

Chapter 2

(In)Essential Bordering: Canada, COVID, and Mobility



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2.1 Introduction

The cross-border movement of a virus threw into chaos the cross-border movement of everything and everyone else.

The unprecedented conjuncture of border closure and domestic immobilisation disrupted conventional patterns of movement and mobility into and within Canada. The hierarchy of admissibility according to legal status and national origin has been jumbled. Consider that in summer 2020, cars on Canadian streets bearing US licence plates were viewed with suspicion and hostility, prompting calls to the Canada Border Services Agency (CBSA) to report the illicit presence of Americans.

This chapter uses Canada as a case study to explore two features of Covid-19's impact on bordering. The first concerns the relationship between the control of movement across borders and the control of movement within borders. The coronavirus pandemic made this salient because of the drastic and unfamiliar restraints imposed on individual movement at local and inter-provincial levels. In *Spheres of Justice*, Michael Walzer (1982) famously provided a normative defence of closed national borders by, *inter alia*, predicting that if national borders were open, sub-state and local communities would reactively erect barriers to entry to preserve the perception of communal membership. This world of a 'thousand petty fortresses' was contrasted to a national territory characterised by unimpeded mobility. In other words, Walzer argued that the maintenance of free movement within the state is underwritten by the presumption of closure at national borders. Covid-induced regulation both tracks and disrupts this hypothesis.

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The second feature of Canada's pandemic migration regulation is the reconfiguration of the conventional priorities and preferences for non-citizen entry. Like other affluent countries, Canadian migration law facilitates travel and migration by nationals from other states of the Global North (and Australia/New Zealand) and impedes it for nationals of the Global South. Ideas about the desirable traveller and migrant are infused with ideas about class, race, gender, religion, and ability. This passport privilege has been temporarily displaced by a different hierarchy based less on desirability than on immediate necessity. In Canada and elsewhere, pandemic rules have been organised around assessments about whose entry, which labour, and which interests are 'essential,' replete with online questionnaires to locate applicants in the shifting landscape of pandemic admissibility (Government of Canada 2020c) I offer a typology of 'essential' that braids together economic, legal, and political elements. While this chapter is not comparative, I suspect that that the particular calculations about who and what is 'essential' vary between states, and that these variations might link to different conceptions of the place of migration in the nation, and national belonging. Canada is a settler-society. It is built literally and discursively on a commitment to immigration that, in the first instance, displaced Indigenous people and consolidated and expanded colonial power. It provided the demographic, economic, and social foundation upon which the state was assembled and continues to grow. Other states have a different migration history and trajectory, but all face similar challenges around Covid-19.

2.2 The Unexceptional Border

A conventional metaphor for the border depicts it as a filter or screen that slows and halts the entry of some, while permitting and expediting the entry of others. In ordinary times, this image is juxtaposed against the situation within state territory, where movement is unimpeded and virtually unregulated. The pandemic has eroded this distinction between governance of movement at the border and inside the country. I do not anticipate that the changes wrought by Covid-19 will become permanent, but what has changed irrevocably is the assumption of irrevocability.

As the coronavirus travelled the world passport-free, a predictable reaction of states was to target for exclusion travellers from alleged source-countries – first China, then Iran and Italy. We know this exclusion narrative well, replete with images of foreign viruses infecting the body politic, and we observed the deplorable enthusiasm with which some political leaders fomented and exploited it. The racist and stigmatising effects of labelling Covid-19 the 'Chinese' or 'Wuhan' virus" are made no less pernicious by their predictability.

Critics of border closures rightly observed that they would likely fail to halt the spread of the virus, partly because these closures inevitably happen after the virus has already found its way in – the inverse problem of shutting the barn door after the horse has bolted. By around mid-March 2020, it had become evident that the virus was everywhere and could not be stopped, only slowed. At that moment, borders

slammed shut more tightly and more pervasively than many of us had ever seen in our lifetimes. But this quantitative intensification of border control masked a shift in its qualitative character that was produced by a transformation in the governance of movement more generally.

Discriminating against ‘dangerous’ foreigners from certain states – China, Italy, Iran – belongs to the banal work of racist border control in the Global North. It has a long and ignoble pedigree. Identifying foreigners as vectors of disease and degeneration in both physical and moral terms is a familiar trope. One need not reach far back to recall, for example, the ‘homosexual Haitian drug user’ as the originary villain in the HIV/AIDS origin story. ‘Xenophobia: Covid Edition’ seems to this observer like a variation on a familiar theme.¹ But this endeavour of excluding the foreign menace was superseded under Covid-19 by the project of halting movement as such, of which cross-border movement was only one type. Once it was apparent that stopping the virus was not viable and the goal shifted to slowing its spread (pending a vaccine), any and all movement became undesirable. In this context, borders continue to mark critical jurisdictional breaks. Canada does not govern the territory of other states, and the actions and inactions of those other states in managing the pandemic become a source of risk embodied by individual foreign travellers. But it is less the conduct or character of border-crossers themselves that is at issue, than the fact that states exercised no authority over how other states governed their residents during the pandemic.

