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Revisiting *The New Politics of Immigration*

Catherine Dauvergne*

ABSTRACT

This article follows from the workshop that Professor Mireille Paquet organized in Montreal in June 2018, to discuss my book, *The New Politics of Immigration and the End of Settler Societies* (Cambridge, 2016; Dauvergne 2016). In relation to this event and the articles of this special issue, this paper embarks on revisiting *The New Politics of Immigration*, now more than three after it first appeared in print. In this paper, I reflect on whether my arguments stand up to the test presented by the events of the past three years. Recent events lead me to nuance some of my original arguments, but on the whole even the most recent surprises fit well into the *New Politics* framework that points to increasing salience, legalization and urgency in politicizing immigration.

It is a rare and wonderful treat for someone who primarily wrestles alone with ideas to have vibrant, deep and deeply informed conversation about those ideas. The workshop that Professor Mireille Paquet organized in Montreal in June 2018, to discuss *The New Politics of Immigration*, was, for me, both flattering and intensely stimulating. The ensuing conversation provided me with many insights into how the book had travelled since its publication two years earlier and, of course, lots of reflections about where I had “gotten it right” and where I had either failed, or failed to communicate clearly. With this rich food for thought, I embark on revisiting *The New Politics of Immigration*, now three and a half years after it first appeared in print.

I sent the manuscript for *The New Politics of Immigration* to press in June 2015. The timing might be considered unlucky: it was just a few weeks before the flow of refugees from Syria across the Mediterranean and into Europe reached truly crisis proportions, and mere months prior to the campaigns that would set the trajectory for Brexit in the United Kingdom and bring Donald Trump to power in the United States. On the other hand, the events that have followed so closely on the heels of the book do reinforce the central idea that the politics of immigration have shifted, and that these changes are significant, irreversible and dangerous. Moreover, there has been such an onslaught of high-profile immigration events that undertaking to revisit the central arguments now that some time has passed is a worthwhile challenge.

In this paper, I reflect on whether my arguments stand up to the test presented by the events of the past three years. While some immigration events were foreseeable when I was writing (like a sharp rise in asylum seeking), others were not (like the emergence of the Trump regime or Brexit). Recent events lead me to nuance some of my original arguments, but on the whole even the most recent surprises fit well into the *New Politics* framework that points to increasing salience, legalization and urgency in politicizing immigration. This is probably even true of the global pandemic which has overtaken the politics of migration in the slip of time between finalizing this reflection and its submission to copy-editing. One of my goals in the *New Politics of Immigration* was to argue for a rejection of the settler state mythology of immigration in order to clear the way for

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more clearheaded and innovative immigration policy making. In my assessment, the events of the past three years lend new urgency to this goal. A key avenue for assessment is whether any progress towards such a rejection is discernable.

My revisiting methodology in this paper is to make a brief assessment of three distinct political shifts and to draw some conclusions on the basis of what these assessments demonstrate. The first assessment is of the Brexit and Trump surprises, arguing that each of these events provides important evidence of the new politics of immigration. The second is to consider the emergence of the centrist Trudeau government in Canada and to question whether this event is in fact a counterpoint to the trends I wrote about in *New Politics of Immigration*. The third is to offer some preliminary analysis of the two global compacts that were concluded in December 2018, which I argue must be understood as a response to the asylum surge of 2015. Following this triptych, in the conclusion I attempt to answer two questions: the first is whether we are any closer to loosening our grip on settler society immigration mythologies; and the second is whether the optimism that I gestured towards in the conclusion of *New Politics of Immigration* has been strengthened or weakened. To set the stage, I begin with an overview of my original argument.

THE END OF SETTLER SOCIETIES

The fulcrum of the book is that the idea of the “settler society” as an interpreter or predictor of immigration policy and politics has come to an end. While we may still use the term to accurately and appropriately categorize different states, the long era when settler societies had different approaches to immigration than the “old world” countries of Europe has ended. And we cannot go back. This shift is particularly important for the paradigmatic settler states “founded” on immigration, those states where the settler encounter with Indigenous people has been so totalizing that the post-World War II era of decolonization passed these states by. In essence, these states are still in a colonial mode – something that the majority publics in Canada, the United States or Australia are very slow to grasp.¹

Understanding that in immigration terms the settler society era is over is vital for understanding how immigration politics now work in these states. It is also useful for understanding how immigration politics work in other states – particularly prosperous Western liberal democracies in Europe, which were once nations whose members led the successive waves of immigration that made the settler society label meaningful. A central question is why does it matter? Why bother to challenge (our) immigration mythology in this way. What does such a challenge offer aside from pessimism and clever rhetoric? The answer to this question is the entire reason to write the book: immigration politics are deeply resistant to change. And change is desperately needed. Almost more desperately with each passing week.

