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MIGRATION AND CRIME: A Canadian Perspective



**The International Centre for Criminal Law Reform
and Criminal Justice Policy**
1822 East Mall
Vancouver, B.C., Canada V6T 1Z1

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Darryl Plecas¹
John Evans
Yvon Dandurand

ABSTRACT

Against the background of the globalization of many sectors of society which has liberalised the flows of capital, people and trade, the role of the nation state in regulating the movement of people is examined. The paper then considers the processes of immigration and integration from a Canadian perspective. The relationships between crime and immigration are examined overall and within Canada. For Canada, the evidence suggests that immigrants are much less involved in criminal activity than are those who were born in Canada. The paper acknowledges that Canadian policies with respect to assimilation, as opposed to integration, have been failures. The paper goes on to argue that current policies, as codified in the Canadian Charter of Rights and Freedoms and The Canadian Multiculturalism Act, strive for a politics of inclusion and provide an illustration of positive policies that nation states can follow to facilitate the integration of immigrants into the larger society.

INTRODUCTION

The *International Scientific and Professional Advisory Council* is once more addressing a complex issue. The connections between migration and crime are very complex and the topic is also very sensitive politically. Indeed, asserting that there is a strong connection between crime and immigration is all too often done for political purposes: to exploit a community's xenophobic fears or to play on a group's natural resistance to cultural pluralism. Both crime and immigration tend to be perceived as threats and provoke

¹ The authors are affiliated with the International Centre for Criminal Law Reform and Criminal Justice Policy at the University of British Columbia, 1822 East Mall, Vancouver, B.C., Canada V6T 1Z1. The order of names is simply reverse alphabetic.

apprehension. When these two issues are combined they may add up to a powerful cocktail of fear and irrational responses.

The multiple links between migration and crime raise much broader and very delicate questions about ethnocultural relations, collective *versus* individual rights, the nature of democracy, and the limits of cultural tolerance. Against appeals for simplistic solutions, we are provided here with an opportunity to compare our experiences, to understand how the emerging new world economic order is forcing us all to reconsider old assumptions about borders and crime, and to offer the best advice we can.

The much heralded "global society" is widely expected to make national borders increasingly irrelevant to most efforts to control the migration, virtual or real, of capital, information, and people. Such developments offer new challenges to all nations. Some of these challenges can be addressed nationally; others cut across national borders and call for new forms of international cooperation and mutual assistance. The responses given to the issues raised by migration and crime will ultimately affect the meaning given to the words "justice" and "criminal justice" in our respective countries.

THE ROLE OF THE NATION STATE

Many people have predicted the imminent death of nation-states as we know them. We do not subscribe to this view. However, we note that the role of nation-states is being profoundly transformed by the globalization of the economy, the explosion of

communication technology, and contemporary cultural revolutions. In these new circumstances, what effective role can states or international organizations play to address crime prevention and criminal justice as affected by transnational population dynamics?

Some analysts² rightly deplore the absence of an effective international migration regime that would fairly and efficiently regulate the movement of people. However, there are obviously some important limits to what can be accomplished by government agencies through migration regimes, concerted efforts to enforce laws or to combat transnational crime or even the promotion of international human rights standards. There are also the significant questions that remain unanswered about the rapidly evolving political reality of state sovereignty and national borders in relation to information, communications and trade. While these lofty questions are being resolved, many of the pressing crime prevention and criminal justice issues will be addressed at the level of smaller communities where a consensus of opinion can more readily be achieved and acted upon.

Nevertheless, in our view, there is an enormous role to be played by nation-states acting together and independently. Since the globalization trend is especially apparent in the financial sector, it is not surprising that most voices speaking against any efforts to "reinvent" and reaffirm national borders come from that sector. Such calls are often justified on the basis of the presumed inevitability of the current form of the globalization process or the alleged futility of political intervention in the face of market forces. However, Eric Helleiner suggests that, "although technological and market developments have been important, states

²Rystad, G. *Immigration History and the Future of International Migration*. International Migration Review, 26/4 (1992). pp. 1168-1197.

have themselves actively encouraged globalization in various ways".³ Many perceive decisions to liberalize capital control as a form of abdication of state responsibility for social policy and, ultimately, as a threat to their own policy autonomy.⁴ The international attractiveness and competitiveness of each country's financial sector have provided a stronger motivation for such policy decisions than longer-term considerations of policy making autonomy or social impact.

At the same time, there is a growing awareness of the importance of immigration policies and regimes, and of actions that might be taken by a state or states to govern and fairly regulate the flow of people across borders. Such measures, for some, run contrary to most countries' eager efforts to meet the demands of the increasingly internationalized financial and economic sectors. Cross-border economic activities are depicted as being necessarily incompatible with state restrictions of the cross-border movement of information, people or capital necessary for business and profit.

Those who advocate either resignation or a "hands-off" policy on the part of national governments in matters of control or regulation of transnational movement of people, labour, capital or goods may be doing so in pursuit of somewhat self-serving interests. The question is perhaps not one of whether or not states ought to intervene, but rather one of what would it take to provoke the kind of concerted action that is obviously required. As Richard Gwyn, a Canadian political writer, argues in his most recent book, *Nationalism Without Walls*:

³ Helleiner, Eric 'Democratic Governance in an Era of Global Finance' in Cameron, M. A. and Mohot, M. A. (Eds.). *Democracy and Foreign Policy - Canada Among Nations*. (Ottawa, Canada: Carleton University Press, 1995), p.284.

⁴ Jackson, Robert H. 'Morality, Democracy and Foreign Policy', in Cameron, M.A. and Mohot, M.A (Eds.). *Democracy and Foreign Policy - Canada Among Nations*. (Ottawa, Canada: Carleton University Press, 1995), pp. 45-62.

"The commanding asset of nation-states is that they remain the only source of democratic legitimacy. Their decisions carry an authority that no supranational agency, no transnational company, and no international advocacy organization can match. What they have come to lack is the nerve to act collectively, their reluctance to do so heightened by their mutual competitiveness".⁵

National governments need to provide a new framework for international, national and local responses to the changing nature of both crime and population migration. A review of the role of nation-states in terms of the management of their territories and resources is necessary, and this, not only as a minimal regulating structure of civil society, but also as a strong political force which alone can anchor these changes in social and economic priorities. Crime is only one of what economists would call the "external effects" which cannot be managed by the transnational market:

“As a basic rule, globalisation processes create new forms of integration and enhance competition among economic and social actors; however, it also leads to new forms of exclusion: exclusion stemming from rising unemployment or precarious jobs, exclusion through the lack of sufficient social services and security nets, (...) exclusion from political decision making (...).”⁶

⁵ Gwyn, Richard *Nationalism Without Walls - The Unbearable Lightness of Being Canadian*. (Toronto: McClelland & Stewart. 1995).pp. 100

⁶ MOST (Management of Social Transformation) *Newsletter*, 6/7, (June 1996) pp. 15

Each one of these new forms of exclusion carries potential implications for national and transnational criminality.

