, “Migrant Rights Network Response to Budget 2025” (4 November 2025), online: <https://perma.cc/N3Q6-TKCN>.

²¹² McCartney, “A question of self-interest”, *supra* note 29.

²¹³ Migrant Rights Network, “About Migrant Rights Network” (last accessed 3 July 2025), online: <https://perma.cc/MT45-CMKP>.

including the regularization of undocumented workers as part of the 2021 Mandate Letter to the Minister of Immigration, Refugees and Citizenship – though this promise has not been realized.²¹⁴

Organized, grassroots campaigns and lobbying for status regularization and the elimination of two-tier migration rights have seen a fair bit of recent success. For instance, after decades of lobbying, the Canadian government acceded to the demands of migrant caregivers by announcing changes to the caregiver program that would give PR status on arrival, which migrant justice activists hope will “serve as a template for permanent resident status on arrival for all temporary foreign workers.”²¹⁵ There have also been smaller efforts and campaigns, particularly among student unions, to re-regulate²¹⁶ and ultimately eliminate²¹⁷ discriminatory international student tuition first implemented in the mid-1970s.

Hence, increased awareness and research of the structural injustices that face international students in Canada will not by themselves lead to lasting and sustainable migrant justice without addressing the structures of xenoracial capitalism and the crucial role of bordering practices in extending the life of neoliberalism. A failure to do so leads to what we see so often with immigration reforms that react to migrant abuses: a schizophrenic oscillation between harsh exclusion of those coded as ‘migrants’ to reduce domestic competition and the reluctant tolerance of migrants for use as cheap, docile, and exploitable labour, typically championed by business interests. The fact that these patterns create terrorized status-excluded populations *en masse* that can be hyperexploited by capital and scapegoated through political alienation is not a bug or byproduct of the system – it is the *raison d’être* of xenoracial capitalism’s shadow policy.

²¹⁴ Justin Trudeau, “Minister of Immigration, Refugees and Citizenship Mandate Letter” (16 December 2021), Prime Minister of Canada, online: <https://perma.cc/JH5B-ZM9M>.

²¹⁵ Migrant Rights Network, “Release: Migrant Care Workers Welcome Permanent Resident Status On Arrival” (3 June 2024), online: <https://perma.cc/2M4P-5UGN>.

²¹⁶ Canadian Federation of Students – Ontario, “Fight the Fees” (last accessed 3 July 2025), online: <https://perma.cc/83QF-6KYK>.

²¹⁷ University of Toronto Mississauga Students’ Union (UTMSU), “Fairness for International Students” (last accessed 3 July 2025), online: <https://perma.cc/KXZ2-G7GF>.

B. The Canadian state as human trafficker *par excellence*

Canada should end labour migration arrangements that foster exploitation by creating dependency situations that tie workers to their employers and give employers control [over] worker's housing, health care and migration status. The Special Rapporteur retains the view that the Temporary Foreign Worker Program serves as a breeding ground for contemporary forms of slavery, as it institutionalizes asymmetries of power that favour employers and prevent workers from exercising their rights.

Tomoya Obokata, UN Special Rapporteur on Contemporary Forms of Slavery²¹⁸

As Prime Minister, I will deport illegal immigrants and clamp down on human traffickers. That's my promise to you.

Ruby Dhalla, former Liberal Member of Parliament for Brampton-Springdale²¹⁹

At first glance, the two statements above appear to be contradictory. In the first instance, the UN Special Rapporteur on Contemporary Forms of Slavery, Tomoya Obokata, released his report on Canada in July 2024, following a series of visits in 2023. While highlighting Canadian domestic anti-trafficking legal and policy frameworks²²⁰, Obokata focused much of his report on the Canadian state's legalized construction of extreme labour exploitation through its TFWP policies, going as far as deeming it a "breeding ground for contemporary forms of slavery."²²¹ These findings echoed the complaints of Jamaican farmworkers under the SAWP who had argued that they faced conditions akin to "systemic slavery" in a 2022 open letter to the Jamaican Ministry of Labour.²²² In that letter, workers described housing conditions so poor that rats ate

²¹⁸ *Visit to Canada: Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences*, Tomoya Obokata, 22 July 2024 (A/HRC/57/46/Add.1) at para 22, online: <https://perma.cc/AV2E-K6PN> [Obokata Report].

²¹⁹ Priyanjali Narayan, "Indian-origin Canadian PM candidate Ruby Dhalla says she will deport illegal immigrants" (28 January 2025), India Today, online: <https://perma.cc/3ECW-2PXZ>.

²²⁰ Obokata Report, *supra* note 218 at paras 7-9.

²²¹ *Ibid* at paras 22-39.

²²² Ali Raza, "Jamaican migrant workers in Ontario pen open letter likening conditions to 'systematic slavery'" (20 August 2022), CBC News, online: <https://perma.cc/3VQZ-4QHK>.

their food, living in crowded rooms with cameras and zero privacy, lack of proper protection from pesticides, physical and verbal intimidation, destruction of personal property, and constant threats of deportation from their employer – in a word, trafficking.²²³

In the second instance, former Liberal MP Ruby Dhalla, as part of her campaign to be the next leader of the Liberal Party of Canada, shared an Instagram post and video committing to deporting “illegal immigrants” while *simultaneously* clamping down on “human trafficking”. While Dhalla was not generally considered one of the frontrunners for Liberal Party leadership at the time of her comments²²⁴, her positions reveal the striking convergence of carceral humanitarian anti-trafficking policies (which purport to rescue and support victims of trafficking through increased policing and carceral interventions²²⁵) with anti-migrant mass deportation policies (which construct disenfranchised and marginalized migrants as security threats to be rounded up, detained, and expunged from national territory).²²⁶ That this type of explicit mass deportation politics has become a mainstay of partisan leadership debates, not for a far-right Canadian political party, but rather its major *centrist* political party, as well as the multicultural celebration of Dhalla as a PM candidate of Indian descent, speaks to the normalizing power of anti-trafficking discourse in making xenoracism a type of political ‘common-sense’.

One of the key differences between these two approaches to “trafficking” and “contemporary forms of slavery” is the contested location and role of the Canadian state, specifically immigration law and border enforcement, in creating the very conditions of abuse and exploitation that are at the core of harms that fall under the “trafficking” umbrella. My argument in this subsection is that carceral anti-trafficking laws and policies have become a key element by which contemporary xenoracial capitalism is structured and justified morally – just as “anti-slavery” rhetoric was weaponized to justify the first race-based immigration restrictions in

²²³ *Ibid.*

²²⁴ Benjamin Lopez Steven, “All 5 Liberal leadership candidates clear final financial hurdle, turn to policies ahead of debate” (17 February 2025), CBC News, online: <https://perma.cc/P258-YAC4>.

²²⁵ See Julie Kaye and Cerah Dubé, “Challenging Notions of Benevolence and Protection: Settler-Colonial Anti-Trafficking in Manitoba” at 192-213 in Katrin Roots, Ann De Shalit, and Emily van der Meulen, eds, *Trafficking Harms: Critical Politics, Perspectives, Experiences* (Halifax and Winnipeg: Fernwood Publishing, 2024) [*Trafficking Harms*].

²²⁶ Jessica Evans, “Crisis, capital accumulation, and the ‘Crimmigration’ fix in the aftermath of the global slump” (2021) 25:2 *Citizenship Studies* 188.

the late 19th century.²²⁷ More specifically, carceral anti-trafficking laws and policies both obscure and indeed perpetuate migrant worker immobility, exploitation, and terror by positioning the main human trafficker – the Canadian state – as saviour of the very people it is exploiting, abusing, and trafficking.