On every side of current immigration politics, the settler society mythology persists. This mythology entails a background vision of hard-working immigrants who come to a new place to set down roots and rebuild their lives, to make better lives for their children, and who contribute at great personal cost to the building of a (new) nation. Mythological immigrants sacrifice and assimilate, or at least adapt to the extent that their remaining qualities of difference contribute to a flourishing multiculturalism. For those who advocate on behalf of immigrants and refugees, this mythology is a powerful call to what is best about (our) past approach to immigration. We conjure this mythology in order to persuade policymakers, judges and politicians, that we ought to return to a time when we treated immigrants differently, because of the value they brought to our nations. In this refrain, “we are all immigrants” (and, as a corollary, Indigenous voices are silent). This is a very compelling story, and advocates would be loathe, and strategically foolish, to abandon it. On the other hand, for those who seek to impose ever harsher immigration laws, ever more rigid restrictions,

ever higher walls, the old mythology of the settler society provides a measure against which today's new immigrants are failing. Whether the story is that the newcomers refuse to integrate, or that they are so wealthy as to distort real estate markets, or that they are not economically successful, or that qualified doctors and engineers are now Uber drivers, the story is the same: today's immigrants do not live up to the immigration imaginary of the past. In this version, the settler society mythology provides the justification for meaner policy measures, because it demonstrates that what we are currently doing is somehow not working. It obscures the fact that the results policy-makers complain of are an entirely predictable outcome of the ways that Western liberal democracies have changed their immigration politics: by undercutting the values of both settlement and society.

Because there is no incentive, anywhere, to move away from the old story, we lose the opportunity to notice key changes, to actually *see* the new politics of immigration and, thus, to change them. My project in the book was to expose how, and why, this new politics has emerged, to demonstrate that it is not simply a passing fad or a partisan moment, and to begin, possibly, to consider what we might be able to do about.

In compelling ways, the scholars engaging with *The New Politics of Immigration* have brought key nuances to this argument about a sharp endpoint to the settler society era in migration studies. Vives' analysis of child migration across the Mediterranean points to vital regional variations; Paquet calls attention to the fact that the new politics incentivizes many new policy actors – a factor to which I had not paid sufficient attention. Importantly, Abu-Laban attunes to the silence about Indigenous perspectives in migration scholarship and calls upon scholars (like me) to initiate a new and more theoretically profound embrace of settler colonial analysis of immigration. I certainly agree with Abu-Laban that this is an urgent and currently absent insight. *The New Politics of Immigration* does nothing more than point to this silence. But more is required. In Abu-Laban's words, "the fundamental and enduring foundation of settler-colonies on Indigenous lands, coupled with the mythology of the frontier, creates a different historical legacy that remains relevant now, even in the face of elements of convergence in relation to immigration policy and practice in Western states".

The New Politics of Immigration works to describe the contours and consequences of contemporary immigration politics, building on the idea that these politics prevail globally. These characteristics prevail in former settler states as well as in traditional sending nations. Furthermore, and with even greater contestation, I argued that because the global North has hegemonic state capacity and overwhelming sway in developing international legal norms, the central facets of the new politics of immigration spill over into global south states, which do not share the historical antecedents of these politics. In other words, global immigration politics are defined by those states that are sought after immigration destinations and that have the capacity to defend – legally, politically, militarily and rhetorically – their borders. In essence, this amounts to a long and detailed statement of the convergence thesis. There is no doubt that my original argument could benefit from the nuances that the Montreal workshop participants (and others) have brought to it.

The end of settler societies has ushered in immigration politics, which is marked by the loss of both "settlement" and "society" as key immigration values. The loss of settlement is telegraphed by an increasing focus on temporary migration, and by the rise of "illegal" as a label to insure exclusion even for those who have long been present in a territory. The decline of society is seen in the reduction of settlement services and an increasing desire to recruit people who can fit easily into the economy as the needed widgets of current circumstances. Ellermann and Gorokhovskaia do an excellent job of exploring the loss of settlement in their analysis of increased impermanence in Canadian immigration law. In addition to the loss of settlement and society, in the twenty-first century immigration has become a central political issue in all Western, as well as many non-Western states. The new politics are marked by policy convergence and competition, temporization, securitization with fear as a backdrop and a predominance of economic discourse. Ellermann and

Gorokhovskaia take these points further, demonstrating how all of this increases migrant precarity. Paquet shows that there are key variances away from economic discourse that persist in particular circumstances. The increasing political salience of immigration brings with it rapid policy shifts, increasing legalization and a decline of discretionary spaces for governments. Consequences of these new politics include a striking resistance to partisanship (which Wright and Levy also find in survey data about American political opinions), an intertwining of immigration and criminality, very slow progress on all human rights indicators and a striking failure of policy innovation.

