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Immigration Policy in Times of Indigenous Reconciliation

Harald Bauder & Rebecca Mueller

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Abstract

The immigration policies in settler colonial countries rarely consider Indigenous perspectives—a reality that is particularly problematic given the key role that immigration policies have played in the colonialization process. In this paper, we use Canada as a case study, surveying the academic and grey literature to examine why and how Indigenous voices have been excluded from decision-making about immigrant selection. In addition, we investigate what the Indigenous perspectives that have been shared surrounding immigration policy currently are. While some perspectives engage with the Canadian state’s problematic treatment of temporary migrants, other perspectives fundamentally challenge the Westphalian state and its claim to regulate human mobility in the name of sovereignty. We connect these perspectives with academic open borders and no border debates.

Keywords: Immigration policy, settler colonialism, Canada, reconciliation, Indigenous sovereignty

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Introduction

The 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. In this paper, we interrogate in which way this territorial logic is disrupted by Indigenous perspectives of land and belonging (Bauder, 2011; Douglas, 2005; Thobani, 2007). We use the example of Canada where, recently, there has been a growing interest in uncovering the colonial histories and continuity of violence and oppression against Indigenous people. The Truth and Reconciliation Commission (TRC) sought to uncover and address these legacies, and the discovery of thousands of unmarked graves of Indigenous children at the sites of former residential ‘schools’ in 2021 has left the nation horrified at the cultural and physical genocide committed against Indigenous people (Hopper, 2021).

In Canada, the multiculturalism and immigration policy that has attracted diverse racialized populations has masked prevailing settler-colonialism (Parasram, 2019). Yet, immigration regulations and policies in Canada are built at their core on territorial understandings of land through the lens of Westphalian sovereignty, which differs fundamentally from Indigenous understandings of sovereign governance (Bauder & Mueller, 2021). This situation has left unclear how Indigenous perspectives can be included in Canadian immigration policies.

The research problem we address in this paper is that the Canadian state has made a commitment to reconciliation with Indigenous peoples and the decolonization of Canadian institutions and laws. However, one of the main instruments of settler colonialism – immigration policy – remains largely untouched by these efforts. Among the 94 recommendations made by the TRC, only two address “newcomers to Canada” and none deal with immigration policy (Truth and Reconciliation Commission of Canada, 2015). In addition, while some scholars have drawn attention to the need for immigration policy and practice to respond to the needs and demands of Indigenous peoples (Abu-Laban, 2020; e.g., Bhatia, 2013; Carlsson, 2020; Kymlicka, 2010; Pellerin, 2019), there seems to be little interest among immigration policymakers and stakeholders in Indigenous perspectives of immigration policy and how Indigenous involvement in newcomer selection could be achieved (Bauder 2020). Furthermore, Indigenous voices on the matter of immigration are rarely heard in policy and public debate or in academic research.

Our thesis is that immigration policy is framed in terms of Westphalian sovereignty and territorial statehood; this frame, however, contradicts Indigenous understandings of sovereignty and belonging to the land (Bauder & Mueller, 2021). We explore whether the relative silence of Indigenous voices on matters of immigration policy in the political realm relates to this contradiction. In other words, the selection of foreigners and granting them permission to settle on state territory might be incompatible with Indigenous ways of thinking about land and belonging. Since neither of us is Indigenous (Harald is an immigrant-settler from Germany and Rebecca is a third-generation white settler), we rely on written accounts from Indigenous and non-Indigenous scholars and commentators to assess what Indigenous ways of thinking about land and belonging in the context of immigration and settlement might be. Considering the possible contradiction between Westphalian and Indigenous frames, we further investigate whether the inclusion of Indigenous voices and perspectives in immigration policymaking can be reconciled within Westphalian territorial statehood, or whether there are fundamental differences that are irreconcilable.