At the same time, the pandemic precipitated unprecedented restraints on movement within the territory of the Canadian state – and this applied to citizens and non-citizens alike. From the individual body, to the household, municipalities, provinces and, finally, the state, the universal object of governance became the arrest of human movement. Although the risk of contracting Covid-19 was unequally borne by racialised and economically disadvantaged people, each person was a potential vector and victim of disease, and controlling mobility preoccupied every jurisdiction at every scale of governance. With policing techniques ranging from appeals to solidarity to threats of criminal sanction, people were told to stay home, to stay away from one another, and to stay put. In ordinary times, the default position for state borders is closure, subject to exception; within the state, the default is free movement, subject to exception. In Canada, s.6 of the Canadian Charter of Rights and Freedoms not only protects the right of citizens to enter, but also the free movement of citizens and permanent residents throughout Canada. Yet, under the coronavirus pandemic, it was all stasis, all the time, everywhere, for everyone. Movement was policed by state actors, by neighbours, via cell phone technology and otherwise; inessential movement was subject to opprobrium, or worse. Borders between

¹For example, Canada adopted explicitly racist entry policies against Chinese migrants from 1885 to 1946, and covertly (and more effective) racist policies against Japanese and South Asian migrants from the early twentieth to mid-twentieth century. *See generally*, Sharry Aiken, ‘From Slavery to Expulsion: Racism, Canadian Immigration Law and the Unfulfilled Promise of Modern Constitutionalism,’ in Vijay Agnew, ed., *Interrogating Race and Racism* (Toronto: U of T Press, 2007), 55–111.

provinces that hitherto only functioned to mark the transition between sub-state jurisdictions were activated to impede inter-provincial or inter-regional movement. A Newfoundland law barring interprovincial travel withstood constitutional challenge, though it is under appeal at the time of writing (Taylor, 2020).

Within this regime of pervasive immobilisation inside the state, where citizenship is almost irrelevant, border control appears less distinctive and more like one component of an apparatus devoted to halting the circulation of people. The technology of border control is purpose-designed to maximise coercion and minimise accountability, and one should not trivialise its specificity and violence. Having said that, it is worth noting how *border control* under the pandemic was interpolated into an infrastructure of *mobility control* that was not primarily about migration. It was primarily about protecting public health – the same objective shared by a suite of domestic measures, including quarantine, lockdown, social distancing rules, internal travel restrictions, mobile app contact tracing, and so on. In this sense, the border’s function in arresting movement was no longer unique. That is new.

Thanks to Covid-19, a vision of Walzer’s world of a thousand petty fortresses came into view, with provinces erecting barriers to non-residents, including former residents. People in rural areas grumbled loudly about city dwellers ‘escaping’ to their cottages or chalets and bringing the coronavirus with them. Fragile northern communities (especially Indigenous) denied access to people from outside the region. But Walzer imagined this as a reaction to [more] open borders. That is not the explanation for the domestic restraint of movement under the pandemic. There is no trade-off between closure at one scale and openness at another. Here, state sovereignty is not manifested by preventing entry, but by controlling, confining, and surveilling all movement, of which cross-border movement is only the exemplar. We cannot know now, and perhaps will not know for a long time, the durability, shape, and the trajectory of states’ newly-revived and amplified will and capacity to regulate movement that begins not with crossing a border between two states, but with crossing a threshold between abode and outside world. The regulatory response to Covid-19 reveals the growing capacity of the state to engage in networked and coordinated control of human movement. The choice to refrain from exercising control is not the same as the absence of control. In my view, the measures adopted because of Covid-19 undermine the very idea of mobility as free movement and bring into view an alternative picture of mobility as permitted movement.

2.3 Essential Connections

2.3.1 *Essential Movement*

Even in a pandemic, borders cannot be hermetically sealed. While the pandemic obviously restricted entry, it also reconfigured the basis for admission in revealing ways. Unlike many other states, the Canadian government did not respond to the

pandemic by declaring a national emergency and invoking the powers contained in the *Emergencies Act*. Under Canada's federal system, international border control falls under federal jurisdiction, and Emergency Orders issued and renewed monthly by Cabinet under the authority of s. 58 of the *Quarantine Act* regulated cross-border movement, overriding or otherwise altering existing provisions of the *Immigration and Refugee Protection Act (IRPA)*. The *Quarantine Act* is narrower in scope than the *Emergencies Act* because it only applies to people or cargo entering or departing Canada. It also contains significantly fewer procedural protections and much weaker accountability mechanisms than the *Emergencies Act*. Exercising state power via the *Quarantine Act* rather than the *Emergencies Act* echoes a similar choice made by the federal government after 9/11 to address national security and terrorism using the powers granted under the *Immigration and Refugee Protection Act* rather than the *Anti-Terrorism Act*. In both instances, the government opted for regulatory instruments that minimised rights protection and accountability. Relatedly, the *Quarantine Act* and *IRPA* are organised around movement across borders and non-citizens respectively, the spaces and subjects that attract least rights protection in Canadian law. Reliance on the *Quarantine Act* and *IRPA* also have the effect of reinforcing a stereotype of foreignness as vector of disease and danger to the body politic.

The term 'essential' became the stamp on the notional permit that validates movement. Technically, the Emergency Orders do not positively authorise 'essential' border crossing. Instead, they prohibit entry for 'optional' or 'discretionary' purposes. The residue that remains is travel for an 'essential purpose'.