The authority nation-states carry is still required to balance the weight to be given to the rights associated with citizenship, the balance to be struck among collective and individual rights, the rights of migrants, the aspirations of a community, and national interests. States will continue to be an essential means to provide security in a rapidly changing world and migration will continue to complicate further this already daunting challenge.

Nation-states, then, are facing some difficult and complex choices with far-reaching consequences. Many of those choices have the potential in the long term to affect something as profound as a nation's own sense of identity. All of those choices will affect how nations and people will relate to each other in the future. We would like to offer a few ideas on how these fundamental choices might be more usefully approached, beginning with an attempt to change the metaphors we use in thinking about immigration.

WAVES OF MIGRATION

Because of historical patterns of immigration in the North American context, we have become accustomed to thinking about immigration in terms of successive *waves*, comparing

them, with all the emotional content that such an analogy carries, to the overpowering and frequently threatening movement of the ocean. In Canada, people will talk about the distinct and successive immigration waves which have shaped the population landscape over many generations. It is not unusual either to consider a nation's response to such waves in terms of how it defends itself against the turbulence, how it survives cultural erosion and threats to its identity, or how it faces the political challenges and the sometimes destabilizing influence of transnational population dynamics. Typically, the success of a nation's response to various immigration waves is measured in terms of the receiving population's ability to absorb or assimilate the new elements.

There are at least two problem with the analogy. First, it carries unnecessary emotional connotations. The analogy situates the actors on the shores, waiting for the next wave and preparing to defend themselves against an undesirable impact.

A second problem is that the analogy lends to simplistic and short-term thinking.

North Americans may be stuck with the analogy, so firmly is it entrenched. But, if we must retain it, let us enrich it by borrowing, not from oceanography, but from North American Aboriginal culture. The wave analogy needs enriching in two ways: the time scale over which effects need to be considered and the complexity of the phenomenon itself.

Consider first the different notion of time span reflected in Aboriginal teachings. There is for example, the "duty expressed by Ojibway people to look seven generations into the future whenever substantial change is being contemplated".⁷ This teaching is worth

⁷ Ross, Rupert *Returning To The Teachings - Exploring Aboriginal Justice*. (Toronto: Penguin Books, 1996). pp. 75

remembering as we make collective choices about how we deal with immigration related issues and how we treat migrants or minority groups.

Second, consider the complexity of waves as seen by the reply of an Inuit woman in Yellowknife when asked about the insistence of Aboriginal peoples that the justice system look beyond the particular crime or threatening situation and try to examine all the events and forces that lead up to it. The Inuit woman's explanation relied on the following story drawn from something her father had told her when he took her as a youngster to the shores of the great Hudson Bay:

"(He) ... told her that before she ventured out she had to learn how to look for and understand how the "five waves" were coming together on a particular day. (...) The first waves were those of the winds that were building but not yet fully arrived, the waves that would go strong as a new weather system came in. The second waves were the ones left over from the weather system that was now fading, for they would still continue to affect the water even after the winds had gone. The third were the waves caused by all the ocean currents that came winding around the points and over the shoals, for they would represent their own forces against the waves from the winds. Fourth were the waves caused by what Westerners call the Gulf Stream, and fifth were the waves caused by the rotation of the earth. Until you looked out and saw how all those forces were coming together, then

developed some idea of how they would interact as the day progressed, it was not safe to go out and mingle with them." ⁸

Given the far-reaching changes affecting all of our societies, nations could profit from adopting this Aboriginal wisdom. Migration waves are dynamic and complex. The benefits and the risks are considerable for all nations. Each must recognize the new threats to security, peace and social harmony that such profound and largely inevitable changes can present. Consideration of these issues cannot be reduced to narrow economic analysis of market forces and the ability of economies to accommodate new workers. Nor should social considerations stop at the level of short term responses to the linguistic and social needs of new immigrants.

FORCED ASSIMILATION

We have used the wisdom of Canada's Aboriginal people here not only because it is wise, but also to acknowledge that Canada has come late to this realization. For over a century Government policies were directed to forced assimilation of Aboriginal peoples. Their cultures were not valued; indeed they were denied legitimacy as cultures. The consequences of these policies were disastrous for Indigenous Peoples and an eternal shame to Canada. Progress, we are glad to say, is now being made and the cultural and political

⁸ Ross, Rupert *Returning To The Teachings - Exploring Aboriginal Justice*. (Toronto: Penguin Books, 1996). pp. 73-74

aspirations of Aboriginal Canadians are being negotiated and they are taking more control of their lives.

Attempts at forced assimilation have also brought Canada an enduring political problem in Quebec. Here too, Canada in effect tried forced assimilation. For many decades French-Canadians had their language and culture devalued and English-Canadian and foreign firms dominated the economy of Quebec. There have been dramatic improvements, but it may be too late; the forces of separation from Canada have never been stronger and it is conceivable, that Canada, one of the world's most privileged countries, will be fractured. If Canada does not survive in its current form, much of the blame will be traced to policies of assimilation and lack of respect for cultural and linguistic diversity.

We make these points here because we will argue that Canada now has policies with regard to immigration and multi-culturalism that are worth examining and, indeed, worth emulating. But we acknowledge that Canada's failures have perhaps, too late, brought wisdom. We urge others not to repeat our mistakes, but to consider more recent policy and practice.

We turn now to a review of the Canadian experience in relation to crime and migration. The country offers a particular example of the active role that can be played by a national government to mediate the impact of globalization and immigration through domestic policies to accommodate the resulting ethnic diversity.

ELEMENTS OF THE CANADIAN EXPERIENCE WITH IMMIGRATION

You may often hear the claim that Canada, like most "new world" countries, is a "nation of immigrants". But this is only true if one excludes Canada's First Nations, the original inhabitants of Canada. In fact, it is quite likely that if you asked First Nations' elders and leaders about the link that they see between migration and crime, many would answer that immigration was indeed responsible for the crime problems that emerged in their country. This, in turn, does not do justice to the contribution of the many generations of immigrants who made Canada into the strong and economically privileged country that it has become.