In the remainder of this paper, we explore how Indigenous peoples have been excluded from the selection of newcomers to Canada and other migration and refugee policies. Thereafter, we investigate the available Indigenous perspectives on immigration and settlement. Then, we link these perspectives with the academic debates of open borders and no border. We conclude with a reflection on our initial thesis.

Indigenous Exclusion in Immigrant Selection

The shared histories of colonialism, ongoing displacement, racialization, and allyship against oppression connect many newly arriving migrants and refugees with Indigenous struggles (Bauder, 2011, 2020a; Bhatia, 2018, 2020; Chatterjee, 2019; Chatterjee & Gupta, 2020; Tuck & Yang, 2012). Soma Chatterjee observes that the settler state is based on the exploitation of immigrant labour and appropriation of Indigenous land (Chatterjee, 2019, p. 645). Bonita Lawrence and Enakshi Dua further assert that both newcomers and Indigenous peoples must strive for the “survival and adaptation to the dominant culture” (Lawrence & Dua, 2005, p. 121). Moreover, Sunera Thobani remarks that “the historical exaltation of the national subject has ennobled this subject’s humanity and sanctioned the elevation of its rights over and above that of the Aboriginal and the immigrant” (Thobani, 2007, p. 9). In addition, both immigrants and Indigenous peoples have suffered from the regulation of their mobility through national borders, reserves, residential schools, and incarceration (Canada, 2018; Carter, 1999). Especially immigrants without status, who are excluded from citizenship, share with Indigenous peoples their non-membership in the imagined and legal settler-colonial community. Paradoxically, Indigenous peoples are presented “as having been here too long, while others (such as migrant workers) are seen as not having been here long enough” (Bhatia 2013: 48). The settler colonial state has presented only settlers as legitimate national subjects.

Historically, the settler state routinely ignored and delegitimated Indigenous sovereignty (Spitzer, 2019). The denial of Indigenous sovereignty is a critical part of “settler amnesia” (Hiller, 2017), which “involves forgetting the prior claims of Indigenous people and the violence and dishonesty that shapes a colonial nation-state” (Ernst, 2018, p. 114). While reconciliation efforts seek to acknowledge this violence and acknowledge settler-colonialism, it still takes place within the nation-state framework; it does not challenge Canadian state sovereignty (Gordon-Walker, 2018, p. 2). Since the United Nations Declaration of the Rights of Indigenous People – the settler states of Australia, Canada, New Zealand, and the United States refused to sign in 2007 – there has been heightened interest and debate as to how Indigenous Sovereignty can be enacted in settler states like Canada. The problem is that settler colonialism follows a Westphalian framework according to which sovereignty (i.e., state self-determination) is supposed to be absolute and tied to state territory. Indigenous sovereignty, however, acknowledges the relationships and interdependencies of various actors and tends to be connected to the natural and spiritual dimension of the land (Deloria, 1996; Moreton-Robinson, 2015; Thorner et al., 2018). The two frameworks do not align with each other (Bauder & Mueller, 2021). The UN Declaration and the efforts of settler colonial states towards reconciliation and granting some autonomy to Indigenous governance generally upholds the superiority of the territorial Westphalian state over Indigenous sovereignty (Bauder & Mueller, 2021; Coulthard & Alfred, 2015).

When it comes to migration policy, the regulation of cross-border human mobility, and political membership, the Canadian settler colonial state asserts sovereignty and control over Canadian territory and its borders. These policy areas follow the logic of Westphalian sovereignty, which cannot be reconciled with Indigenous sovereignty (Bauder & Mueller, 2021). Historically, the sovereign’s control over mobility and political membership has been a key instrument to exercise political authority over people (Bauder, 2018). It has served to solidify state control in Europe and the United States (Torpey, 1999) and exercise colonial control in other parts of the world (Mongia, 2018; Sharma, 2020).