As a preliminary matter, we must first be precise on what we mean when we speak of human trafficking. As Katrin Roots, Ann De Shalit, and Emily van der Meulen explain in the context of human trafficking’s multivariate social meaning:

Human trafficking is complex and contentious, in part because it is an umbrella term used to capture an array of social conditions and activities while excluding a variety of others. The term embodies gendered, racialized, sexualized, and classed dimensions, and intersects with workers’ rights, migration, border control, and much more. It is also applied to circumstances involving child abuse, intimate partner violence, sexual assault, missing and murdered Indigenous women and girls, sex work, and notions of modern-day slavery.²²⁸

From a Canadian legal perspective, *Criminal Code* section 279.01 on “trafficking in persons” states:

Every person who recruits, transports, transfers, receives, holds, conceals or harbours a person, or exercises control, direction or influence over the movements of a person, for the purpose of exploiting them or facilitating their exploitation is guilty of an indictable offense [emphasis added].²²⁹

Further, *Criminal Code* section 279.04 defines exploitation in the following way:

(1) For the purposes of sections 279.01 to 279.03, a person exploits another person if they cause them to provide, or offer to provide, labour or a service by engaging in conduct that, in all the circumstances, could reasonably be

²²⁷ Lorelei Lee, “The Roots of ‘Modern Day Slavery’: The Page Act and the Mann Act” (2021) 42 Immigration and Nationality Law Review 55; *Chinese Immigration Act*, 1885, c 71 at s 5.

²²⁸ See Katrin Roots, Ann De Shalit, and Emily van der Meulen, “Understanding Human Trafficking: An Examination of Discourses, Laws, Policing, and Migrant Labour” at 2 in *Trafficking Harms*, *supra* note 225.

²²⁹ *Criminal Code*, RSC 1985, c C-46, s 279.01.

expected to cause the other person to believe that their safety or the safety of a person known to them would be threatened if they failed to provide, or offer to provide, the labour or service.

(2) In determining whether an accused exploits another person under subsection (1), the Court may consider, among other factors, whether the accused:

(a) used or threatened to use force or another form of coercion;

(b) used deception; or

(c) abused a position of trust, power or authority [emphasis added].²³⁰

Unpacking the *Criminal Code* definition of human trafficking thus reveals effectively three constitutive elements:

(1) Facilitating both movement and movement restriction;

(2) Enacting control, direction, and influence (often through discipline and punishment or the threat thereof);

(3) For the purpose of exploitation or facilitating exploitation.

Under this conceptualization of human trafficking, what becomes clear is that this conduct is *exactly* what the Canadian state through immigration law and border enforcement engages in through two-tier immigration programs and the shadow policy of creating status-excluded communities. Indeed, among other actors engaging in similar conduct, given scale, scope, and severity, I argue that the Canadian state is unambiguously the human trafficker *par excellence*. This is not a novel argument, as legal commentators involved in migrant justice advocacy such as Shane Martinez and Chris Ramsaroop have made similar arguments, particularly in the context of the SAWP.²³¹ However, I extend Martinez and Ramsaroop's

²³⁰ *Ibid* at s 279.04(1)-(2).

²³¹ For instance, in examining labour trafficking in the context of migrant worker organizing, Shane Martinez remarks that "[i]f the SAWP appears to resemble some or all the ways in which human trafficking can occur, that is because it does." Similarly, Chris Ramsaroop explains that the SAWP "facilitates state-accepted indentured labour – a system where people are tied to a single employer – and yet in no way is SAWP seen by the government or the

arguments to the Canadian state's production of other precarious status workers (such as international student labourers) as well as those who are excluded from status entirely. To support this argument, I will examine the Canadian state's role in the production of each of these three constitutive elements of human trafficking.

First, the Canadian state is the primary actor which *facilitates* both movement of migrant labourers to Canada and *enforces* mobility restriction once they arrive. In the context of agricultural migrant labour programs, Adrian Smith describes this dynamic in terms of “mobilize to immobilize”, harkening back to the legacies of colonial plantation labour regimes in the late 19th and early 20th centuries.²³² Unfree migrant worker programs facilitated by Canadian immigration policies and enforced by employers and the CBSA are accepted by the general public because they maximize profits for Canadian businesses and are “therefore justified in continuing the subordination and subjugation of racialized populations from the Global South who are working in Canada.”²³³ In doing so, they take advantage of structural global inequalities (whether in labour or education markets) that have been created by colonial and neo-colonial relations between states to make these workers both displaceable and disposable.²³⁴

The Canadian state and partnering private entities play a big role in recruitment for Canadian migrant worker programs. In the context of the SAWP, this role is particularly hands-on throughout the migration process:

[E]mployers in the agriculture industry – in consultation with Employment and Service Development Canada – routinely *recruit* people from abroad to work in Canada under the SAWP. These employers then engage the services of third parties to *transport* workers to Canada. Employers or their representatives *receive* the workers at the airport, and then *transport* them

general public as a form of exploitation.” See Shane Martinez, “Redefining “Exploitation”: Reconciling Human Trafficking Provisions with Canada’s Migrant Farm Work Program” at 242 [“Redefining Exploitation”] and Chris Ramsaroop, “A Narrative on Organizing for Migrant Farm Worker Justice” at 254 [“A Narrative on Organizing”], in Katrin Roots, Ann De Shalit, and Emily van der Meulen, *Trafficking Harms*, *supra* note 225.

²³² Adrian A Smith, “The Bunk House Rules: Housing Migrant Labour in Ontario” (2015) Osgoode Legal Studies Research Paper Series 98 at 9, citing Prabhu P Mohapatra, “Assam and the West Indies, 1860-1920: Immobilizing Plantation Labour” at 455 in Paul Hay and Douglas Craven, eds, *Masters, Servants, and Magistrates in Britain and the Empire, 1562-1955* (Chapel Hill & London: University of North Carolina, 2004).

²³³ Ramsaroop, “A Narrative on Organizing”, *supra* note 231 at 254.

²³⁴ Harsha Walia, *Undoing Border Imperialism* (Oakland: AK Press, 2013) at 40-52.

again direct to the rural farms where they will work and reside during their time in Canada.

Once SAWP participants are in Canada, their employers exercise significant *influence* over their movements. While some migrant farm workers may have bicycles to travel short distances, many rely on their employers to provide them with rides to nearby towns in order to buy food or send money to loved ones back home. These workers are constantly aware that their movement and engagement with Canadian society must not be such that it upsets their employers [emphasis added].²³⁵

Additionally, as detailed in Chapter Four, Canada has increasingly positioned international education as a cornerstone of its export economy, aligning the interests of the state, educational institutions, and private actors to attract foreign students as a source of revenue through education head taxes and as cheapened labour with promises of avenues to PR. By 2018, international students were contributing over \$22.3 billion annually to the Canadian economy.²³⁶ The Canadian state has poured substantial resources into branding and recruitment efforts to facilitate the migration of international students (and by extension, migrant student labourers) through the EduCanada brand, promotional efforts abroad, recruitment fairs, and marketing partnerships with institutions and private education brokers.²³⁷

By the mid-2010s, most Canadian colleges and universities were participating in these international recruitment activities. Like in the temporary foreign worker space, many postsecondary schools rely on for-profit third-party recruiters – especially in key source countries like India – to identify, advise, and funnel students into Canadian programs. These agents typically work on commission, with payments reaching up to 20% of a student's first-year tuition.²³⁸ Immigration lawyer Wei William Tao testified to Canadian Parliament that roughly a “third to a quarter of tuition money is being offshored to agents who have no authorization to practise immigration for the services they provide.”²³⁹ The widespread use of such

²³⁵ Martinez, “Redefining Exploitation”, *supra* note 231 at 241.

²³⁶ Canmac Economics Limited, *supra* note 77 at 2.

²³⁷ Stein, *supra* note 83.

²³⁸ Halliday, *supra* note 93.

²³⁹ *House of Commons Standing Committee on Citizenship and Immigration*, 44-1, No 3 (3 February 2022) at 1115 (Wei William Tao), online: <https://perma.cc/6TLJ-KLT7>.

intermediaries, coupled with limited oversight, has led to concerns about misinformation, student exploitation, and a lack of institutional accountability.

Second, once *inside* Canada, the Canadian state alongside private employers and institutions enact control, direction, and influence over migrants with precarious status, often through discipline and punishment or the threat thereof. Specifically, the control of movement and behaviour is accomplished through contracts and tied visas “that significantly favour employers and provide few protections to workers.”²⁴⁰ Tied visas condition migrant workers’ access to rights and status to continued good relations and specific performance in their employment contract such that their right to residence and access to housing, healthcare, and social security may be put in jeopardy if they antagonize their employer or are terminated.²⁴¹ In particular, visas that are tied to a specific employer and require employer permission to switch jobs greatly disenfranchise migrant workers’ access to justice and effective remedies, keeping them in situations of state-sanctioned bondage where employers have heightened control and direction over workers’ lives.