Who or what is essential, and why? For present purposes, I will detach the label 'essential' from 'services', 'work', or 'worker' and instead consider more broadly the kinds of reasons that give shape and content to the category 'essential', which in turn signifies an exception to the default of stasis and exclusion. I propose that entry might usefully be classified as *legally* essential, *politically* essential, or *economically* essential. The legal dimension captures constitutional, international, or legislative provisions that constrain the power of the state to exclude. While it is true that most laws create exceptions for emergencies of various sorts, the existence of an initial legal obligation to admit can still exert significant force in policy choices.

Entry is economically essential to a state in respect of those workers who transport otherwise unavailable goods or who provide vital and otherwise unavailable forms of labour such as healthcare, sanitation, transportation and delivery, and food production and distribution. However, as the Canadian case shows, workers are not the only non-citizens considered essential to the Canadian economy.

The category of politically essential entry overlaps with the other two and is necessarily contested and contingent. Claims that entry is legally or economically essential will be leveraged by interested parties (employers, institutions etc.) to persuade politicians to create an exception to the default of closure and exclusion. But the political impetus may also be generated from successful public appeals to moral, social, or pragmatic considerations.

These proposed categories of essential entry are neither mutually exclusive, nor static. They simply provide a rough schema for organising and comparing the

diverse responses of various states to the challenges of COVID and trans-border movement.

2.3.2 *The US and Everywhere Else*

Canada's only land border is with the United States. The Canada-US border is not only a barrier, but also a suture stitching together two political units into a deeply interdependent economic, social, and political relationship (Salter, 2012). Early on, it became obvious that neither the US federal government, nor most state governments, would or could act quickly to contain the spread of Covid-19. Inevitably, the *per capita* infection and fatality rates in the US would (and did) soar relative to Canada. Restricting the flow of entrants from the US was both vital from a public health perspective and potentially devastating to the Canadian economy. This tension between sovereign self-interest and unequal economic power plays out across the full range of Canada-US relations, and the pandemic provided another occasion to observe its effect on migration and border management.

Each month since March 2020, Cabinet has renewed not one, but two Emergency Orders under the *Quarantine Act* that govern cross-border movement. One is for foreign nationals entering Canada from the US. The other is for foreign nationals entering from all other countries. The salient difference between the two Emergency Orders is the default starting point. Foreign nationals from the US are prohibited unless their entry is not for an optional or discretionary purpose. Foreign nationals from elsewhere are prohibited unless they come within a list of designated exceptions *and* if their entry is not for an optional or discretionary purpose. A non-exhaustive list of examples of discretionary or optional travel includes 'tourism, recreation, and entertainment.' Until October 2020, international students arriving directly from the US were admissible if they possessed student permits issued anytime; international students arriving from anywhere else had to possess student permits issued before 18 March 2020. As discussed below, the government amended these rules in mid-October 2020.

The reason for the preferential treatment of the US is straightforward: it is the only country with which Canada shares a land border. North American economic integration makes the cross-border traffic of goods (including food and health equipment) from the US vital to Canadians. US truckers became essential workers to Canada, and the Emergency Order enabled them to traverse the border as visitors (they were also exempt from the quarantine requirement). Indeed, the same quarantine exemption applied to hundreds of Canadian nurses living in the Windsor, Ontario, area who crossed the border daily to work in Detroit hospitals and returned home to Windsor.

Travel to Canada for tourism and business travel were prohibited as optional and discretionary, although special permits were granted for overland transit through Canada from the continental US and Alaska, and vice versa. Well-publicised stories of Americans who assured CBSA that they were transiting through Canada but who

were actually vacationing in Canada stoked a certain degree of suspicion and animosity directed at drivers of cars with US licence plates. While mocking Americans is something of a national pastime in Canada, there was something undeniably novel about casting white, affluent, middle-aged American tourists in the role of foreign scofflaws and vectors of contagion. Even more troubling, however, were revelations that senior Canadian officials authorised entry of several US business executives to Canada during the pandemic with no requirement to quarantine (Gatehouse et al., 2020).

2.4 Citizens and Permanent Residents

As states moved to close borders in response to the pandemic in early 2020, Canadian citizens outside Canada remained free to re-enter, subject to a 14-day quarantine period. Indeed, the Prime Minister of Canada repeatedly urged Canadians abroad to return to Canada as soon as possible. Since the right of citizens to enter Canada is constitutionally protected under Section 6 of the Canadian Charter of Rights and Freedoms, as well as international law, one might understand access by citizens to Canadian territory as *legally essential*. But it bears noting that citizens who exhibit any symptoms of Covid-19 can be refused boarding by airline carriers, rendering them *de facto* excluded. And for over two weeks in late December 2020, Canada banned all inbound flights from the UK in response to the revelation of a more infectious strain of the virus in the UK (first detected in September 2020). The ban applied to all air travellers, regardless of citizenship. The end of the UK ban was followed by a requirement that all air travellers seeking entry to Canada from abroad test negative for Covid-19 within three days of departure for Canada. Here, bio-status trumped citizenship-status when citizens travelled by air, which they must do to reach Canada from anywhere but the US.