Today, nation states continue to assert their sovereign authority over cross-border human mobility and national membership (Bauder, 2017, 2018; Sharma, 2020). In other words, the sovereignty claims of territorial nation states justify their monopoly on immigration law and policy. The settlement of non-Indigenous newcomers continues and is perpetuated through the processes of immigration (Gordon-Walker 2018; Coulthard 2015). Although Canada has agreements to consult with stakeholders such as the provinces and territories, various

municipalities, employers, faith-based groups, non-profit organizations, and linguistic minorities such as Franco-Ontarians (Bhatia, 2018, p. 347), Indigenous people are usually not included or consulted in the decision-making about who is invited to settle on the land. Bhatia concludes that “Indigenous laws, legal traditions and treaty relations should serve as a source of authority in immigration law, policy, and discourse going forward” (Bhatia, 2018, p. 343). Yet, no such efforts are discernable. The exclusion of Indigenous perspectives from immigration policy-making illustrates how the colonial present in Canada is “an ever-evolving and shifting continuity of practices that displace Indigenous peoples, both symbolically and materially, in order to reiteratively emplace non-Indigenous people” (Hiller, 2017, p. 416). Given the impact of immigration on the continuing colonization of Indigenous people in Canada, the opportunity for Indigenous voices to be heard in policymaking would be critical to state efforts towards reconciliation.

Indigenous Views on Immigration

There is considerable academic discussion on whether all immigrants (and even refugees) are settlers and colonizers. Some scholars, many of them non-Indigenous, fundamentally challenge the presence of immigrants on Indigenous land (Lawrence & Dua, 2005; Thobani, 2007). In this context, colonization is not a historical event but rather an ongoing process (Douglas, 2005). Thobani plainly states that by participating in Canadian society, “migrants became implicated, whether wittingly or otherwise, in the dispossession of Aboriginal peoples” (Thobani, 2007, p. 16). Chatterjee uses the term “immigrant settler hood” to critique the benefits that immigrants receive in their complicity and suggests that “while their pathways to the New World are various and complex, they cannot but be settlers on Indigenous land” (Chatterjee, 2019, p. 650). Similarly, Ajay Parasram argues that the acceptance of “legal and territorial parameters” (Parasram, 2019, p. 197) by immigrants is implication enough in ongoing settler colonialism. In a non-colonial context, immigrants would observe the laws and adjust to the ways, not of the colonizers, but of the Indigenous population (Tuck & Yang, 2012).

Based on the above discussion, one could speculate that Indigenous people would reject immigration all together. However, Amar Bhatia, a non-Indigenous scholar, suggests that many Indigenous people do not object immigration; some may even find it desirable (Bhatia, 2013). Indigenous voices on this matter, however, are rare. In the context of critiquing Canadian multiculturalism from an Indigenous perspective, Harold Johnson, son of a Cree mother and Swedish immigrant father, remarks: “We are happy that many people from different parts of the world have come to live here. They are as welcome as you (i.e., white settlers) are” (Johnson, 2007, p. 100 my parentheses). In this case, immigrant selection can be interpreted as a treaty responsibility that rests with the settlers.

Anecdotal evidence also suggests that Indigenous communities and Indigenous leaders in Canada have other priorities and lack resources that could be devoted to developing perspectives of immigration policy or consult on and engage with immigration policymaking. Correspondingly, there are only a few statements that indicate Indigenous perspectives of immigration. One of such statements was made by Chief Robert Joseph (2012) who wrote: “As Aboriginal people we welcome you here. We are neither frightened nor challenged by your diversity and resourcefulness” (p.9). Chief Joseph believes that “Every colour, every race, every creed has a right to be here. Every person or group of people has value, has purpose” (p. 10). Indigenous affairs columnist and member of the Little Pine First Nation, Sask., Doug Cuthand, makes a similar point when he writes:

It's kind of late to complain about immigration. There are 35 million people in Canada and only 1 million of us are members of the original First Nations ... In fact, I'm quite

happy that more people of colour and diversity are coming to this country... We need a country that reflects more of the world's population if we are truly to become a country of the future. (Cuthand, 2017)

Overall, there is evidence that some Indigenous views support the arrival of diverse newcomer populations.