The situation is not too different for many migrant student-workers. Their study visas condition their rights in Canada to (1) their ability to stay enrolled in school full-time (especially continuing to pay discriminatory tuition fees and keeping up with their grades), and (2) not to breach their working conditions.²⁴² Assuming an average of \$40,000 tuition a year, undergraduate students in a typical four-year degree need to come up with \$160,000 in tuition alone, without including significant living expenses related to additional fees, books, housing, food, clothing, transportation, and socialization/entertainment. While pre-existing wealth can mitigate some of these financial pressures, many students must take on significant debt alongside working part-time jobs under higher risk of workplace exploitation. Despite the qualitative

²⁴⁰ Martinez, *Redefining “Exploitation”*, *supra* note 231 at 241.

²⁴¹ Amnesty International, “*Canada Has Destroyed Me*”: *Labour Exploitation of Migrant Workers in Canada* (London: Amnesty International, 2025) at 7-8, online: <https://perma.cc/E8YF-5PMT>.

²⁴² Immigration, Refugees and Citizenship Canada, “Study permit conditions” (last accessed 4 July 2025), online: <https://perma.cc/E2JU-XF94>.

prevalence of structural indebtedness and financial pressure among international students, this area has been significantly under researched.²⁴³

As a result of these conditional status arrangements, schools and employers are given tremendous power over migrant student-workers. Students must make discriminatory tuition payments to their school or risk losing their status and rights in Canada. To make those payments and other bills, many are desperate for work to make ends meet. Employers know this and take advantage of student-workers' desperation and disenfranchisement, commonly engaging in employment law violations such as wage theft and excessive working hours.²⁴⁴ Further, immigration conditions that place hourly caps on international student work (previously 20 hours weekly, now adjusted to 24 hours weekly)²⁴⁵ force students to work under the table and allow employers to use the threat of deportation for violating visa conditions in order to extract greater concessions from student-workers.²⁴⁶ The threat of deportation is even more acute for status-excluded workers, where employers hold the power of potential detention and deportation over workers at all times.

Coercion, influence, and control of migrants by non-state actors is made possible by the threat of loss of status and the *penal* consequences of immigration arrest, detention, and expulsion (under an administrative legal sheen) enforced by the Canadian state. This structure should not be surprising, given the history of immigration regulations and coolie labour covered in Chapter Two. Early British imperial indentured labour regimes included both worker indenture contracts alongside immigration ordinances which authorized criminal penalties (fines, imprisonment, terms of forced labour) automatically applicable for breaches of contractual work

²⁴³ As of the time of writing, Queen's University researchers Alkim Karaagac and Dan Cohen are conducting a research study to better "understand the volume, actors and relations of private finance in the international higher education system and the lived experiences of indebtedness among international students." Alkim Karaagac and Dan Cohen, "International Student Indebtedness" (last accessed 4 July 2025), online: <https://perma.cc/8SQE-ECZ6>.

²⁴⁴ Anusha Siddiqui, "Exploited in the workplace: the 'Canadian dream' turns into a nightmare for international students" (9 July 2024), Investigative Journalism Foundation, online: <https://perma.cc/TC5F-SR6Y>.

²⁴⁵ Immigration, Refugees and Citizenship Canada, "Work off campus as an international student" (last accessed 4 July 2025), online: <https://perma.cc/SJA8-5ZB3>.

²⁴⁶ Migrant Workers Alliance for Change, "Response to New International Student Rules", *supra* note 195, online: <https://perma.cc/X878-Z83X>.

duties, such as desertion and laziness.²⁴⁷ Despite these crimmigration sanctions however, as with the case of chattel slavery, indentured workers kept running away and catching these workers returning them to hard labour was a Herculean task.²⁴⁸ In the white settler colonies, after half a century of racial nationalist exclusion, the use of penal consequences to discipline labour has been brought back in ‘multicultural’ Canada through the use of widespread border police, immigration detention, and deportation infrastructure.

This leads us to the third element of trafficking: evidence that movement facilitation, control, and influence is being made “[f]or the purpose of exploitation or facilitating exploitation”²⁴⁹ to provide a labour or service and if an individual’s “safety...would be threatened if they failed to provide, or offer to provide, the labour or service.”²⁵⁰ On these terms, it is quite clear that in creating precarious status and status-excluded regimes *en masse*, the Canadian state fulfills the role of exploitation and the facilitation of exploitation. As we have covered through this dissertation, extended non-immigrant status creates dependency, precarity, and limited rights, which entrench power imbalances between employer and worker and make it difficult to leave abusive or exploitative situations, with status-excluded populations losing almost all legal protections. Aside from labour, this exploitation can extend to outright theft – most significantly through the billions of dollars annually siphoned from migrant students and their families to Canada through education head taxes or through chronic wage theft from precarious status workers.

Immigration status and the production of deportability has become the most reliable way to threaten and discipline workers, take away their rights, cheapen them in the labour market, and make it difficult to speak out or collectively organize without reprisal. Immigration detention, deportation, loss of status, and immigration raids deeply undermine migrants’ sense of safety,

²⁴⁷ Walton Look Lai, *Indentured Labor, Caribbean Sugar: Chinese and Indian Migrants to the British West Indies, 1838-1918* (Baltimore and London: The Johns Hopkins University Press, 1993) at 62-70.

²⁴⁸ Also see Marcus Rediker, Titas Chakraborty, Matthias van Rossum, eds, *A Global History of Runaways: Workers, Mobility, and Capitalism 1600-1850* (Oakland: University of California Press, 2019).

²⁴⁹ *Criminal Code*, RSC 1985, c C-46, s 279.01.

²⁵⁰ *Ibid* at s 279.04(1)-(2).

often producing chronic fear, anxiety, and a feeling of living “at gunpoint”.²⁵¹ As detailed in Chapter Three, these practices affect every part of a status-excluded migrant’s life – from their mental health to their ability to access basic services.

In sum, what the millions of predominantly low-income racialized people in Canada funneled into status-precarity and status-exclusion amount to is a *new coolie trade*: a massive system of migrant worker exploitation under coercive and highly restrictive conditions that provides the engine for global capitalism in the 21st century.²⁵² Yet what is particularly shocking about this system is its Orwellian inversion of language – despite being the human trafficker *par excellence*, the Canadian state and border enforcement is portrayed as the saviour of trafficked people, rather than their perpetrator. Since the 2000 adoption of the Palermo Protocol²⁵³:

[T]here has been an explosion of advocacy organizations, social service agencies, research centers, think tanks, school clubs, Christian charities, academic journals, and foundations across the US (and the world) that profess a dedication to combating human trafficking, sex trafficking, or “modern slavery.” These organizations develop human trafficking law and policy for the state, advise the state on human trafficking policy, lobby members of local, regional, federal, and international bodies to enforce human trafficking laws and policy.²⁵⁴

In Canada, hundreds of millions of dollars of funding have been poured into state anti-human trafficking programs. For instance, the federal government committed over \$125 million for its National Strategy to Combat Human Trafficking between 2019-2024.²⁵⁵ Not to be outdone, the Ontario provincial government in May 2021 passed Bill 251, which set aside \$307 million for its anti-trafficking strategy, including “increased capacity for policing, Crown prosecutors and intelligence gathering” and creating “new multi-disciplinary police and child

²⁵¹ Human Rights Watch and Amnesty International, “I Didn’t Feel Like a Human in There” (2021), online: <https://perma.cc/H7JW-4MRK>; Interview with M3, archived with author.

²⁵² Walia, *Undoing Border Imperialism*, *supra* note 234 at 70-71.

²⁵³ *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, 15 November 2000, A/RES/55/25 [Palermo Protocol].

²⁵⁴ Chanelle Gallant and Elene Lam, *Not Your Rescue Project: Migrant Sex Workers Fighting for Justice* (Chicago: Haymarket, 2024) at 111-112.