Why did the Prime Minister exhort Canadians to return in the early days of the pandemic? One might read this as a romantic appeal to the Canadian diaspora: in times of crisis, one can and should return to the protective embrace of the homeland (Mégret, 2020). Of course, patriotism can be mobilised toward a variety of ends. The Chinese government blocked Canadian-Chinese dual citizens from leaving China (often with Canadian family members) and travelling to Canada. At the same time, the Chinese government actively discouraged thousands of Chinese international students attending Canadian university from returning to China, ostensibly to minimise any risk of reintroducing Covid-19 into China. It seems that Chinese citizens in China behave patriotically by remaining in China, while those abroad show their patriotism by remaining outside China.

In general, the call to ‘come home’ tracked the predictable eruption of xenophobia directed at actual or perceived ‘foreigners’ (Purohit & Mukherjee, 2020; Stevens, 2020). The familiar story is that the non-citizen and the racialised other (in this case, people with Asian features) always teeter at the edge of outsider status – and an outsider is always vulnerable when bad things happen and people look for someone

to blame. Around the world, anti-Asian racism and scapegoating of migrants and foreigners escalated.

From a purely pragmatic perspective, the Canadian Prime Minister's appeal to citizens abroad also anticipated the imminent global shutdown of international travel. The government wished to avoid the prospect of thousands of Canadian citizens stranded abroad and calling on the Canadian government to repatriate them. Even though the Canadian government insistently (though quietly) declares that consular assistance in the form of repatriation is dispensed as a matter of discretion, not entitlement, Canadians continue to expect it. The political cost of refusing to repatriate Canadians would have been enormous, so better to do so before the logistical and financial cost escalated even further.

Permanent residents of Canada do not enjoy a constitutional right to (re)enter Canada, but they do enjoy a statutory right under s. 19(2) of *IRPA* to enter Canada. Permanent residents must physically reside in Canada for at least six months a year to maintain their status. A purely statutory right can be abridged more easily than a constitutional right, but in any case, the orders issued under the *Quarantine Act* preserved permanent residents' ability to enter Canada on the same terms as citizens. This was true of most countries in the Global North, who recognised that exclusion of permanent residents would have been politically untenable. The Canadian government also included many permanent residents in repatriation flights (Government of Canada, 2020f).

Unsurprisingly, the government also discouraged Canadians from non-essential travel outside Canada. In the early days of the pandemic, many Canadians (with the support of some provincial premiers) did not heed the advice of public health officials not to travel south for spring break vacations, and it appears that this expedited the coronavirus's spread in Canada. Thousands of retired Canadians spend the winter in Florida, Arizona, and California, and many others vacation in southern destinations. In October 2020, Prime Minister Justin Trudeau cautioned against travelling to the US but added,

If someone chooses to travel, we're not going to keep them imprisoned in Canada. There is freedom of movement in this country. [But] they have to recognize that they're putting themselves at risk. They're putting loved ones at risk (Muggeridge, 2020).

In light of the various restraints on mobility within Canada, Prime Minister Trudeau's invocation of freedom of movement was striking, if not ironic. But perhaps more notable were the number of politicians, especially at the provincial level, who chose to travel south for warm weather vacations in December 2020, only to face a chilly public reception upon their return. Many were demoted, fired, or forced to resign (Canadian Press, 2021).

2.5 Foreign Nationals in Canada

2.5.1 *Workers*

Canadian immigration law defines foreign nationals as non-citizens who are not permanent residents. When the pandemic struck, some foreign nationals who had resided in Canada for extended periods on renewable work permits happened to be temporarily abroad. Their legal entitlement to enter is even more conditional and precarious under immigration law than that of permanent residents, but the government ultimately permitted them to return. To understand why, it is worth noting that over the past 15 years, Canadian immigration policy has reduced the proportion of 'high' skill economic immigrants admitted directly as permanent residents in favour of two-step immigration schemes that require migrants to undergo a period of temporary status before qualifying for permanent residence. Thousands of foreign nationals live and work in Canada more or less continuously for years (often with families) on a succession of temporary work permits. Many of those on temporary work permits are indistinguishable from those admitted as permanent residents in the economic class. But legally, the line between temporary and permanent resident status means that temporary residents' continuous, long-term physical presence in Canada is legally inconsequential in the sense that it does not accumulate into recognition as a permanent resident. During the pandemic, however, prior presence sufficed for purposes of admission.

2.5.2 *International Students*

All major Canadian universities are publicly funded, but governments cover a decreasing proportion of actual costs. Historically, the education of international students was framed as a form of quasi-international development assistance, in which students from the Global South would acquire a university education in Canada that they would carry back and apply in their countries of origin. By the turn of the twenty-first century, this neo-colonial model of international students as aid recipients had evolved into a neo-liberal model of international students as revenue stream. Programmes that enable some international students to obtain post-graduation work permits incentivise international students to choose Canada as a destination in the hopes of finding a pathway to permanent immigration. Today, Canadian universities depend heavily on tuition fees charged to international students; international student tuition across Canadian universities averages 4.5 times the fees charged to domestic students (Statistics Canada, 2020). Even as the pandemic pushed post-secondary institutions to facilitate online course instruction for the majority of programmes, universities were anxious to maintain international student enrolment. They worried that international students would balk at paying exorbitant tuition fees without the benefit of also living in Canada. Thus,

universities lobbied the federal government to ensure that international students who were willing to leave their home countries could still travel and live in Canada – even if they studied online upon arrival.