It is a truism to say that Canada was built on immigration. The country has also remained open to immigrants and refugees to an extent which, on a per-capita basis, can be matched by few other countries. Since the Second World War, it has received more than eight million new immigrants, three quarters of a million of whom were refugees. In recent years, immigrants have arrived in Canada at a rate of more than 200,000 persons per year and the percentage of refugees among them (15%) continues to be significant.⁹ In fact, immigrants were responsible for approximately 63% of Canada's population growth over the last eight years.¹⁰ Today, Canada is second only to Australia in terms of the proportion of its population which is made of first-generation immigrants. With a current population of nearly 30 million inhabitants, more than one in six Canadians is a first-generation immigrant

⁹ Bodets, Jane 'Canada's Immigrants: Recent Trends', in *Canadian Social Trends (Volume 2)*. (Toronto: Statistics Canada: Thompson Educational Publishing, 1994), pp. 27-31. Logan, Ronald 'Immigration during the 1980's' in Statistics Canada *Canadian Social Trends (Volume 2)*. (Toronto: Thompson Educational Publishing, 1994), pp. 31-34. Statistics Canada *Canadian Social Trends*. (Ottawa: Statistics Canada, 1996).

¹⁰ Statistics Canada *Canadian Social Trends* (Ottawa: Statistics Canada, 1996).

to the country.¹¹ Statistics Canada projects that, if immigration targets remain at their current annual levels of 250,000 and natural population growth falls as expected, immigrants will become Canada's *only* source of real population growth by the year 2030.¹²

Immigration statistics such as these do not paint the whole picture. They do not, for instance, include the hundreds of thousands of foreign nationals who visit or temporarily stay in Canada on business and pleasure trips and who, like most recent immigrants to Canada, also tend to gravitate mainly around large urban centers.¹³ Neither do these statistics include the unknown number of people residing illegally in the country.

For people in many countries, including many in Canada, immigration on this scale evokes nightmares about crime and ethnocultural conflict. Yet, Canada is certainly not the crime-ridden nor conflict-plagued country that such fears might have led one to expect. In fact, Canada is a relatively safe and peaceful society. Furthermore, for many Canadians, their country's openness to refugees and immigrants is a source of pride, a defining value which they sometimes place at the very root of their cultural identity. Canada's experience in this area, at a time when many nations fear that they are losing control over their borders, might offer some measure of reassurance and help to counter some of the xenophobic fears which tend to colour discussions of migration and crime. What, then, do we know about the relationship between the two? We first review studies from a variety of countries and then focus on Canada.

¹¹ Bodets, Jane (1994).

¹² Chui, Tina *Canada's Population: Charting Into the 21st Century*. (Ottawa: Statistics Canada, 1996), pp. 3-7.

¹³ Logan, Ronald 'Immigration during the 1980's' in Statistics Canada *Canadian Social Trends (Volume 2)*. (Toronto: Thompson Educational Publishing, 1994), pp. 31-34.

CRIME AMONG IMMIGRANTS

There is a body of research which suggests that the rate of criminality among immigrants is higher than the rate for non-immigrants. For example, a study of immigrants to Germany, revealed that immigrants from Turkey, Greece, and Italy all had higher rates of criminality than non-immigrants of that country during 1965.¹⁴ Other reports from the sixties showed that Italian immigrants to both Switzerland¹⁵ and Belgium¹⁶ had higher rates of violent criminality than non-immigrants of those countries. Similarly, it has been reported that Hungarians and Yugoslavians living in Sweden were more likely than Swedes to be arrested for certain violent crimes.¹⁷ Finns living in Sweden were also reported to have higher violent crime rates than Swedes themselves.¹⁸ Still another study from the sixties reports differential crime rates for serious crimes in Israel among various ethnic groups, with Jews of African origin and Asian origin having rates at least twice as high as Jews from Europe and the Americas.¹⁹ Another study from New Zealand yields a similar pattern²⁰.

¹⁴ Zimmerman, H.G. 'Die Kriminalität der ausländischen Arbeiter', *Kriminalistik*, 2 (1966), pp. 623-625

¹⁵ Feracuiti, F. 'European Migration and Crime' in M.E. Wolfgang (Ed.). *Crime and Culture: Essays in Honor of Thorsten Sellin*. (New York: John Wiley & Son, 1968). Gillioz, E. 'La criminalité des étrangers en Suisse'. *Revue pénale suisse*, 2 (1967) pp.178-91

¹⁶ Liben, G. 'Un reflet de la criminalité italienne dans la région de Liege' *Revue de Droit Penal et de Criminologie*, 44 (1963), pp. 205-245.

¹⁷ Sveri, (1960).

¹⁸ Kaironen, V.A. *A Study of the Criminality of Finnish Immigrants in Sweden*. (Strasbourg: Council Of Europe, 1966).

¹⁹ Shoham, S. *Crime and Social Deviation*. (Chicago: Henry Regnery Company, 1966).

More recent research, including some presented at this conference²¹ show higher rates of crime among immigrants. The research of Jackson, P.²² and Chilton et al.²³ points in the same direction.

What do these findings really tell us? In most cases, the research findings suggest more of a link between crime and how the criminal justice system and other institutions respond to minorities, than between individual or even group characteristics of immigrants and criminality. In this regard, we are struck by the pattern of results which tends to show higher crime rates not so much among minorities, but among specific minority groups, e.g. darker coloured people who have been the object of systemic discrimination on the part of a criminal system.²⁴

²⁰ Ferguson, D., Harwood, L. and Lynskey, M. '*Ethnicity and Bias in Police Contact Statistics*'. Australian and New Zealand Journal of Criminology, 26, (December 1993), pp. 193-206.

²¹ Savona, Ernesto U. (In cooperation with di Nocola, Andrea and da Col, Giovanni) '*Dynamics of Migration and Crime in Europe: New Patterns of an Old Nexus*' ISPAC Conference, (1996). Solivetti, Luigi '*Some Quantitative Considerations on Migration, Crime and Justice in Italy*'. ISPAC Conference paper (1996).

²² Jackson, P. '*Minority Group Threat, Crime and the Mobilization of Law in France*' in D. Hawkin (Ed.) *Ethnicity Race and Crime: Perspectives Across Time and Place*. (Albany: SUNY Press, 1995).