²⁵⁵ Minister of Public Safety and Emergency Preparedness, “National Strategy To Combat Human Trafficking 2019-2024” (2019), online: <https://perma.cc/X9AD-J3LD>.

protection specialized intervention teams”²⁵⁶ in the face of concurrent mass mobilizations to divest from police and invest in community supports.²⁵⁷ Yet as migrant sex worker organizers Chanelle Gallant and Elene Lam argue:

In reality, anti-trafficking non-profits do not combat human trafficking, violence, exploitation, and coercion in the sex industry, they facilitate, enhance, and expand state violence. They are aligned not with a social justice movement fighting gender-based violence and “modern slavery,” but with right-wing and carceral feminist movements that are opposed to racial, social, and economic justice.²⁵⁸

By reframing ‘trafficking’ as movement, influence, and exploitation of people committed solely by ‘bad actors’ and ‘criminal elements’ *outside* systems of capitalism and immigration law:

The state gets to decide what counts as modern slavery, and it has decided that it does not include corporate wage theft, even when millions of workers are cheated out of money for their labor. Legal definitions of modern slavery do not include the extreme economic coercion that forces poor migrants to take abusive, exploitative jobs for massive corporations that cheat them, bust unions, and lead to serious illnesses and injury. [...] These conditions of exploitation and sexual and physical abuse are not treated as modern slavery or sex trafficking, because they are perpetuated against other marginalized people, at the hand of the capitalist class and protected by the state.²⁵⁹

However, it is important to understand that this cynical manipulation of anti-trafficking and anti-slavery discourse for its *de facto* opposite is nothing new. Just as the first immigration ordinances in the British empire used anti-slavery discourse to impose mobility restriction and penal discipline on indentured labourers and white settler colonies used anti-coolie discourse to impose their first immigration exclusions, today’s ‘anti-trafficking’ zealots are going back to the

²⁵⁶ Government of Ontario, “Ontario’s anti-human trafficking strategy 2020-2025” (last accessed 4 July 2025), online: <https://perma.cc/8KEA-GYYV>.

²⁵⁷ Shanifa Nasser and Farrah Merali, “Why some sex worker advocates say Ontario’s anti-human trafficking bill will do more harm than good” (11 May 2021), CBC News, online: <https://perma.cc/VA9G-9P96>.

²⁵⁸ Gallant and Lam, *supra* note 254 at 112.

²⁵⁹ *Ibid* at 14.

same well of ideas that created racist bordering regimes in the first place. A historical and systemic xenoracial capitalist lens allows us to unpack, decode, and reveal this system for what it is – old wine in new bottles.

Conclusion: freedom dreams

The idea that we could possibly go somewhere that exists only in our imaginations – that is, “nowhere” – is the classic definition of *utopia*. Call me utopian, but I inherited my mother’s belief that the map to a new world is in the imagination, in what we see in our third eyes rather than in the desolation that surrounds us.

Robin DG Kelley, historian and author of *Freedom Dreams*¹

I would like to close this dissertation (as I had opened it) with some personal reflections. Looking back, my entire legal career up to this point has been largely shaped, rightly or wrongly, by guilt. During my JD studies, I was thoroughly uninterested in law school and thought seriously about quitting. It was only after our Asia Law Society student group invited (now Federal Court Justice) Avvy Go to speak on the Chinese Head Tax and class action case² that I convinced myself that I should stay.

I felt guilty that despite growing up in Canada nearly all my life, I was completely ignorant to Chinese Canadian history and in turn, a reckoning with who I was, why I was here, and who came before me. As an immigrant, I felt guilty that despite my immense privilege, especially relative to my parents and grandparents³, I had not thought seriously about how to use that privilege in a responsible manner – which ultimately led to my stint at the Chinese and Southeast Asian Legal Clinic. Further, as a Hong Konger, I felt guilty that my parents brought me to Canada when I was young, since if I had stayed in my city of birth and tried to remain true to my politics during a time of ascendant authoritarianism, I would almost certainly face criminal sanction and the prospect of prison.⁴

¹ Robin DG Kelley, *Freedom Dreams: The Black Radical Imagination* (Boston: Beacon Press, 2022) at 2.

² *Mack v Canada (Attorney General)* (2001), 55 OR (3d) 113; *Mack v Canada (Attorney General)* (2002), 217 DLR (4th) 583, leave to Supreme Court of Canada refused.

³ As my grandmother once relayed to me, times were so difficult that she nearly sold my mother as a baby to a more well-off family for two large, dried squid, withdrawing only when the potential buyer showed up with just one of the promised commodities.

⁴ Vincent Wong and JS Tan, “What China’s New National Security Laws Mean for the Protest Movement in Hong Kong” (26 May 2020), Jacobin, online: <https://perma.cc/EL2H-9QK8>.

Unsurprisingly then, I came to this dissertation motivated by a sense of guilt as a clinical immigration lawyer. In representing individuals case-by-case within the Canadian immigration system, where one must ‘see like a state’ to do their job effectively, I felt unable to challenge that system and its dehumanizing premises at all in any meaningful way. Even now as a law professor, I struggle daily with a sense of guilt. Guilt about being in the envious position of having the time and resources to read and study. Guilt around whether I should be the one writing and taking space around these important issues that impact marginalized communities and whether ‘I’m getting it right’. Trepidation that my writing and normative analyses will be interpreted as a privileged scholar passing judgment on the politics and decision-making of people with far less power than I, who are simply trying to survive in a very difficult world, and so on.

Yet guilt has also given me the motivation to search for helpful and hopeful paths. It has led me to study history, challenge prior assumptions, and excavate different modes of analysis, praxis, and individual and collective freedom to keep my hopes and dreams alive. As Robin DG Kelley describes it, to believe “that the map to the new world is in the imagination” and to overcome a “culture of cynicism”.⁵ What I have learned from these years pursuing this dissertation is that unearthing forgotten histories is a renewable resource for political and legal imagination, as well as creating new futures based upon these resources. In doing so, I find the motivation by which to cut against law’s tendencies to “grind down the idealism” that people arrive with before entering law school and legal practice.⁶ I hope to apply the lessons I have learned from studying history to the current moment in an analytic form that can be useful to those struggling for migrant liberation. Whether I have succeeded even in part towards this goal, I leave to the judgment of the reader.

Almost a full decade after the July 1st, 2015 commemorative ceremony for injured and dead Chinese railroad workers in Toronto which began this dissertation, I found myself at the other end of the country, strolling through the new Victoria Chinatown Museum, nestled in Fan Tan Alley in the heart of Canada’s oldest Chinatown. One of the exhibits, ‘Victoria in the Time

⁵ Kelley, *supra* note 1 at 2, 7.

⁶ William P Quigley, “Letter to a Law Student Interested in Social Justice” (2007) 1:1 DePaul Journal for Social Justice 7 at 9.

of Exclusion’, displayed a large wall of the Chinese who lived in Victoria from 1923-1947 through their state-issued Certificates of Identification – mandated by law under pain of fines, imprisonment, or deportation. All these people, of course, had their lives, hopes, and dreams severely damaged by the xenoracist law and policy of their time.

However, like other oppressed peoples throughout history, they did not take their oppression laying down. Another part of the exhibit displayed news articles of Chinese communities staging demonstrations, organizing mass meetings of protest, petitioning support from allies and other Chinese communities in the diaspora as well as China proper. One news article indicated that some were engaging in civil disobedience, ignoring the registration requirement, and ready to test its legality in court, arguing that it was “illegal”, “discriminating”, “unjust”, and “in interference with our civil rights in this Province.”⁷

While there were those (especially those born in Canada or naturalized as Canadian nationals) who loudly and publicly protested, others resisted in a much more clandestine way. Status-excluded Chinese migrants at the time purchased and adopted the identities of individuals exempt from exclusion, “passing” in an “ongoing performance of legally recognized kinship...to enter or remain in Canada in contravention of exclusionary laws.”⁸ As Melanie K Ng writes, “the existence of paper families was among the most well-known secrets across Chinese communities” as “secret-keeping was an imperative of survival.”⁹ Further, archival research and historiography on the subject is complicated (practically and ethically) by the fact that those “that might be considered the most ‘successful’ are those that left no trace, that escaped the record of immigration officials.”¹⁰

As I brought out my phone to take snapshots of the exhibit, I received text messages and notifications about what was happening in Los Angeles. After Immigration and Customs Enforcement (ICE) agents began raiding numerous communities in the city on June 6th, 2025 – some made under the suspicion that workers at a clothing warehouse were using false documents

⁷ Exhibit photo archived with author.