While many Indigenous peoples may not oppose the arrival of newcomers, they reject the way institutions and corporations instrumentalize migration, for example, when low skilled temporary foreign workers are brought to Canada to serve as exploitable labour in industrial farming and resource extraction (Bhatia, 2013). In this case, the problem that many Indigenous people have is with the nation-state's treatment of temporary migrants, not with the arrival of newcomers in general. In fact, *not* granting all migrants equal rights is a problem in the eyes of many Indigenous voices. In regard to temporary foreign workers programs, Bhatia writes that "Canada's treaty right to be here cannot plausibly include the right to import people as commodities who never have the right to stay here, can never become treaty people, and are never subject to treaty obligations to share and care for the land, life and waters" (Bhatia, 2013, p. 59).

Furthermore, Canadian sovereignty claims of immigration often violate Indigenous rights to self-determination. An example is Sister Juliana, a Nigerian non-status migrant, who was adopted by Sandy Bay Ojibway First Nation in 2006 after her claim for asylum in Canada was denied. However, the adoption was not recognized by the Canadian state, and she was deported. In this way, the Canadian state deprived the Sandy Bay Ojibway First Nation of deciding who they welcome onto their land. The removal of Sister Juliana denied Indigenous peoples "their inherent rights and power to reproduce their societies through birth and immigration" (Bhatia, 2018, p. 348). The Westphalian sovereignty claim of the Canadian state trumped Indigenous self-determination.

Another example is the arrival of 92 Tamil refugees aboard the MV Sun Sea in 2010 on the shores of Canada's West Coast. When the refugees faced immediate incarceration, Indigenous elders held weekly demonstrations outside the jails. As their contributions to a National Day of Action in support of the detained Tamil refugees, the Lhe Lin Liyin of the Wet'suwet'en nation hung a banner affirming: "We welcome refugees." As part of this same National Day of Action, Pierre Beaulieu-Blais, an Indigenous Anishinaabe member of NOII-Ottawa, declared: "From one community of resistance to another, we welcome you. As people who have also lost our land and been displaced because of colonialism and racism, we say Open All the Borders! Status for All!" (Walia, 2013, p. 123).

Indigenous Perspectives as Open Borders and No Border Position

In this section, we interpret Indigenous perspectives of immigration in light of academic debates of open borders and no border (B. Anderson et al., 1969; Bauder, 2017; Carens, 1987). The open borders position recognizes that Westphalian sovereign states are today's dominant political configuration but proposes that humans should be free to cross territorial state borders and be able to settle in the country. Academic debate suggests that existing immigration laws are unjust because they selectively permit or deny mobility; or they permit mobility only under certain conditions, for example, when migrants are only allowed to enter the country when they work for certain employers for a defined period. Such laws trap mostly racialized workers in the Global South (Caplan, 2019), enforcing the international segmentation of labour that creates inequalities between people – often along colonial and racial lines – based on their country of origin and citizenship (Bauder, 2006). These laws and legal practices relate to Fortress Capitalism (Georgi, 2019) and Border Imperialism (Walia, 2013) that protects the privileges of elites in the global

north. The free mobility of people across national borders and the equal treatment of migrants within destination countries would mitigate the possibility of labour exploitation and colonial oppression.

Indigenous perspectives that are not opposed to immigration in general but reject existing national policies that select newcomers based on economic criteria and that deny temporary migrants important rights including the right to stay, have an affinity with this open-borders position. Rather than seeking to regulate cross-border migration and membership, this position focusses on the responsibilities that all newcomers have as settlers. Roxana Akhetova (2019) argues that meaningful reconciliation should involve newcomer education about Indigenous peoples, and discussions of how immigrants have a choice not to comply with ongoing settler colonialism. She states that “awareness and acknowledgment are one step closer to creating opportunities to think about tangible ways that colonial relationships are supported, reproduced, and reinforced” (p. 54). Lynn Gehl (2012), who is of Algonquin Anishinaabe-kwe descent, echoes this sentiment of awareness-raising and education, claiming that allies of Indigenous peoples should be responsible for recognizing their own privileges, the colonial structure they support, and their own responsibilities towards decolonialization.