²³ Chilton, R., Teake, R., and Arnold, H. '*Ethnicity, Race and Crime: German and Non-German Suspects 1960-1990*' in D. Hawkin (Ed.). *Ethnicity Race and Crime: Perspectives Across Time and Place*. (Albany: SUNY Press, 1995).

²⁴ See for example: Griffiths, C. and Verdun-Jones, S. *Canadian Criminal Justice (Second Edition)*. (Canada: Harcourt Brace and Co., 1994). Hartnagel, Timothy '*Correlates of Criminal Behaviour*', in Linden, R. *Criminology, A Canadian Perspective (Second Edition)*. (Canada: Harcourt Brace and Co., 1992), pp. 91-126. Conklin, John *Criminology (Fifth Edition)* (New York: MacMillan, 1995). Currie, Albert *Ethnocultural Groups and the Justice System in Canada - Working Document*. (Ottawa, Canada: Research and Statistics Directorate, Department of Justice Canada, 1994). Ontario Royal Commission Of Systemic Racism *Racism Behind Bars: The Treatment of Black and Other Racial Minorities in Ontario Prisons*. (Toronto: Publications Toronto, 1994).

It is important to consider that when most of these studies were conducted, the researchers had less than quality data to rely on. As Borowski and Thomas emphasized recently:

"The entire field of criminology is plagued by data quality problems. Indeed, these limitation make it quite difficult to feel very confident about the extent of crime and delinquency in general, let alone the extent of migrant crime in particular".²⁵

In contrast to the studies cited above, there is another body of literature which reports lower rates of criminality among immigrants than among non-immigrants. Borowski and Thomas²⁶ reviewed several Australian studies which concluded that immigrants had lower rates of crime.²⁷ Borowski and Thomas also cite a study reporting a lower recidivism rate among convicted immigrants than convicted non-immigrants.²⁸

As these conflicting results show, there cannot be any simple assumption drawn about the relationship between immigration and crime. Indeed, migration within a society may

²⁵ Borowski, A. and Thomas, D. 'Immigration and Crime' in Adelman, H., Borowski, A., Burstein, M., and Foster L. (Eds.). *Immigration and Refugee Policy: Australia and Canada Compared, Volume 2*. (Toronto and Buffalo: University of Toronto Press, 1994).pp. 649.

²⁶ Borowski, A. and Thomas, D. (1994).

²⁷ Francis, R.D. 'Crime and the Foreign Born in Australia', in D.Chappell & P. Wilson (Eds.). *The Australian Criminal Justice System: The Mid 1980s*. (Sydney: Butterworths, 1986). Hazelhurst, Kayleen M. *Migration, Ethnicity and Crime in Australian Society*. (Canberra: Australian Institute of Criminology, 1987). Easteal, P.W. *Vietnamese Refugees: Crime Rates of Minors and Youths in New South Wales*. (Canberra: Australian Institute of Criminology, 1989).

²⁸ Commonwealth Advisory Council (1952), cited in Borowski and Thomas (1994).

have a stronger relationship with involvement in criminal activity. Shelley,²⁹ for example, found that individuals who migrate to Soviet cities have higher rates of criminality than long term residents of the same cities. Similarly, Clifford³⁰ found the same pattern in Japan. Specifically, he found that individuals moving to Tokyo from the surrounding country side had higher rates of crime than those who grew up there.

The conflicting findings about the relationship should, in our view, cause us to look at the social, economic, and justice policies within countries and at their unique histories.

²⁹ Shelley, L. 'Urbanization and Crime: The Soviet Case in Cross-cultural Perspective', in Shelley, L. (Ed.). *Readings in Comparative Criminology*. (Carbondale: Southern Illinois University Press, 1981).

³⁰ Clifford, W. *Crime Control in Japan*. (Lexington, Mass.: D.C. Heath, 1976).

CRIME AMONG IMMIGRANTS IN CANADA

The Canadian experience with criminality among immigrants seems to be very similar to that of Australia. Very simply, immigrants have a lower rate of crime than non-immigrants. A study conducted in the mid-fifties,³¹ for example, showed that immigrants were convicted of indictable offenses at literally half the rate of non-immigrants and that this pattern of under-representation of immigrants in the rates of convictions held true across nearly all offense categories. More recently, similar findings were produced by a study conducted by Canada's Ministry of the Solicitor General³² (1974).

Furthermore, a survey conducted recently by the Correctional Service of Canada found that immigrants were significantly under-represented in Canada's federal penitentiaries (for individuals serving sentences of two or more years), and this pattern held true for all of the country's regions and for all age groups³³.

While not direct evidence, another indicator that immigrant crime in Canada is relatively low comes from what we know about "removals" from the country. These are cases involving individuals who have been ordered to leave Canada because they have either entered the country illegally, committed an indictable offense as a non-citizen in Canada, or otherwise have been determined by Canada's courts to be ineligible for further stay in the country. When we look at the total number of removals from Canada each year, we find that the number is quite small in comparison to the average number of immigrants arriving each

³¹ Valée, F.G. and Schwartz, M. *'Report on Criminality among the Foreign Born in Canada'*. In H.R. Blishen (Ed.). *Canadian Society* (Toronto: Macmillan 1961).

³² Ministry of the Solicitor General, Canada (1974), cited in Borowski and Thomas (1994).

year and very small indeed in terms of the total number of first-generation immigrants in Canada (see: Table 1). As a percentage of immigrant arrivals each year, the number of removals represents less than one percent (i.e. 0.9%) and even that is an over-estimate since a significant number of those cases are not immigrants, but either visitors or illegal entries.

INSERT TABLE 1 ABOUT HERE.

³³ Cited in Borowski, A. and Thomas, D. (1994)

Table 1

Removals From Canada, 1994 and 1995 ** (Selected Cities)					
Removal Centre (1)	1994 Removals (2)	1995 Removals	Yearly Average	Average Yearly Criminal Cases	Criminal Cases as % of Removals
Vancouver	818	639	729	299	41%
Montreal	1104	1189	1147	257	22%
Toronto	3179	3017	3098	1262	41%
Combined	5101	4845	4973	1818 (3)	37%

(1) These three major cities handle approximately 95% of removals nationally.

(2) The majority of removals relate to arrivals from the United States.

(3) Not all of these cases involve immigrants. A significant number are visitors and illegal entries.