⁸ Melanie K Ng, “Open Secrets: Methods and Archives in Chinese Canadian Histories” (2024) 34:1 Journal of the Canadian Historical Association 183 at 185.

⁹ *Ibid* at 186.

¹⁰ *Ibid*.

– anti-ICE protests erupted, resulting in the Trump administration unleashing the National Guard and US Marines to quash protestors in an unprecedented move. Police and military personnel in riot gear clashed with protestors, using tear gas and rubber bullets to violently disperse people and pave the way for ICE raids to continue unobstructed.¹¹

Canada was moving in a similar direction. After many years of unprecedented growth in the number of precarious migrant workers (including international student workers) under the Trudeau administration, the Mark Carney Liberal administration has since 2024 undergone a marked restrictive turn, characterized by declining intake targets, a retreat from humanitarian obligations, fewer pathways to PR, heightened border securitization, and expanded border enforcement powers. The very first bill advanced by the new administration was Bill C-2 (later Bill C-12), the so-called “Strong Borders Act” which proposes to, *inter alia*: block anyone resident in Canada for more than one year from refugee applications, allow for mass surveillance without warrant, remove privacy protections and enhance surveillance and information-sharing across agencies and with the United States, and provide powers for the Minister to cancel permits and revoke applications without due process – setting the stage for mass deportations.¹² Despite Carney having campaigned on being different from Donald Trump and his anti-migrant politics, Bill C-2 has been criticized as “nothing less than a shameful capitulation to Trumpian xenophobia”.¹³ Moreover, the spokesperson for Bill C-2 was announced by Minister of Public Safety Gary Anandasangaree – a well-known Tamil Canadian former human rights lawyer and refugee rights advocate – showcasing the way in which Canadian liberal racial inclusion (domesticated ‘anti-racism’) can be effectively co-opted to uphold structures of xenoracial violence.¹⁴

In its 2025 budget, the federal government froze its permanent resident targets to 380,000 while simultaneously chopping the number of study and visitor permits it would issue – leaving the some three million people in Canada on temporary visas facing status-exclusion and

¹¹ James Liddell, Mike Bedigan, and Rebecca Whittaker, “Why anti-ICE protests are spreading across the US” (13 June 2025), *The Independent*, online: <https://perma.cc/C9AN-99E4>.

¹² Canadian Council for Refugees, “Over 300 Organizations United to Demand Complete Withdrawal of Bill C-2” (18 June 2025), online: <https://perma.cc/6E63-QZKN>.

¹³ Pitasanna Shanmugathas, “Canadian Minister Anandasangaree’s Border Bill Constitutes a Vicious Assault on Immigrant Rights” (6 June 2025), *Jurist*, online: <https://perma.cc/V6SD-Y754>.

¹⁴ *Ibid.*

scrambling for a tiny fraction of regularization spots.¹⁵ These quantitative cutbacks have been accompanied by programmatic tightening: higher financial thresholds for study permits¹⁶, the introduction of provincial attestation letters, the curtailment of post-graduation work permits for certain programs, and stricter labour market assessments for employers.¹⁷

\$1.3 billion CAD of new federal investment has been directed toward border security infrastructure (including “helicopters, drones, and mobile surveillance towers”), new screening technologies, and deportation capacity, reflecting a growing convergence between immigration management and national security policy.¹⁸ Framed rhetorically around housing pressures, system integrity, and fighting crime and terrorism, these measures together represent a structural recalibration of Canada’s migration regime from one at least rhetorically oriented toward openness and growth to one defined by containment, verification, and enforcement, consolidating a securitized logic of migration control within the broader apparatus of Canadian state sovereignty.

As decades of neoliberalism in Canada and elsewhere have greatly exacerbated socioeconomic inequality, the destruction of the environment, as well as racial and gender anxiety, masses of disaffected and disillusioned people are being radicalized by far-right ideology – a resurgence of fascism with anti-migrant scapegoating politics as the tip of the spear.¹⁹ These structural and discursive technologies turn the cycle of xenoracial capitalism again from a period of adverse incorporation towards violent nativist exclusion, further pushing more people into the ranks of the status-excluded whose labour power can be extracted under conditions of extreme precarity, administrative invisibilization, and potential penal consequences

¹⁵ Migrant Rights Network, “Migrant Rights Network Response to Budget 2025” (4 November 2025), online: <https://perma.cc/N3Q6-TKCN>.

¹⁶ For instance, the Federal government increased its proof of funds requirement for study visa applicants from \$10,000 to \$20,635 in 2024 and again to \$22,895 in 2025. The government again justified imposing harsher financial barriers on these students ostensibly to “protect” them. Immigration, Refugees and Citizenship Canada, “Revised requirements to better protect international students” (7 December 2023), online: <https://tinyurl.com/kzc35fn6>.

¹⁷ Caroline Minks, “2025 mid-year review: major immigration policies and changes implemented” (4 July 2025), CIC News, online: <https://perma.cc/E97J-L6GB>.

¹⁸ Public Safety Canada, “Government of Canada announces its plan to strengthen border security and our immigration system” (17 December 2024), online: <https://tinyurl.com/5n6mbczk>.

¹⁹ Sanam Islam, “Omer Aziz on the alarming rise of modern fascism in Canada” (24 June 2024), Broadview, online: <https://perma.cc/M7X2-YEQX>.

through border enforcement – the Canadian government’s shadow policy at work. As IRCC slashes PR spots and international students and recent graduates in Canada run out of time and space to regularize, officials have been simultaneously stoking panic about the 47,175 study permit holders who are potentially “non-compliant” with their conditions and thus “in Canada illegally”.²⁰

A xenoracial capitalism lens shows us how adversely incorporating millions of migrants through precarious temporary labour and education streams and then plunging them into deportability and status-exclusion through restriction and scapegoating, are not contradictions but complementary logics. Both rely on the same racialized ordering of labour and belonging. Importantly this oscillation is *how neoliberalism protects and extends itself through seemingly contradictory migration dynamics*.

Neoliberal restructuring since the 1980s has hollowed out welfare states, privatized public goods, and generated housing, education, and labour market crises. Migrants are first incorporated through programs that extract value – international students subsidize universities and colleges gutted by public funding cuts while non-immigrant workers sustain low-wage sectors vital to the Canadian economy. But when the contradictions of neoliberalism – like unaffordable housing, precarious jobs, or overstretched services – become politically explosive, migrants are then recast as the source of the problem. Restrictions on visas, border securitization, and scapegoating displace public anger away from neoliberal policies and elites, and onto racialized outsiders.²¹ This scapegoating produces immigration restrictions, visa caps, and mass deportations which in turn produce a growing population of status-excluded people (including many ‘Dreamers’) who work under the table low-wage or informal sectors, have limited access to social services, and are subject to constant surveillance and threat of removal.

In this way, migrant exploitation and exclusion work together as a survival strategy for neoliberalism. Exploitation generates the resources to keep starved public systems afloat without reversing austerity, while exclusionary measures channel social discontent away from structural

²⁰ TOI World Desk, “47,000 foreign students may now be in Canada illegally, says IRCC; ‘India one of the top countries’” (6 October 2025), Times of India, online: <https://perma.cc/VV9T-8DCZ>.

²¹ The Breach, “Canada’s elite are scapegoating migrants—and here’s why they’re wrong” (5 March 2025), online: <https://tinyurl.com/38jtz2ux>.

reform and into nationalist, racialized narratives of protection. Meanwhile, neoliberalism abroad works to expand and protect Canadian corporate interests (particularly resource extraction) in the Global South, contributing to structural changes that displace local populations and drive them to emigrate under conditions of duress. Xenoracist cycles not only manage migrant labour and belonging but also shield Canadian neoliberalism from critique, allowing it to persist and adapt despite mounting crises.