Universities found themselves in a quandary: the physical presence of international students is *economically essential* to Canadian post-secondary institutions. But universities' own efforts to manage the pandemic by going online refuted the claim that physical presence was essential to fulfilment of universities' pedagogical mission. The economic imperative to enable international students to enter Canada thus collided with the bar on entry for 'discretionary' or 'optional' purposes. Although the federal government allowed online courses to 'count' for purposes of activating a study permit, this did not resolve the problem of entry.

Universities only partially succeeded in enabling international students to enter in time for the start of the 2020–2021 academic year in September 2020. As with holders of temporary work permits, government policy drew on past residence as a criterion for designating entry as essential. Returning international students able to prove that they had already lived in Canada could enter. This did not address the situation of first-year international students, unless their university furnished a supporting letter from the university attesting that 'the program requires in-person attendance...once the [university] is able to resume classroom operations'. The university was also required to 'indicate a target start date for courses that require the student to be in Canada' (Government of Canada, 2020e). International students arriving directly from the US could hold student permits issued anytime; international students arriving from anywhere else could only hold student permits issued before 18 March 2020. But even with a study permit in hand, actual admission remained subject to CBSA officers' exercise of discretion at the port of entry. This meant that students could not confidently predict whether they would be admitted until they travelled to Canada.

In mid-October 2020, the federal government announced a new programme to enable international students to study in Canada. Henceforth, provincial governments would certify individual Canadian universities with an approved 'COVID readiness plan' as Designated Learning Institutions (DLI). International students possessing study permits for those DLIs could enter and would follow the quarantine protocol arranged by the university (Government of Canada, 2020h). This model was the product of assiduous negotiations between the government and Canadian post-secondary institutions. Although it arrived too late for the start of the 2020/21 academic year, it enabled universities to continue offering the 'in-Canada' experience to international students for whom online study was an unsatisfactory substitute for the money.

2.6 Family Members

Over 20% of Canada's population was born abroad. Immigration is written into Canada's nation-building narrative as a settler society; historically, family-based migration was considered integral to social and demographic reproduction, and not (unlike European states) primarily the consequence of decolonization or failed temporary labour migration schemes. Untold numbers of Canadian citizens, as well as permanent and foreign nationals in Canada, have close kin who are foreign nationals. Even though non-citizens have no currency in the political marketplace, they are virtually represented by the millions of naturalised citizens and descendants of immigrants. The admission of foreign family members of Canadian residents emerged as a contentious issue during COVID. Foreign family members had no legal or economic argument in favour of admission, but the government eventually relented, recognizing that their admission was *politically essential*, even if not legally required.

Emergency Orders under the *Quarantine Act* prohibit entry for optional or discretionary purposes, and specifically list tourism, recreation, and entertainment as examples. This leaves considerable interpretative latitude in the hands of CBSA officials. The government's initial position on non-optional/non-discretionary exceptions to border restrictions was that '[t]here are no exemptions to border restrictions for compassionate reasons, such as visiting a critically ill loved one or attending a funeral' (Government of Canada, 2020f, 5). Early on, however, the government declared an exemption for immediate family members (intimate partners and dependent children) of citizens and permanent residents. These foreign nationals could be admitted as visitors if it was 'for an essential purpose'.

Over the course of several months, media accounts abounded of foreign national spouses denied entry to attend the birth of their child, adult children unable to visit or care for their ailing elderly parents, and long-term long-distance couples refused permission to see one another (Bureau, 2020a, b). Other states wrestled with the same issue (Dutch News, 2020). In each of the Canadian cases, CBSA officers determined that the foreign national did not qualify as an immediate family member or the purpose of travel was inessential or both. In some cases, CBSA officers threatened to issue a one-year ban if the foreign national did not surrender their attempt to enter Canada (Harris, 2020).

Ad-hoc advocacy sprung up across Canada to press for a wider definition of immediate family and for recognition of family reunification as intrinsically essential. The 'Faces for Advocacy' group set up a social media presence under the slogan 'Family Reunification, Not Open Borders', and engaged in a media campaign and government lobbying (Faces of Advocacy, 2020). In a subsequent order under the *Quarantine Act*, 'immediate family' was broadened to include parents as well as step-parents and adult children of citizens and permanent residents (Government of Canada, 2020f). The government also removed the requirement for foreign national family members to establish the essential purpose of their travel, thereby reducing border officials' negative discretion; in effect, family reunification as such was

deemed essential for those who fell within the definition of family; who were reuniting in Canada with a citizen or permanent resident; and who would be staying beyond the mandatory 14-day quarantine period (Government of Canada, 2020a, b, d). Immediate family members of temporary residents were required to obtain an advance authorization letter from Immigration, Refugees and Citizenship Canada, which they would present at the port of entry. CBSA border officials retained residual discretion to reject them at the port of entry, even with the letter. An indirect indication of how CBSA border officials had been wielding their discretion is provided by a policy guideline clarifying that non-discretionary or non-optional travel could indeed include a ‘foreign national coming for the birth of their own child to another foreign national with temporary resident status’ (Government of Canada, 2020a).