** Figures are from a forthcoming national report on removals (January, 1997) and were obtained from an immigration official in the Removals Section, Immigration Canada, Vancouver, B.C.

MIGRANT CRIMINALS

We do not wish to suggest that there are not serious crime problems in Canada or that foreign criminals are not involved in serious criminal incidents in Canada. There are “migrant criminals” who present a totally different kind of problem than that those posed by immigration in general.

Migrant criminals are individuals who come to a country for the purpose of conducting criminal activities, generally of an organized nature and most often in a transnational manner. Immigration to the country may be an option, but only as a means towards criminal ends. On the question of "migrant criminal elements", the Criminal Intelligence Service of Canada (CISC) paints, in its *1996 Annual Report on Organized Crime in Canada*, a rather bleak picture of a growing problem:

“The crimes involve activities taking places in many countries, often from the countries of origin of Canada's immigrant communities and are becoming increasingly sophisticated, well organized, transnational, and more broadly and deeply entrenched. In the process, migrant crime in Canada continues to have a dominant role in a broad range of traditional and new forms of crime. Furthermore, there is clear evidence that it continues to make elaborate and far-reaching in-roads into legitimate business in Canada”.³⁴

³⁴ CISC (Criminal Intelligence Service Canada) *1996 Annual Report On Organized Crime in Canada*. (Ottawa: Canada, 1996)

Migrant criminals pose very different problems for society and they should not be confused with the vast majority of immigrants who move to seek a better life for their families and themselves.

CRIMINOGENIC AND RESILIENCY FACTORS AMONG IMMIGRANTS

The vast majority of immigrants to Canada have nothing to do with migrant criminals, except unfortunately as victims. In fact, as the studies reviewed above show, crime rates among immigrants to Canada should not be a source of serious concern. That in itself should provoke us to re-examine some of the assumptions that are too easily made about the nature of the links between crime and immigration. At the same time, we are not suggesting that the assumption that immigrants will have higher crime rates is entirely due to prejudice.

Indeed, looking at crime among immigrants from the perspective of what we know about the etiology of crime in general, there would seem to be ample reason to expect that immigrants as a group would have higher rates of criminality than non-immigrants. Immigrants are newcomers, often to a very different environment. They frequently have to fight exclusion and they are risk of falling prey to various predatory and criminal individuals or groups. When we consider these circumstances, we can appreciate why many immigrants (especially involuntary ones) are potentially at risk of being involved in criminality.

The risk of criminality for any one individual stems from multiple, complex and interconnected factors. The personal characteristics of the individuals themselves are obviously important. That is, when individuals lack certain skills, abilities, attitudes, understanding, and other attributes, their probability of becoming and remaining criminally oriented is enhanced. For example, cognitive skills, life skills, social skills, educational level, maturity, level of moral reasoning, and work skills have all been found to be related to crime and recidivism.³⁵

These personal characteristics, for immigrants or others, do not lead inexorably to a life of crime. Rather, they must be considered in a complex social context. For instance, an individual may be reasonably well educated and possess good social and work skills relative to the needs of their homeland, but because of language difficulties and differences in technologically, they find themselves being seen as uneducated and without work skills in their new home. To take another example, we might consider the matter of physical attractiveness (or the lack of) - a factor which has been reportedly linked to criminality.³⁶ It may be that this factor is related to self-esteem. But it may also have its roots in what individuals find unattractive in others, which in turn may be related to access to opportunities, treatment by teachers, acceptance by peers, and prejudice in general. The

³⁵ See for example: Bartol, Curt *Criminal Behaviour: A Psychological Approach (Fourth Edition)*. (New Jersey: Prentice Hall, 1995).

³⁶ Cavior, N. and Howard, L. 'Facial Attractiveness and Juvenile Delinquency Among Black Offenders and White Offenders'. *Journal of Abnormal Psychology*, 1 (1973), pp. 202-213. Dion, K. 'Physical Attractiveness and Evaluations of Children's Transgressions'. *Journal of Personality and Social Psychology*, 24 (1972), pp. 207-213. Agnew, R.. 'Appearance and Delinquency', *Criminology*, 22 (1984), pp. 421-440. Kurtzberg, R., Mandell, W., Levin, M., Lipton, D. and Shuster, M. 'Plastic Surgery on Offenders', in Johnson, N. and L. Savitz (Eds.). *Justice and Corrections*. (New York: Wiley, 1978).

point is that the characteristic has less to do with the individual, and more to do with how people respond to it. To take one further example, we might even say that virtually any immigrant who doesn't speak the national language(s) of their new country, lacks communication skills and the net effect is similar to the non-immigrant who lacks communication skills.

It is easy to be fooled when we fail to consider these personal characteristics and their relative nature, especially in our consideration of race and ethnicity. For instance, in Canada, Aboriginals have a long history of a substantially higher rate of criminality than non-Aboriginals.³⁷ A similar situation exists in the United States where African-Americans have long had higher rates of criminality than Caucasians.³⁸ But what is really going on here? What would we find if we could fully and simultaneously extract the effects of drugs, alcohol, living conditions, life circumstance, access to opportunity, forced assimilation, and ethnocultural relations from the equation?

As these examples illustrate, the risk of criminality increases whenever individuals are unable to feel part of and genuinely accepted by the larger group they relate to. When individuals are not genuinely accepted, they cannot develop a sense of belonging that would allow them to feel comfortable about who and where they are. In short, their self-esteem, confidence, and level of trust in others is shaken. In turn, they begin to look at themselves

³⁷ Griffiths, C. and Verdun-Jones, S. *Canadian Criminal Justice (Second Edition)*. (Canada: Harcourt Brace and Co., 1994). Samandych, R., Lincoln, R. and Wilson, P. 'Towards a Cross-cultural Theory of an Original Crime: A Comparative Study of the Problem of Aboriginal Over-representation in the Criminal Justice Systems of Canada and Australia'. *International Criminal Justice Review*, 3 (1993). Hartnagel, Timothy 'Correlates of Criminal Behaviour', in Linden, R. *Criminology, A Canadian Perspective (Second Edition)*. (Canada: Harcourt Brace and Co., 1992), pp. 91-126.

³⁸ Conklin, John *Criminology (Fifth Edition)* (New York: MacMillan, 1995).

and those around them differently and are motivated to, in effect, play to a more receptive audience, even if that audience is itself marginal to the larger society.