As I stood in the middle of Victoria's Chinatown while taking in news of the mass immigration raids, more questions naturally emerged. How do we understand our history? What lessons can we draw from it to meet the injustice of the present moment? For Chinese Canadians like me, the historical lesson from the 2015 railroad worker commemoration ceremony – that 'we' may now celebrate Canadian nationalism with dignity because 'we' have been acknowledged as great nation-builders – seems insufficient at best and deeply offensive at worst. When we look again at the faces on the Victoria museum's wall of Chinese Certificates – many of them part of paper families themselves – is our history not the history of Canada's first undocumented, status-excluded communities? Are the young people who appear before us also not some of Canada's first 'Dreamers'? And so, if the history that we solemnly preserve, curate, commemorate, and teach is the story of status-exclusion, mutual aid, and righteous civil disobedience, what does a reckoning with our history morally compel us to do? Does it not compel us to stand with the status-excluded communities of today, rather than the (same) state that forces them into invisibility, exploitation, and terror? Will we be the 'good' Asians? The 'model minority'? Or will we be the 'bad' Asians? Who accept that, in the words of Martin Luther King Jr, "one has a moral responsibility to disobey unjust laws"?²² Who refuse to have our anti-racism domesticated?

Since the first intra-imperial immigration ordinances to the development and first proliferation of the doctrine of sovereign migration control in white settler nations, xenoracial capitalism has played an important and increasingly influence role in the development of the modern nation-state and global political economy. Migrant workers and their families have been

²² Martin Luther King Jr, "Letter from Birmingham Jail" (1963) 212:2 *The Atlantic Monthly* 78, online: <https://perma.cc/8NC5-PQQ5>.

shoved to the periphery by both the nation-state form as well as international state inequalities left behind by the long shadow of centuries of colonialism, genocide, and slavery – their ‘dreams’ for a better and more secure life ironically providing the fuel by which a global economy based on xenoracial capitalism runs.

Further, as Nandita Sharma astutely observes, “[g]lobal inequalities in a world of nation-states are *worse* than in the Age of Empires. Disparities across *and* within nations-states have grown as practices of expropriation and exploitation have intensified in the Postcolonial New World Order.”²³ Indeed, “one’s *nationality* has become the greatest *determinant* of one’s income and wealth.”²⁴ Yet the doctrine of sovereign migration control is not only a key technology for xenoracist expropriation, exploitation, and expulsion of migrants in the Global North, but also among Global South nation-states, enriching Global South elites and dominant constituencies to the detriment of their status-excluded.²⁵ What has resulted from the development of these practices over time is the emergence of what Catherine Bestemen calls a system of “ Militarized Global Apartheid” which has as its foundation a “hierarchical labor market dependant on differential access to mobility”.²⁶

So how do we break the cycle of xenoracial capitalism, which seems to trap us in a never-ending merry-go-round between adverse incorporation and xenophobic exclusion? Between subordination and exile of the political and legal ‘other’? I do not pretend to have the answers. However, studying the various and diverse freedom dreams of people on-the-move may give us some clues. There are continuities not only in technologies of oppression, but also technologies of resistance. Embedded movement knowledge borne through the experiences of those at the sharp end of bordering are thus critical to foreground.

One set of political formations that attempts to respond to xenoracial capitalist regimes is No One is Illegal (NOII). NOII is an anti-capitalist, anti-colonial, and anti-racist migrant justice

²³ Nandita Sharma, *Home Rule: National Sovereignty and the Separation of Natives and Migrants* (Durham: Duke University Press, 2020) at 268.

²⁴ *Ibid* at 270.

²⁵ See Heaven Crawley and Joseph Kofi Teye, *The Palgrave Handbook of South-South Migration and Inequality* (Open Access: Palgrave Macmillan, 2024).

²⁶ Catherine Besteman, “ Militarized Global Apartheid” (2019) 60:19 *Current Anthropology* S26.

movement that formed as a set of decentralized groups “during heightened racist national hysteria and escalating attacks on immigrant and refugee communities after the incidents of September 11, 2001.”²⁷ NOII focuses on five key movement-based elements: (1) direct support work (including legal assistance), (2) status and access for all, (3) abolition of the broader security apparatus, (4) solidarity with Indigenous struggles (particularly land defense movements), and (5) anti-capitalist resistance.²⁸ In articulating its slogan “no one is illegal, Canada is illegal”, NOII challenges the doctrine of sovereign migration control on two fronts: by refusing the premise that a nation-state can deem human beings themselves ‘legal’ or ‘illegal’, thus undermining the dichotomy between a ‘desirable’ or ‘undesirable’ migrant, and by foregrounding the rank illegitimacy and hypocrisy of the Canadian settler colonial state in particular to claim an exclusive sovereign right to determine who should be allowed to come and stay in Turtle Island and who should not.

NOII’s political work has also greatly influenced access-for-all (sanctuary) and status-for-all (regularization) campaigns. Xenoracial capitalism creates a false dichotomy between subordination and exclusion, which in a sense can be resolved with the simplest solution – equality, which is the central tenet of status-for-all yet rendered unthinkable by the ‘common-sense’ premises of nationalist segregation and status-hierarchy. NOII’s approach on this front is to “actualize and prefigure regularization from the ground up” by reconstructing community spaces and neighborhoods (including key sites such as community centres, schools, libraries, and health centres) as sanctuary zones free of immigration controls and the threat of deportation.²⁹ As Walia explains, these campaigns “are prefigurative in their aim to ensure that undocumented migrants, despite lacking full legal immigration status, can have their basic needs met and be supported in creating semiautonomous spaces of safety” which “take power away from the state because their very existence represents nonparticipation in and subversion of an exclusionary apartheid system of citizenship.”³⁰ Peer-led sanctuary mutual aid groups, such as S4, are particularly important for status-excluded youth to find support, organize around their specific needs, and build all-important alliances and networks. Meanwhile, service programs specifically

²⁷ Harsha Walia, *Undoing Border Imperialism* (Oakland: AK Press, 2013) at 17.

²⁸ *Ibid* at 97-156.

²⁹ *Ibid* at 113.

³⁰ *Ibid*.

for status-excluded youth, such as Childhood Arrivals Support & Advocacy (CASA), play an important role in bureaucracy navigation, connection to services, and advocacy.³¹

A second, related set of political formations combatting xenoracial capitalism is internationalist *worker* organizing. As Mostafa Henaway succinctly puts it: “[n]o anti-racist struggle for status and justice will be successful without utilizing migrants’ power as workers, and no struggle for working-class justice in our cities will be successful without organizing with migrant communities.”³² In the context of traditional union decline (only 15.5% of the Canadian private sector was unionized in 2023³³), new collective labour formations such as worker centres have emerged to “address the void in organizing low-wage migrant workers,” often by providing a physical space by which to “focus on building migrant worker leadership, defending basic labour rights, improving working conditions and challenging broader policies regarding standards, wages and immigration.”³⁴

Though deemed by some traditional unions as ‘unorganizable’³⁵, peer-led precarious migrant worker organizations and support networks that have emerged out of necessity and creativity are now at the forefront of challenging the foundations of xenoracial capitalism. For instance, the Brampton-based Naujawan Support Network (NSN) has been successful in organizing primarily Punjabi international student and other migrant workers in recovering hundreds of thousands of dollars in wage theft while halting the deportation of dozens of students.³⁶ Originally sparked by migrant student workers who shared grievances at a funeral of one of their friends, NSN has relied on “direct action and organizing large-scale protests in front of businesses and residences”, where they have “challenged employers, landlords, immigration consultants and the Canadian government, with increasing success.”³⁷

³¹ Justice for Children and Youth, “CASA: Childhood Arrivals Support & Advocacy” (last accessed 15 Jul 2025), online: <https://tinyurl.com/bdhjhjkt>.

³² Mostafa Henaway, *Essential Work, Disposable Workers: Migration, Capitalism and Class* (Halifax and Winnipeg: Fernwood Publishing, 2023) at 113.