While the Canadian government recognized admission of some family members as *politically essential* from the outset, successful advocacy reconfigured family reunification as intrinsically essential so that family members did not have to demonstrate why reunification was essential. It also expanded the ambit of who counted as ‘family’ in the pandemic. Importantly, media attention appeared to play an important role and many profiles of separated family members featured people who were not habitually the subject of restrictive and arbitrary border enforcement or politically active on migration issues.

2.7 Seasonal Agricultural Workers

Canada operates a Seasonal Agricultural Worker Program (SAWP) via bilateral agreements between the governments of Canada as destination state and Mexico and Jamaica as sending states. Through this programme, the Canadian government subsidises the agricultural employers’ labour costs by furnishing migrant workers who work in greenhouses, orchards, and other industrial agriculture operations for wages and working conditions below what Canadians will accept. Privatised variations on this model supply Canadian agricultural businesses with temporary migrant workers from Guatemala, Philippines, Indonesia, and elsewhere. Most return year after year on work permits that tie them to specific employers for a stipulated duration of up to 10 months. The workers can never transition to permanent residence and must perform the annual ritual of returning ‘home’ for some period of time in order to affirm their designation as merely temporary.

The work requires long hours of hard physical labour and is poorly paid. Respect for occupational health, safety, and employment standards by employers is uneven, and exploitative practices by unscrupulous employers are endemic and well-documented. The demand for the labour may or may not be temporary, but the visa is restricted in duration in order to keep the workers temporary. Because of their precarious immigration status (accompanied by the ubiquitous threat of deportation), they experience wage-theft, overwork, unhealthy and dangerous working conditions, overcrowded and inadequate shelter, poor sanitation, and restricted access to food, healthcare, and liberty (MWAC, 2020).

In the initial iteration of the pandemic travel restrictions, temporary workers who did not previously reside in Canada were barred from entry. This encompassed seasonal agricultural workers because, as noted above, the requirement to return home annually meant that each entry would be based on a new temporary work permit and so they could not claim to reside in Canada. Their exclusion because of Covid-19 rekindled a familiar discussion about migrant labour. Although frequently denigrated as ‘unskilled’ and thus undeserving of permanent residence, employers now emphasised the skill, experience, and efficiency of seasonal agricultural workers. They reiterated the refrain that Canadians – even in the face of unprecedented unemployment rates – could not and would not do the arduous work. And so, to sustain the food supply in Canada, the entry of seasonal agricultural workers was facilitated as an exception because their admission was *economically essential* to Canada.

But upgrading the work to essential did not make the workers essential. Rather, it exposed the extent to which migrant agricultural labour is essential *because* the workers themselves are dispensable. This is not a paradox: slave labour is essential to a slave economy but, and because, enslaved people have no intrinsic worth in that economy.

Arriving workers were screened for Covid-19 before departure and employers pledged to honour the 14-day quarantine period, ensure housing and working conditions that respected social distancing requirements, and to otherwise respect and protect workers’ health. The Jamaican government, recognising the remittances by seasonal agricultural workers as economically essential, required Canada-bound Jamaican workers to sign a waiver of any liability for contracting Covid-19 while employed in Canada (Mojtehedzadeh, 2020). The dependence of sending states on remittances, their competitive relationship with other sending states, and their weakness relative to destination states often result in tepid protection and advocacy by sending states for overseas workers.

Consistent with pre-coronavirus patterns of employer misconduct, many Canadian employers did not respect the quarantine period, coerced employees into working immediately alongside local workers (who did not live on site and circulated freely), did not provide them with adequate housing, personal protective equipment or means of social distancing. After travelling thousand of kilometres across international borders, they were, in some cases, physically confined to the employer’s property. Non-compliant workers were threatened with repatriation. Government inspectors – who refrained from entering workplaces because of the risk – conducted virtual inspections in which they relied on employer reports.

Covid-19 outbreaks on farms and greenhouse operations erupted almost immediately. In surrounding communities and commercial establishments, migrant workers were stigmatised and even refused service (Hennebry et al., 2020). For the first six months of the pandemic, the agricultural industry (including meat packing plants) and privately-operated long-term care facilities were responsible for the overwhelming majority of positive cases and deaths in Canada. In each sphere, the common denominator was a work force that was disproportionately racialised, low-paid, and populated by migrants lacking secure migration status. A key finding of a

study of the differential impact of Covid-19 on non-citizen and racialised people in Ontario (Canada's largest province) found that, as of June 2020, 'Although immigrants, refugees and other newcomers make up just over 25% of the Ontario population, they accounted for 43.5% of all Covid-19 cases' (Guttmann et al., 2020). The study did not include seasonal agricultural workers, which would have significantly increased the proportion of non-citizen Covid-19 cases.

Civil society organisations focused on migrant and refugee rights have been documenting conditions faced by precarious migrants and refugees during the pandemic, using mainstream and social media as well as public protests to advance long-standing demands to issue migrant workers (across a range of occupations) access to permanent resident status (MWAC, 2020). In one well-publicised case, a migrant farm worker was fired for speaking to media after he tested positive and a roommate died from Covid-19. The agri-business employed hundreds of workers under Canada's seasonable agricultural programme. The employer failed to provide safe, clean, and well-provisioned accommodation for workers; by June 2020, over 190 workers tested positive. With support from a migrant rights organisation, the farm worker was able to resist the employer's attempt to summarily deport him, and he filed a complaint against the employer for engaging in reprisal against him. In early November 2020, the Ontario Labour Relations Board ruled in favour of the worker, awarding him lost wages and damages (Gabriel-Flores, 2020).