Newcomers should also learn about the treaties and how to participate in them. Roger Epp (2008) highlights the importance of treaties, claiming “we are all treaty people—settler and aboriginal” (p. 5). According to the Government of Canada, Indigenous and Northern Affairs (2020), treaties “define specific rights, benefits and obligations for the signatories that vary from treaty to treaty,” including guidance surrounding land and resource use, and governance, among others. Thus, newcomers are becoming a part of the broader society which has made promises to Indigenous peoples by way of treaties that should be upheld.

In addition, the willingness to cooperate is an important attitude newcomers should display. Three treaty people, James Bird, Ange Loft, and Jane Wolff (2021), discuss “the power of kindness and care to engender meaningful relationships among people and with places” (n.p.). Along similar lines, Greg Poelzer and Kenneth Coates (2015), in painting a picture of ideal Canadian society, imagine “senior representatives of Canada’s immigrant communities reach[ing] out to Aboriginal people in the interests of building economic prosperity and personal opportunity” (p. 283).

Contrary to the open-borders position, which situates settlement within the territorial Westphalian framework, the no border position opposes the Westphalian territorial state on which national immigration policies rely (Epp 2008). This position was shared by Chief Joseph of the Wal-lam-wat-kain (Wallowa) band of Nez Perce who said in 1871: “The country was made without lines of demarcation, and it is no man’s business to divide it” (Noy, 1999, p. 208). Today, scholars concur: “On the map of Turtle Island, the Canadian-US border is an illegal settler-colonial construct that violates Indigenous sovereignty” (Yalamarty, 2020, p. 477). Around the world, the imposition of national borders by colonial powers and settler colonial states has had devastating impacts on Indigenous peoples. Victoria Tauli-Corpuz, who is Kankanaey Igorot from the Philippines and the UN Special Rapporteur on the Rights of Indigenous Peoples, speaks about the effects borders have had on Indigenous people: “countless Indigenous Peoples have been divided by imposed State borders, their communities and relatives separated by artificial lines, their migration patterns, sacred rituals, fishing and hunting ways altered” (Tauli-Corpuz, 2020, n.p.). Dylan Miner, an Indigenous artist and scholar, shares his own reflections on the creation borders in North America, recounting the story of how his paternal ancestors “crisscrossed the Canada-USA border and literally fought against its creation” (Miner, 2015, p. n.p.). Tauli-Corpuz (2020), too, references the limitations on mobility for Indigenous people and claims that “there should really be no borders as far as Indigenous Peoples are concerned because they existed in those territories before these nation states came into the picture” (Tauli-Corpuz, 2020, n.p.).

Borders not only pose material barriers in separating cultural groups, access to resources, and limiting movement, but they enshrine the settler-colonial territorial logic in the political

imagination. Miner (2015) observes that: “the border – as a manifestation of the settler-colonial and capitalist nation-state – constrained my own being and, in turn, constrained my capacity to think beyond the limits of its own borders” (n.p.). Borders are both material and discursive tools of ongoing colonialism and imperialism (Walia, 2013).