³³ Statistics Canada, “State of the unions in Canada” (26 November 2024), online: <https://perma.cc/6SDR-CJX3>.

³⁴ Henaway, *supra* note 32 at 118.

³⁵ *Ibid* at 123.

³⁶ Divyani Motla, “The movement that’s won back \$650K in stolen wages for international students” (6 October 2023), The Breach, online: <https://tinyurl.com/bdzf2wah>.

³⁷ *Ibid*.

In the summer of 2023, NSN and the Migrant Workers Alliance for Change (MWAC) supported an over two-week 24/7 community sit-in (Morchá) at the International Centre in Mississauga, successfully halting deportations that affected hundreds of international students affected by the fraud and misrepresentations of a well-known immigration agent in India, resulting in inadmissibility determinations and potential deportations for students.³⁸ During the Morchá, NSN organizers called attention to the hypocrisy of federal politicians acknowledging and apologizing for the 1914 blockade and deportation of the SS *Komagata Maru*, while repeating the same mistakes in exiling a new group of status-excluded Punjabi migrants.³⁹ Meanwhile, others drew connections of the international student Morchá to the Ghadar movement and other anti-colonial movements in the diasporas.⁴⁰ The slogan, “No more Komagata Maru” has become a mainstay at protests for international student and migrant worker rights, connecting past legacies of xenoracist oppression to contemporary lived struggles.⁴¹

Another constituency that has sometimes been seen as too difficult to organize are that of migrant sex workers. As we have covered in Chapter Two, moral panic and anti-slavery/anti-trafficking discourse has played a central role in the development of modern bordering and immigration restriction – specifically to police, rescue, and exclude Chinese and other Asian sex workers. Racialized migrant sex workers are constructed and imagined as the archetypal ‘trafficking victim’, a persist stereotype which continues to deny migrants agency and justify increased powers of surveillance, seizure, detention, and deportation under raid and rescue frameworks while exculpating the role of the state. In turn, anti-trafficking ideology has created the moral heart of carceral humanitarianism – sustaining a ‘carceral web’ of regressive criminal, immigration, municipal, and family laws that must be untangled.⁴² As Channele Gallant and Elene Lam write:

³⁸ *Ibid.*

³⁹ Amardeep Kaur, “The Toronto Morchá: International Students Halt Deportations to India” (1 July 2023), online: <https://perma.cc/FFU5-5NK3>.

⁴⁰ *Ibid.*

⁴¹ Kusum Arora, “Fearing Deportation, International Students Protest Canada’s Pullback of Work Permit Extension” (8 September 2024), *The Wire*, online: <https://perma.cc/LH4G-ALW4>.

⁴² July Fudge, et al, “Caught in the Carceral Web: Anti-Trafficking Laws and Policies and Their Impact on Migrant Sex Workers” (2021).

We want to challenge the narrative that abusing, caging, and threatening migrant sex workers with death is considered human trafficking when it is committed by non-state actors but legitimate, helpful, and fair when the police do it...It is the police who enter [their] workplaces with guns pointed at their heads. It is the police who are authorized to shoot people to death for resisting an arrest or running from a raid. It is the police who are authorized to seize a sex worker's life savings. It is the police who are authorized to kidnap migrant sex workers and put them into [a cage] – in a prison, jail, or detention center. And it is the police who sexually extort and assault them with impunity.⁴³

Yet despite these profound challenges at the intersection of multiple axes of oppression, migrant sex workers from the Global South have created grassroots workers' rights organizations and networks across the world to mutually support one another and fight back against exclusion, stereotyping, border violence, and policing.⁴⁴ In 2014, Butterfly (Asian and Migrant Sex Workers Support Network) was created as “a grassroots organization that provides support to, and advocates for, the rights of Asian and migrant sex workers in Canada.” Through creating networks of mutual aid, outreach, case support, peer support, education, research and documentation, and community arts and exhibitions, Butterfly has been successful in centering Asian migrant sex and massage workers' experiences, allow them the opportunity to speak out, and take a leading role in policies that affect their lives.⁴⁵ As Harsha Walia writes, as communities who are frequently “cast out of state and social systems...evading and defying carceral, capitalist, colonial power at every turn...migrant sex worker organizing is abolitionist imagination as reality.”⁴⁶

A third and final set of political lenses that challenge xenoracial capitalism fall under the rubric of Indigenous decolonial perspectives on migration and sovereignty. These perspectives are being given greater (though still woefully insufficient) attention in the wake of the Truth and

⁴³ Chanelle Gallant and Elene Lam, *Not Your Rescue Project: Migrant Sex Workers Fighting for Justice* (Chicago: Haymarket, 2024) at 226.

⁴⁴ Tiffany Diane Tso, “Not Victims: On Global Sex Worker Organizing” (6 April 2022), Asian American Writers' Workshop, online: <https://perma.cc/C5UP-5AF3>.

⁴⁵ Elene Lam, Jaden Hsin-Yun Peng, and Coly Chau, “Resistance of *Butterfly*: Mobilization of Asian Migrant Sex Workers Against Sexism and Racism in Canadian Anti-Trafficking Measures” at 214, in Kamala Kempadoo and Elena Shih, eds, *White Supremacy, Racism and the Coloniality of Anti-Trafficking* (New York and London: Routledge, 2023)

⁴⁶ Harsha Walia, “Foreword” in Gallant and Lam, *supra* note 43 at XIV.

Reconciliation Commission 94 Calls to Action as well as greater public awareness of other settler colonial systems of mobility control such as the Indian Pass System.⁴⁷ As Bauder and Mueller write, “[t]he admission of immigrants into settler-colonial countries rests on the assumption that the settler state has the right to control who enters its territory and who can become a member of its territorial polity”, an assumption fundamentally “disrupted by Indigenous perspectives of land and belonging.”⁴⁸ As covered in Chapter Two, the doctrine of sovereign migration control – which posits the idea of a right of a group to forcibly expel or deport others from land they ‘own’ to the exclusion of others – was generally foreign to most Indigenous legal orders which do not hold a propertied Lockean relationship to land.

These contradictions are not merely theoretical but have led to contestation and conflict. Xenoracial capitalism and its structures of militarized bordering are consistently infringing on Indigenous sovereignty, particularly at reserves crossed by borders. In 2009, the Mohawk Nation at Akwesasne, which straddles the border between the US and Canada on the St. Lawrence River, protested against proposals to arm CBSA officers at the port of entry within their reserve territory under the pretenses of stemming contraband trade.⁴⁹ For many Mohawks there, CBSA bringing guns and militarizing the border outpost on their land was perceived as an armed colonial occupation.⁵⁰ As border securitization has increased and crossings for status-excluded people are made more treacherous, two migrant families of four drowned to death in 2023 while attempting to cross the border in Akwesasne territory. Mainstream news coverage focused on villainizing Akwesasne nationals helping people make border crossings as “smugglers” rather than the role of border violence and status-exclusion in these tragic deaths.⁵¹

⁴⁷ Harald Bauder and Rebecca Mueller, “Immigration Policy in Times of Indigenous Reconciliation” (2021) RCIS Working Paper No 2021/12 at 1.

⁴⁸ *Ibid.*

⁴⁹ Sonya Fatah, “Canada’s Toughest Border Crossing” (9 January 2019), International Women’s Media Foundation, online: <https://perma.cc/P2EB-J4Z8>.

⁵⁰ *Ibid.*

⁵¹ Vincent Wong, “After the migrant deaths in Akwesasne, Canadian immigration law must reckon with its colonial history” (20 April 2023), The Conversation, online: <https://perma.cc/X87A-ZLHD>.