Migrant worker organisations drew attention to the essential services these workers provide to a Canadian economy in crisis, and the heightened risk of infection, illness, and death they faced because of the nature of the work they perform. Their vulnerability was compounded by disregard of their health and safety by employers who exploit their precarious immigration status. The government largely deflected the issue and, instead, provided tens of millions of dollars to employers to encourage them to implement the protective measures they had already pledged and failed to provide.

2.8 Asylum Seekers and Refugees

At the bottom of all hierarchies of legal migration are refugees and asylum seekers. Admission of asylum seekers is not politically or economically essential to Canada. Refugee resettlement is not legally required, and Canada halted resettlement in March 2020. It resumed slowly in late August, but Canada did not meet its resettlement targets for 2020.

Canada's obligations toward asylum seekers qualify their admission as legally essential under a proper interpretation of Canada's obligations under the UN Refugee Convention (United Nations High Commissioner for Refugees, 2020), but it is undeniable that Canada (like most other states) seeks to evade those obligations. Elsewhere, Sean Rehaag et al. (2020) describe how Canada leveraged the pandemic to advance its goal of preventing asylum seekers from reaching Canada and seeking refugee protection. In a depressing and distinctive display of Canadian-ness, the

government classified the entry of NHL hockey teams (and their entourages) as essential, but not the entry of asylum seekers (*ibid.*; Mohammed, 2020).

In July 2020, the Federal Court of Canada ruled that the Canada-US Safe Third Country Agreement (STCA) violates the Canadian Charter of Rights and Freedoms, based on the treatment to which asylum seekers are subject when returned to the US under the STCA (Canadian Council for Refugees, 2020). The government appealed the decision, and the Federal Court of Appeal overturned the decision in April 2021 (Canadian Council for Refugees, 2021). The applicants have applied for leave to appeal to the Supreme Court of Canada. Meanwhile, the border remains closed to refugee claimants who do not fall within STCA exceptions. Those who are apprehended while crossing irregularly are pushed back to the US.

2.9 Pandemic Pathways to Permanent Residence

Against this generally dismal landscape for migrants and refugees, two developments stand out. When the pandemic measures began, refugee and migration advocates launched a campaign to urge the federal government to provide access to permanent residence for front-line ‘essential workers’ with precarious immigration status, including seasonal agricultural workers, other migrant workers, and refugee claimants. The Black Lives Matter uprising amplified the racialised character of the migrant worker population and the pandemic’s impact on expressions of racism and xenophobia. Activists’ calls to action were backed by evidence about the treatment of seasonal agricultural workers and temporary workers in meat packing plants. Frontline workers in long-term care facilities also received considerable attention, especially in Quebec. Many among them were Haitian and African refugee claimants who had entered Canada irregularly from the US post-2016 (because the aforementioned STCA precluded them from entering through regular means) at a Quebec location known as Roxham Road. They had long been vilified as ‘illegal’ immigrants from various quarters, including the Quebec provincial government, which had promoted a number of anti-Muslim and anti-immigrant policies since its election. But here they were, risking their health by providing services in nursing, security, janitorial work, and food preparation.

In mid-August 2020, the federal government announced that refugee claimants working in the health sector in direct contact with patients would be granted direct access to permanent resident status (Canada, 2020g) The federal immigration minister praised these refugee claimants as demonstrating ‘a uniquely Canadian quality in that they were looking out for others’ (Canadian Press, 2020; Kestler-D’Amours, 2020). There was, of course, a certain irony to rewarding refugee claimants for performing their ‘Canadian-ness’ by doing work that Canadians would not do. But more significant was the exclusion of other services that were also deemed essential, which also exposed workers to heightened risk of infection, but which did not involve direct contact with the sick or elderly. Inside healthcare facilities, these included security, cleaning, and food preparation. Workers in other sectors,

especially in agriculture, also faced heightened risks that were not inherent to the work (unlike healthcare), but largely attributable to employer failure to ensure safe working and living conditions. Additionally, precarious migrant workers who were not refugee claimants remained ineligible. Soon after the programme's announcement, it emerged that while the federal government and other provinces were open to a wider scope of eligibility, at least for refugee claimants in the health sector, the Quebec government strongly opposed it (Gruda, 2020).

This exceptional initiative for refugee claimants appealed to the logic of deservingness and 'earned' citizenship: non-citizens may be put on a path to citizenship as a reward for extraordinary sacrifice to the nation. A similar premise underwrote US President Barack Obama's DACA programme, whereby prosecution for irregular presence was deferred for people without legal status who served in the US military or attended post-secondary education. The Canadian programme's limitation to direct provision of healthcare and the ineligibility of precarious workers who were not refugee claimants both invite deeper reflection about the particular confluence of forces and discourses that produced it. This unprecedented offer of permanent resident status for refugee claimants was both welcomed for those it included and contested as arbitrarily restrictive for those it excluded. In December 2020, four months after the initial announcement, the government opened the application process. The scope of the program was confined to a tiny subset of eligible refugee claimants who claimed refugee protection before 13 March 2020, who possess valid work permits, and have accumulated a minimum number of hours of employment in direct provision of health care (Pilon-Larose, 2020). A journalist estimated that the proposed measure would probably benefit no more than a thousand refugee claimants (Gruda, 2020).