Pro-migration organizations such as No One is Illegal (NOII) use the no border position to “challenge the settler state’s legitimacy in determining who can and cannot enter the country” (Fortier, 2013, p. 9). The no-border position aligns with perspectives of Indigenous sovereignty that does not make any absolute territorial claims but recognizes the interactions and interdependencies between actors and responsibilities of everyone towards the land and its human and non-human inhabitants (Bauder & Mueller, 2021). In her critical analysis of the refugee politics of Westphalian settler-colonial states, Sedef Arat-Koç advocates for a “*place-based* episteme that helps to challenge the logic and discourse of the grateful refugee and also inspire and inform alternative political subjectivities and collective political visions of another world beyond colonialism, imperialism, interventionism, war, capitalist expansion and environmental degradation” (Arat-Koç, 2020, p. 373 original italics). These politics of place (i.e., a politics that is contextualized in concrete locations and physical places) reject national citizenship and emotional attachment to a settler colonial nation state, and instead involve solidarity between newcomers and Indigenous people and respect for the land (see also Arat-Koç, 2014; Bauder, 2020a). In the context of Aotearoa New Zealand, Vivienne Anderson and Zoë Bristowe observe that policy development should start “with the aspiration of indigenous people and attention to relational commitments” that involves caring for the land and responsibilities towards the ancestors and future inhabitants as they connect to particular places (V. Anderson & Bristowe, 2020, p. 423). This emphasis on relationships and caring for land stands in contrast to the Cartesian logic of Westphalian territorial sovereignty and resource extraction that frames immigration policy.

Conclusion

In this paper we addressed the problem that immigration policy largely remains on the sidelines of reconciliation efforts in Canada. Especially, Indigenous voices are rarely heard on this matter. We find this situation perplexing since immigration policies are a key instrument of ongoing settler colonialism and are historically closely connected to land appropriation and the oppression of Indigenous peoples (Bauder, 2011).

Our prior research suggests that Indigenous understandings of sovereignty and belonging contradict Westphalian sovereignty and territorial statehood, which frames immigration policy (Bauder & Mueller, 2021). However, the evidence we present in this paper also suggests that Indigenous voices commenting on immigration in Canada do not always oppose the Canadian Westphalian territorial state. Some of these voices generally support immigration, advocate for the extension of equal rights to temporary migrants, and reject immigrant selection based on economic criteria. We suggest that such Indigenous positions have an affinity with open border arguments that are prevalent in the academic literature (Bauder, 2017; Carens, 1987; Cole, 2000; Siebold, 2017).

There are also more radical voices that reject the Canadian Westphalia state as an institution of settler colonialism. We propose that these voices align with a no border position assumed by some academics and activists (B. Anderson et al., 1969; Bauder, 2017; King, 2016; Walia, 2013). The evidence, however, is too thin to conclude that the relative lack of Indigenous voices and perspectives in immigration policy-making can be attributed to the irreconcilability of Indigenous sovereignty and self-determination, and Westphalian territorial statehood on which current immigration policy depends.

There are other factors that may account for this lack of available perspectives: First, Indigenous communities may have more pressing priorities or too few resources to worry about

immigration. There are other more important struggles that currently require the attention of Indigenous communities – such as the discovery of unmarked graves of Indigenous children, the murder and disappearance of Indigenous women, and the unsafe drinking water in many Indigenous communities. Second, Indigenous perspectives may not oppose the arrival of newcomers. Denying people their right to mobility may not align with Indigenous interest or beliefs. Their focus may rather be on educating newcomers about Canada's colonial past and present, holding newcomers responsible to learn about and respect treaties, establishing allyship with newcomers in the struggle for decolonialization, and sharing with them the land and resources in responsible, equitable, and sustainable ways.

As settlers ourselves, we cannot speak for Indigenous peoples; thus we recognize the need to include Indigenous peoples in policy decision-making (Maaka & Fleras, 2009). In addition, we are mindful of our positionality as settlers as we draw attention to a policy matter that Indigenous communities may not perceive as a problem. As settlers and citizens in Canada, we are complicit in the state's immigration policies and practices which perpetuate the colonization of Indigenous peoples. Through this paper, we sought to uncover the realities of Canadian policy and discourses and ways forward from a settler perspective. We believe that more research would be helpful to obtain further clarity surrounding Indigenous perspectives on immigration and immigration policy in order to critically reflect on the current immigration policies by the settler colonial state.

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