At the US-Mexico border, the US administration's policies of deportation raids have targeted and detained Indigenous peoples, including many Navajo⁵², while transforming reserves like that of the Tohono O'odham Nation into a militarized outpost, replete with enormous 160-foot surveillance towers and mobile surveillance systems in a lucrative laboratory for defense and surveillance contractors.⁵³ The contractor tasked to build the surveillance towers is Elbit Systems, Israel's largest military and technology company and a primary player in facilitating the violent settler colonial dispossession of Palestinian land and the displacement of its people.⁵⁴

The imposing rust-coloured border wall that separates Arizona and Mexico is erected using the steel of Zekelman Industries – run by Windsor-based steel magnate and billionaire Barry Zekelman.⁵⁵ As Israel's genocide of Gaza rages on at the time of writing, the University of Windsor – my university – after relentless organizing by its students, became one of the only universities in North America to commit to boycotting institutional academic partnerships with Israeli universities until “Palestinian self-determination has been realized”⁵⁶ and pledge to implement a responsible investment policy which addresses human rights and divestment.⁵⁷ In response, Zekelman withdrew a \$1 million donation to the university towards a new centre and research chair on sustainable construction.⁵⁸ The networks of xenoracial capitalism run deep and cross through the very borders that they enrich themselves by erecting.

Yet as Amar Bhatia argues, Indigenous ideas of membership and sovereignty, extended to the realm of immigration, “cuts to the core of conventional state sovereignty”, “threatens all [settler colonial] sovereign attributes”, and thus manifests in a “fragility and fear on this topic”

⁵² Edward Helmore, “Navajo alarmed by reports of Indigenous people caught up in Trump immigration raids” (27 January 2025), The Guardian, online: <https://perma.cc/CK7U-F75R>.

⁵³ Will Parrish, “The U.S. Border Patrol and an Israeli Military Contractor are putting a Native American Reservation under ‘Persistent Surveillance’” (25 August 2019), The Intercept, online: <https://perma.cc/X5Y9-3U33>.

⁵⁴ *Ibid.*

⁵⁵ Mary Caton, “Atlas Tube products used in Trump's border wall with Mexico” (17 February 2020), Windsor Star, online: <https://perma.cc/42RA-Z57U>.

⁵⁶ *Agreement between the University of Windsor and the Windsor Liberation Zone Team (LZT)* (10 July 2024), Item #4(f)(5), online: <https://perma.cc/X9NU-RH2A>.

⁵⁷ *Ibid.*, Items #4(d) and (e).

⁵⁸ Trevor Wilhelm, “\$1M gift gone – Big donors desert UWindsor in wake of controversial deal with pro-Palestinian protesters” (13 September 2024), Windsor Star, online: <https://perma.cc/8MMT-55FK>.

among Canadians that is “real, long-held, and recurrent.”⁵⁹ For many Indigenous societies, outsiders could travel or settle on the land if they followed proper protocols and established relations of respect and reciprocity. One such approach is that of “citizenship with the land”, as articulated by Anishnaabe legal scholar John Burrows, which consists of entering into mutual relations and obligations with the land, water, nature, and all beings on the land including other humans.⁶⁰ According to Burrows, this idea of citizenship does not only have historic or Anishnaabe-specific application, but could be expanded and “extended to encompass other people from around the world who have come to live on our land.”⁶¹ Put simply, under this framework, the land does not belong to ‘us’, but rather ‘we’ belong to the land.

Another Indigenous idea of migration and citizenship can be understood through the lens of kinship and laws of adoption. According to Cree lawyer Harold Johnson, when migrants move to territory under treaty governance, they are *adopted* into pre-existing treaty and kinship relationships and must strive to have harmonious relations with the land and others. In Johnson’s view, if “there is any supreme law, it must be the law of adoption.”⁶² It is therefore inappropriate to suggest that one goes back to where they came from.⁶³ For other Indigenous polities, migration and citizenship is ultimately dependent on the willingness to respect and obey host laws. For instance, the Haudenosaunee Great Law of Peace states:

If any man or any nation outside the Five Nations shall obey the laws of the Great Peace and make known their disposition to the Lords of the Confederacy, they may trace the Roots to the Tree and if their minds are clean and they are obedient and promise to obey the wishes of the Confederate Council, they shall be welcomed to take shelter beneath the Tree of the Long Leaves [Emphasis added].⁶⁴

⁵⁹ Amar Bhatia, “Re-peopling in a settler-colonial context: the intersection of Indigenous laws of adoption with Canadian immigration law” (2018) 14:4 *AlterNative: An International Journal of Indigenous Peoples* 343 at 347.

⁶⁰ John Burrows, “‘Landed’ Citizenship: Narratives of Aboriginal Political Participation” in Will Kymlicka and Wayne Norman, eds, *Citizenship in Diverse Societies* (Oxford: Oxford University Press, 2000) 326 at 328.

⁶¹ *Ibid* at 329.

⁶² Harold Johnson, *Two families: Treaties and Government* (Saskatoon: Purich Publishing Ltd, 2007) at 105.

⁶³ *Ibid* at 14.

⁶⁴ *The Constitution of the Iroquois Nations: The Great Binding Law, Gayanashagowa* at Art 2.

These ideas of migration and membership and their contradictions with settler immigration law have also spilled over to the courts. For instance, in the 2006 case of *Sandy Bay Ojibway First Nation*⁶⁵, the First Nation was attempting to stay the deportation of Sister Nkemhurunaya Juliana Eligwe, a status-excluded Roman Catholic Nun and Nigerian citizen who entered on a visitor visa but lived and worked in the reserve without immigration authorization, volunteering primarily through care work.⁶⁶ On April 26th, 2006, she was adopted into the First Nation, which then asserted on her behalf that she had an Aboriginal right to remain in Canada and could not be forcibly removed by the settler state.⁶⁷ The Federal Court of Canada rejected this argument, ruling that First Nations do not have “the power to usurp the discretion of the Minister of Citizenship and Immigration by accepting non-residents as band members and thereby granting permanent status.”⁶⁸ But why not? If Canada is truly committed to nation-to-nation relations, by what right can it privilege settler power over membership and associated rights ahead of those of First Nations? How can Canada – itself a visitor on these lands – vest itself with the unassailable power to expel other visitors off the land?

This dissertation began with questions around the plight of Canada’s ‘Dreamers’ – the young people who migrate to Canada but whose status-exclusion gets in the way of realizing their dreams. But what I have learned on this journey is that the movement of *all* people, as well as their hopes and dreams for a better future, are powerful and enduring – they can never be fully crushed, no matter how bad the circumstances.

Back in Victoria, I thought back to the young men who worked the Canadian railroad, bloodied and brutalized, left to die in the hundreds and buried alongside the track in shallow graves. What were *their* dreams? Did they really dream, as the Canadian nation-building narrative states, that their descendants could one day celebrate Canada Day with dignity and proudly wrap themselves around with the flag? Of course, this is an impossible question to answer. But I imagine that their dreams could not be fully encapsulated by nationalist enclosure.

⁶⁵ *Sandy Bay Ojibway First Nation v Canada (Minister of Citizenship and Immigration)*, 2006 FC 903 [*Sandy Bay*].

⁶⁶ Bhatia, *supra* note 59 at 344-345.

⁶⁷ *Ibid* at 347.

⁶⁸ *Sandy Bay*, *supra* note 65 at para 11.

I imagine that their dreams might be very similar to other people who dream a simple yet transcendent dream, a dream of freedom, much like that of Robin DG Kelley's mother:

She dreamed of land, a spacious house, fresh air, organic food, and endless meadows without boundaries, free of evil and violence, free of toxins and environmental hazards, free of poverty, racism, and sexism...just free. She never talked about how we might create such a world, nor had she connected her vision to any political ideology. But she convinced my siblings and me that change is possible and that we didn't have to be stuck there forever.⁶⁹

On the plane back to Toronto, my mind drifted to the next time I would visit the memorial of those Chinese migrant railroad workers, who died so far away from home, on stolen land, without whose sacrifices I surely would not be able to live the life I currently live. What do I say? What words do I have to offer their spirits? I put my earbuds on and watch my downloaded Netflix shows. One of them is *Mo*, a story about a young undocumented Palestinian-American man working to support his family while awaiting a long-pending asylum case. And it is *Mo*'s mother Yusra, played by the inimitable Farah Bseiso, who gives me the words that stills my troubled soul: "countries and borders are all made up. The real thing is the land. And the land accepts us wherever we die."⁷⁰

⁶⁹ Kelley, *supra* note 1 at 2.

⁷⁰ *Mo*, "Field of Dreams" (2025), Season 2, Episode 7, Netflix.