While the 'pandemic pathways' program was restricted to asylum seekers in front-line health care, another program introduced in April 2021 offered access to permanent resident residence for up to 90,000 migrant workers and international students – but excludes refugee claimants (Government of Canada, 2021a). The program opened in May 2021 with a six-month deadline for application. The impact of the pandemic on transnational movement meant that Canada could not approach its annual target for permanent immigration except by pivoting to temporary migrants (workers and international graduates) already in Canada. The program sets aside 20,000 spaces for health care workers, 30,000 for essential non-health care workers, and 40,000 for recent graduates from Canadian institutions. As of 1 June 2021, however only 13,000 workers applied for 50,000 spaces, whereas the 40,000 maximum for international graduates applications was reached (Government of Canada, 2021b). The explanation for undersubscription by workers is not a lack of eligible candidates. While the program is open to workers designated as 'low skill,' the complexity of the application process itself, the lack of digital literacy and language fluency among many foreign workers (the application must be submitted online), the onerous documentary requirements, the expense of obtaining private language testing, and the cost of legal assistance in completing the application have made the program inaccessible to eligible workers.

These temporary programs illustrate the capacity of the government to depart from entrenched ideas about who is worthy of admission to permanent residence. The most optimistic view is that this lesson will survive the pandemic and create momentum for establishing a standing policy of prioritizing permanent immigration and facilitating access to permanent residence for all temporary workers. The pessimistic view is that these initiatives will become another example of short-term, ad-hoc policies that sustain Canada's reputation as a generous and welcoming country, while conferring material benefits on very few. To put these pandemic pathways in perspective, as of December 2020, there were over 80,000 refugee claimants in Canada and over a million people on temporary work permits. (Goldring & Landolt, 2021).

2.10 Concluding Remarks

The global migration of Covid-19 not only disrupted transborder movement; in many (perhaps most) states, stasis and closure became the default norm at and within borders. It is too early to predict or theorise the future of mobility as free (versus permitted) movement in an era of surveillance, internal borders, and lockdowns.

With respect to transborder movement, pandemic restrictions have in turn, generated exceptions organised around a conception of 'essential' that was produced, revised, and represented through the interaction of pandemic-driven exigencies and nationally-specific articulations of the legal, political, and economic constraints in play. It would be imprudent to suggest that these have altered conventional migration and citizenship hierarchies, but perhaps the pandemic has temporarily jostled conventional hierarchies of who (or whose labour) enough to expose those privileges and stereotypes to greater critical scrutiny by a wider public.

To understand how the admission of certain people to Canada was accepted as legally, economically, and/or politically essential, one must take account of Canada's character as a 'country of immigration', and its particular impact on expanding grounds for admission of family members. Canada's economic integration with the US explains its preferential treatment of entry from that country (despite the hazards posed by US governance of the pandemic). The exposure of Canada's dependence on migrant workers to subsidise food production and to deliver critical services counters the settler-society tendency to promote permanent immigration and settlement. It has also dampened anti-immigrant sentiment, as Canadians recognise the vital contribution of those admitted on a temporary basis.

If one describes Canadian policy on Covid-19 admissions as a circle of inclusion, the government drew the circle around citizens, permanent residents, and foreign nationals who could demonstrate prior physical presence of some duration in Canada. In other words, the circle was drawn around functional rather than formal residence. Normally, formal temporary status prevails over functional residence under immigration law. One can reside in Canada continuously for years and yet

remain permanently ‘temporary’ because one holds only a temporary visa. During the public health emergency, the ethical significance of the fact that a student or worker actually lives in Canada – even if their status is ‘temporary’ – was validated in a way that it normally is not. The labour performed by temporary foreign workers, so often devalued as ‘unskilled’ or misrepresented as ‘seasonal’, was newly valorised during the pandemic. The acknowledgement that the definition of family (basically intimate partners, parents and children,) used for ordinary immigration purposes was too narrow to address the urgent need for family members to connect with those residing in Canada was also noteworthy. Refugees, however, were mostly left behind.

Every autumn, the Minister of Immigration, Refugees and Citizenship announces projected levels of immigration for the next year. On 30 October 2020, the federal government announced its plan to increase admissions over the next three years to compensate for the shortfall caused by the pandemic and to facilitate economic recovery and future growth (Canada, 2020i). The messaging was positive about immigration at a moment when many states have doubled down on xenophobia and exclusion – and that is remarkable in itself. The critical question is whether the insights gained because of Covid-19, which carry with them profound potential for transforming migration policy, can survive the pandemic.

Each state has its own set of factors that combine to determine whose entry and what kind of labour was legally, economically, and politically essential during the pandemic. But beyond these pragmatic considerations lie conceptions of the nation and identity, and broader attitudes toward immigration society surely matter. These may best be revealed and appreciated through comparative analysis. By offering Canada as a case study, I hope to open up the possibility for generative comparison.

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