From a similar perspective, we can envision that an inability to gain acceptance would hinder an individual's likelihood of establishing what Hirschi³⁹ calls "attachment".

Attachment is one of the four elements in Hirschi's social control theory and is based on the assumption that crime has its roots in the extent to which individuals are connected to their surroundings and able to establish social bonds. The strength of an individual's attachments to people and institutions around him/her is considered the most important element in the overall theory because it sets the stage for the other three (commitments, involvement and beliefs) which account for the intensity of the social bond thus created. When related to criminality, strong social bonds are understood to increase resiliency against criminogenic factors, while weak ones increase the influence of other risk factors.

In any case, individuals who look, act, and speak differently than the general population are likely to find gaining acceptance more difficult - in part because of their own discomfort in the first instance, and in part, because of others' fear of and discomfort with differences. It follows that the greater the perceived differences, the greater the difficulty one is likely to experience in gaining acceptance.

Other circumstances which would increase the risk of criminality would include perceived, and too frequently real, barriers to legitimate opportunities to reach cultural goals

³⁹ Hirschi, Travis *Causes of Delinquency*. (Berkeley: University of California Press, 1969).

and aspirations. Cloward and Ohlin's "differential opportunity theory"⁴⁰ as well as other strain and sub-cultural theories of crime underline the importance of providing immigrant and other vulnerable sub-groups with access to legitimate social, economic and political opportunities. They also underline the need of minority communities to be genuinely integrated, as opposed to simply assimilated. Immigrants, especially refugees, are less likely than non-immigrants to have the education, work skills, language skills, and social skills so necessary to gaining access to opportunities.

In spite of all these factors which may make involvement in crime more likely for immigrants, we think that there is no conclusive evidence and no reason to believe that the mere fact of being an immigrant predisposes one to criminal involvement. Such an assumption would be as wrong and as damaging as the racist assumption that particular races or ethnic groups are inherently more criminal than others. The point deserves emphasis because the presumed higher criminality of certain ethnic groups has frequently served as a justification for denying their opportunity to immigrate to some countries.⁴¹ It will remain important for researchers to look at ethnicity or race when considering the issues of migration and crime. Such analysis may be helpful in understanding the extent of, and the effects of, individual and systemic prejudice.

There are, then, a large number of criminogenic factors which would seem to effect immigrants. At the same time there are conflicting findings about the extent of immigrant

⁴⁰ Cloward, Richard and Ohlin, Lloyd *Delinquency and Opportunity*. (Glenco: Free Press. 1960).

⁴¹ Cited in Borowski, A. and Thomas, D. (1994).

involvement in crime. In addition to what we have already said about the relationship between immigration and crime, there are two other factors we wish to emphasize. These are the policy responses of the receiving country and the resilience of immigrants themselves.

Immigrants to Canada have been remarkably resilient and hard working. The decision to immigrate and leave familiar customs and, most frequently, familiar languages, takes resolve and courage. Most immigrants have arrived in Canada determined to make a better life for themselves and their families. They frequently work harder than native-born Canadians and since many of them know the stark contrast between their previous circumstances and the promise of their new country, they are dedicated to doing well. They also know that conviction for a criminal offence could mean deportation.

In addition to these resilience factors we wish to emphasize that the policies and laws of the receiving country can play a significant role in determining whether immigrants will have the resources to shield them from the criminogenic factors that are, in fact, present.

ELEMENTS OF CANADIAN POLICIES

Canadian policies regarding immigration and multi-culturalism have some unique features. They strive to be inclusive and to encourage the involvement of all groups in the larger society without requiring the erosion of ethnic and cultural identity. They also serve

as a foil to aspects of public opinion which is intolerant, suspicious, and even hostile to diversity.

Canada's *Citizenship Act* of 1947 made no distinction between native-born and immigrants, but Canada's immigration policy certainly was directive about the immigrants it wished to attract and admit within its borders. Two decades later, the 1967 *Immigration Act* abolished all immigration quotas or preferences on the basis of race, national origin, religion or culture. In 1982, the *Canadian Charter of Rights and Freedoms*, proclaimed as part of the *Constitution Act*, emphasized not only the obligation of all Canadians to respect and "preserve" the distinctive culture of newcomers, but also their responsibility to "enhance" their multicultural heritage. Specifically, Section 27 of the *Charter* states that:

"This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canada".⁴²

Moreover, many of the rights in the *Canadian Charter of Rights and Freedoms* are phrased as 'Everyone' has..., not citizens have. And there has even been pressure to ensure that Charter rights are accorded to those seeking entry to Canada, that is to persons who have applied to enter Canada as refugees or immigrants, but who are not yet physically present in Canada.

⁴² Part I of the *Constitution Act*, 1982 being schedule B of the Canada Act c.11s.27 (U.K.) (1982).????

The promotion of ethnic diversity became official government policy in Canada in 1988, with the passage of *The Canadian Multiculturalism Act* which states, in part:

"3.(1) It is hereby declared to be the policy of the Government of Canada to (a) recognize and promote the understanding that multiculturalism reflects the cultural and racial diversity of Canadian society and acknowledges the freedom of all members of Canadian society to preserve, enhance, and share their cultural heritage; (...)".⁴³

Canada's official multicultural policy was designed to encourage the recognition and preservation of culturally diverse communities in a number of aspects, including ensuring that social, cultural, economic and political institutions of Canada are respectful and inclusive of Canada's multicultural character.⁴⁴

How far is Canada prepared to go in promoting multiculturalism? Once the process is well established and has acquired its own momentum, it is not quite clear what limits will emerge. The very fact that the answer to this question must remain ambiguous is in itself a reason for concern for many Canadians. In the area of criminal justice, one can already see a time when consensus on traditional definitions of crime will become more problematic in a society where a strong consensus on values may become more illusive. A Department of

⁴³ *An act for the Preservation and Enhancement of Multiculturalism in Canada*, S.C. Chapter 31 (1988).

⁴⁴ See: Ministry of Supply and Services, *The Canadian Multiculturalism Act: A Guide for Canadians* (Ottawa, Canada): Quoted in Currie, Albert *Ethnocultural Groups and the Justice System in Canada - Working Document*. (Ottawa, Canada: Research and Statistics Directorate, Department of Justice Canada, 1994). pp. 4

Justice consultation paper published in 1994 even raised the theoretical question of whether a "general cultural defense" could be instituted to enable persons "not to be found guilty for conduct that would otherwise be criminal, when the person acted in accordance with his or hers customs or beliefs".⁴⁵

There are, however, some limits. Canada, for example, has before Parliament a bill which would make female genital mutilation a criminal offence. In part this is symbolic since legal opinion in the Department of Justice has been that female genital mutilation was already covered under the assault and wounding sections of the *Criminal Code*.

When it comes to questions of immigration and ethnocultural relations, Canada has made some "nation-defining" choices which contrast with the protectionist and assimilationist policies of many other countries. And, to be sure, many of these choices remain very controversial, even within Canada. There are those who point at Canada's vast spaces and wealth and argue that Canada should adopt a more generous policy towards refugees. But there are also those who argue that immigrants and refugees do not mix with "space" but with other people, that they tend to congregate in urban centers and redefine the nature of our cities, and that there are limits to the number of newcomers a country can welcome without seriously affecting the welfare and the prosperity of its current residents. Some people are afraid that they might be losing something. There are inevitably the fear-mongers who predict a totally dislocated society, at the mercy of international criminals. There are also those who are concerned with the prevalence in our society of what they call

⁴⁵ Cited in Gwyn, Richard *Nationalism Without Walls - The Unbearable Lightness of Being Canadian*. (Toronto: McClelland & Stewart. 1995). pp.196. See also: Currie, Albert (1994).

“hyphenated Canadians” (as in English-Canadian, French-Canadian, Chinese-Canadian, Ukrainian-Canadian, etc.) and who fear that Canadians are rapidly losing their very sense of national identity. There even is a recurring debate in Canada, the equivalent of which would be hard to imagine in many other countries, on what it means to be a "Canadian". There is also the astonishing fact that many Canadians apparently cannot answer that simple question, except in the negative, stating what they believe they are not.

Once a society has truly accepted respect and tolerance of cultural diversity as one of its defining values, it must expect to struggle to find ways for ethnocultural groups to stress not only their distinguishing beliefs and traditions, but also to reinforce the similarities and the joint purposes that unite them with the larger society.

Some observers, after they have noted international trends and expressed the usual concerns about the potential long-term impact of economic and political decisions made by leaders apparently determined to abolish all obstacles to the free flow of capital, business and information, often note that Canada's unique situation may offer a glimpse of things to come in all post-modern nations. Is "*Nationalism Without Walls*", as Richard Gwyn⁴⁶ calls it, possible? What kind of nationalism is still possible with the remaining permeable national borders and an open-door immigration policy? In Canada, as elsewhere, immigration "is creating a new pattern of human existence".⁴⁷

⁴⁶ Gwyn, (1995).

⁴⁷ Kotkin, Joel. *Tribes: How Race, Religion, and Family Determine Success in the New Global Economy*. (New York: Random House, 1992).

There is a strong sense among many Canadians that too many of the "nation-defining" decisions in this area have been made by national governments behind closed-doors. There has been little public debate on, for example, the control of immigration, the allocation of citizenship, the policies concerning political refugees, or the right of ethnocultural minorities to participate in the nation's political process,. The public has not been able to participate and the people are often not aware of the political implications of policy changes. As part of his controversial criticism of Canada's multicultural policy, Neil Bissoondath⁴⁸ noted how essential, although difficult, a public debate around such choices is to the eventual success of the policy and to ensuring that its implementation remains true to its basic objectives. The same certainly holds for all public policies affecting immigration: these decisions can no longer be made on purely technocratic or on economic-efficiency bases. It is extremely short-sighted to believe that such decisions can be made without a prior public debate and without ensuring that they enjoy a comfortable level of public support.

CANADIAN PUBLIC OPINION

Canada has not recently had an open public debate on immigration policy. There are occasional flurries of comment in the media in response to particular incidents and some limited public debate among politicians in response to opposition questions or interest group statements. What we do know about public acceptance of and support for immigration and related policies comes from public opinion polling.

⁴⁸ Bissoondath, Neil *Selling Illusions - The Cult of Multiculturalism in Canada*. (Toronto: Penguin Books, 1994).

Recent public opinion polls suggest that most Canadians support multiculturalism. For instance, a 1994 Ekos survey found that 75% of Canadians believe that “a mix of cultures makes Canada a far more attractive place to live”.⁴⁹ At the same time as there is support for the abstract ideas of diversity and tolerance, Canadians are concerned with government policy. Jim Bronsill notes that a federal government document reports that Canadians are “confused and disappointed” with the government’s policies and initiatives respecting multiculturalism.⁵⁰ There is also some indication that a majority of Canadians are concerned that we are accepting immigrants at a rate faster than our ability to integrate them.⁵¹ This was a common reaction, for example, to a front page headline and story in the Vancouver Sun: “English now a Minority Language in Vancouver.”⁵²

Because there is concern among the majority of Canadians the government has decided to hold immigration to current levels, that is up to 220,000 per year of which approximately 15% would be refugees. The governing party had promised in the last election campaign to increase immigration to 1% of the population or approximately 300,000 per year.

⁴⁹ Cited in Gwyn, (1995).

⁵⁰ Bronsill, J. ‘*MultiCulturalism: a Vision of Confusion for Canada*’ Vancouver Sun, (October 15, 1996)

⁵¹ Wilson-Smith, A ‘*Debating the Numbers - Focus on Immigration*’. Maclean’s Magazine, (November 7, 1994).

⁵² “A majority of people living within the city limits now speak a language other than English in the home, city Hall’s social planning department has confirmed.” See Ouston, Rick *Vancouver Sun* (November 2, 1996). pp.1.: “English was spoken in 43.96% of the homes; Chinese in 31.56%; Vietnamese in 5.17%; Punjabi in 4.39%; and 14.92% spoke

Choices about levels of immigration and the criteria under which new entrants will be admitted will obviously continue to be made and levels and criteria will no doubt change but it seems unlikely that Canada will fundamentally reverse direction. The choices made by Canadians regarding immigration and ethnocultural relations may appear as courageous and future-oriented to some. To others they may seem ill-advised, if not completely suicidal. Nonetheless, the fundamental idea that immigration policies and multi-cultural policies should respect differences and promote the participation and inclusion of all groups in Canadian society seems robust and is supported by the majority of Canadians.

ETHNOCULTURAL RELATIONS

Even after acknowledging a relative decline in its standing, the state remains the locus of policy response in terms of producing the ethnic accommodation made necessary by immigration. Cultural diversity calls for acknowledgment rather than judgment. As Young argues, "the presumption that the healthy end-state equilibrium for the nation-state is homogeneity must be dethroned".⁵³

Perhaps more than any other type of identity, ethnicity carries the potential to "become totalizing, that is to displace other loyalties and obligations and become the central basis of identity of a group".⁵⁴ To avoid their further marginalization on the basis of ethnicity, the

some other language in the home. The Vancouver School Board lists 88 languages spoken by its students."

⁵³ Young, Crawford 'Ethnic Diversity and Public Policy: An Overview'. Occasional paper no. 8, World Summit for Social Development. (Geneva: UNSRID, 1994). pp.3

⁵⁴ UNRISD (United Nations Research Institute for Social Development) 'Ethnic Violence, Conflict Resolution and Cultural Pluralism'. In *Report of the UNRISD/UNDP International Seminar on Ethnic Diversity and Public Policies, New York, 17-19 August 1994*. (Geneva: UNRISD, 1995). pp.3

needs of immigrant groups should get particular attention by the receiving country. This can be achieved partly by proactive social and criminal justice policies that respond to ethnic diversity and promote access to and participation in the political process. Internal security depends, not so much on criminal justice response to crime committed by immigrants, but on whether a country responds to the immigrants' own needs for security of legal, social and economic status. As Bangura notes:

"When people evoke identity, they are less concerned with the totality of social values than with a primary or core set of values that are assumed to transcend social divisions. Such core values are often based on religion, language, race, colour or an assumed common culture. It is not surprising, therefore, that identity issues are all too often embedded in emotions".⁵⁵

Attempts to repress ethnic identification can be destructive and are a source of conflict and social destabilization. Nevertheless, national policies can be set in place which reduce ethnic tension by protecting people's rights to form ethnic loyalties. To do so, however, it is not necessary to resort to policies which entrench ethnicity in formal social and political structures. As Ghai reminds us:

"Ethnicity naturally evolves, and in the process previously important ethnic markers become insignificant, and new bases for identification are created.

⁵⁵ Bangura, Y. *'The Search for Identity: Ethnicity, Religion and Political Violence'* Occasional Paper No. 6. World Summit for Social Development. Geneva: UNRISD. (1994) pp.1

This is a process that is difficult to regulate, and it is usually a mistake to try to do so".⁵⁶

CANADA'S MINORITIES AND THE JUSTICE SYSTEM

During the first part of this decade the Department of Justice of Canada commissioned a number of important studies of the question of the access of ethnocultural and visible minorities to the justice system. Although these minorities are not necessarily immigrants, their experience is certainly relevant to an understanding of the situation of immigrants to the country. We do not wish to present all of these studies in detail, but we recommend them to your attention. One could consult, for instance, the excellent synthesis of findings and review of the issues produced by Currie⁵⁷ or the technical report on *Gaps in Obtaining Justice* by Patricia File.⁵⁸

This work underlines the importance of understanding that justice is not simply a question of acknowledging the fact of diversity. "It is also about transforming our

⁵⁶ Ghai, Dharam 'Preface', in *Ethnic Violence, Conflict Resolution and Cultural Pluralism: Report of the UNRISD/UNDP International Seminar on Ethnic Diversity and Public Policies, New York, 17-19 August 1994*. (Geneva: United Nations Research Institute for Social Development (UNRISD)1995). pp. ii.

⁵⁷ Currie, Albert *Ethnocultural Groups and the Justice System in Canada - Working Document*. (Ottawa, Canada: Research and Statistics Directorate, Department of Justice Canada, 1994).

⁵⁸ File, Patricia *Gaps in Obtaining Justice: A Study of Justice Issues of Importance to Ethnocultural and Visible Minority Community Organizations*.(Ottawa, Canada: Research and Statistics Directorate, Department of Justice Canada, 1994). pp.1.

institutions to truly embrace new notions of equality, fairness and appreciation of diversity".⁵⁹

Together, the studies conducted by the Department of Justice, suggest that the identification of the gaps between what the justice system provides and what the ethnocultural communities expect can offer a point of departure to redefine what access to justice ought to embody in practice.⁶⁰ Whenever the justice system attempts to deal with justice problems involving ethnocultural communities or immigrants, the system must establish links with the communities to use their strengths and develop effective solutions. It is important to remember in doing this that immigrants frequently come from countries where their experience of criminal justice authorities is less than reassuring. This is of special importance since the authorities in the receiving country will frequently be the principal "messenger" through which the new cultural and social expectations of the country will be communicated to immigrants. The initial contacts between immigrants and authorities can have a significant influence on future relations.

⁵⁹ File, Patricia pp. 1

⁶⁰ Currie, Albert *Ethnocultural Groups and the Justice System in Canada - Working Document*. (Ottawa, Canada: Research and Statistics Directorate, Department of Justice Canada, 1994). Etherington, Brian *Review of Multiculturalism and Justice Issues: A Framework for Addressing Reform*. (Ottawa, Canada: Department of Justice Canada, 1994).

CONCLUSION

Even at the best of times, cross-national comparisons are difficult. In comparing national experiences around the issues of immigration and crime, one should remember that Canada has enjoyed rather favorable circumstances. However, if there is one general lesson to be drawn from Canada's experience as it relates to these issues, it is that our fears about the impact of immigration on crime are not justified. Immigrants, although themselves individually at a greater risk of exclusion, marginalization and exploitation, do not necessarily represent a greater risk of crime for the host society. In fact, the risk of criminal involvement among immigrants can be significantly reduced by pursuing active domestic policies which favor an integration of immigrants based, not on assimilation which strives to eliminate ethnic differences, but on respect for and accommodation to, ethnic differences.

Particular stress needs to be placed on the importance of addressing the increased risks of alienation, marginalization and criminality to which immigrants are exposed. These risks can be increased by the criminal justice system's attitude towards immigrants. It can also be increased by policies and practices which effectively deny immigrants access to legitimate means of conflict resolution and access to justice in general. The same risks can also be decreased.

The successful integration of immigrants and the noticeable absence of wide-spread crime problems among immigrants in a country such as Canada can be explained by some of the policy choices made by the country in the areas of multiculturalism, equal access to justice and the opportunities provided for ethnic minorities and ethnic relations in general.

National policies in these areas need to deliver effective means to facilitate the integration of immigrants and to abolish systemic obstacles to their full participation in society, including providing equal access to justice.

States are not powerless. They can do much to alleviate the potential problems created by the patterns of immigration emerging in our global society.

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