One of the most intractable features of the new politics of immigration is that they cast human rights and economics as antagonists to one another. Policy “solutions” on the government side are locked into economics justifications. Advocacy is framed almost exclusively in human rights terms. There is a lot to unpack here, and I hope the book has done this work well and fully. I believe that this dyad is reflected in the sub-national policies Paquet analyses in Canada and Australia on the one hand, and in the United States on the other. Importantly, I argued that the economics–human rights dyad contributes very strongly to policy paralysis as economic values are seen to undermine human rights arguments and vice versa. This observation moves us to the necessary conclusion that neither economic rationale nor human rights arguments can move us beyond the impasse of the new politics. The three examples that I take up in this short paper provide some insights, and perhaps, optimistically, a potential challenge to this desultory conclusion.

PRESIDENT TRUMP AND BREXIT: UNSURPRISING SURPRISES

By the middle of 2015, Donald Trump had already entered the race to become the forty-fifth president of the United States, and the legislation that provided for the Brexit referendum had passed second reading in the United Kingdom’s House of Commons. In this sense, the outcome of each of these votes ought not to have been such a surprise – both were clearly on the horizon. In mid-2015, however, Donald Trump was still a year away from being confirmed as the Republican Party nominee for the 2016 presidential election, and it is arguable that the strong Parliamentary support for the Brexit bill was based in part on a belief by many parliamentarians that the referendum would not succeed. Certainly, however, migrant advocates and scholars, like me, were deeply in denial about the possibility of a Trump presidency or a British departure from the European Union.

Despite my confession that as I penned the forward-looking conclusion of *The New Politics* I did not seriously entertain either of these outcomes, as I undertake a systematic revisiting, these major shifts in global political configurations are both emblematic immigration politics events. I have chosen to treat these events as one instance of a new challenge because of what they share: a major electoral victory that was unforeseeable to intellectual elites nationally and globally, and that was driven in large part by concerns about immigration.

In the case of Donald Trump’s presidential election win, the link with immigration matters is emblazoned on his standard. The winter of 2019 saw the longest United States government shut-down in modern history because of the deep divide over funding further fortification of the US–Mexico border. The core of the dispute was widely known as “The Wall”, with Mr. Trump daily reminding the world that he campaigned on the issue of building a full wall along the US–Mexico border. Beyond The Wall, the immigration agenda of his presidency has been so intense that each issue seems to fade as a new and more preposterous one arrives: the Muslim immigration ban, the sharp curtailing of refugee resettlement, rolling back the DACA process and the mass detention of migrant children arriving at the southern border. I would now predict that the list will grow before this article goes to press. More than any other issue, President Trump returns to immigration matters and uses them as a primary rallying point for his core supporters. Wright and Levy bring an important caution here, showing that the American government is more, and more consistently,

anti-immigration than is the American population. Still, it is the elites that make and change laws. I hope Wright and Levy's cautions to my argument will be evident in the 2020 Presidential election.

Casting Brexit as primarily an immigration politics event requires a bit more subtlety, but not terribly much more. Popular concerns about the open border with the rest of the European Union are focused on workers from elsewhere in Europe entering Britain, and on rulings from the European Court of justice that protect their human rights. It is easy enough to forget, in hindsight, the role that UKIP played in making the Brexit referendum a reality. But the voting patterns in the referendum itself conformed closely to traditional stereotypes about immigration opinion: older voters, and voters in rural areas and smaller centres, largely supported Brexit; metropolitan cosmopolitans and younger voters opposed it, as did those in Scotland and Northern Ireland where one would not expect strong allegiance to British identity. The immigration markers of the entire dispute were also highlighted in much of the concern about potential ways to secure a Brexit deal. In the deal versus no-deal saga, central points were about how to ensure that goods and money would still move, but that people would not. And the inverse is true in the still-not-solved dispute concerning the Irish border was a major political barrier to resolving the Brexit dilemma: how to ensure that in an increasingly psychically united Ireland, people can move freely.

These two global shifts demonstrate very clearly how immigration matters have moved to centre stage in ordinary electoral politics. This point is very well illustrated in Paquet's analysis of sub-national jurisdictions: more salience leads to more actors. While Donald Trump's election and the approval of the Brexit referendum are distinct events, I have grouped them together because they share the following: each is a sharp departure from the status quo ante, with strong elements of populism and signalling the political power of groups of voters who over the final few decades of the twentieth century were reasonably easy to ignore. A true political shift. In addition to being significant shifts marked by the salience of immigration, these two events have ushered in, in each case, a national political climate which reads as a summary of markers of the new politics of immigration: rapid policy shifts, blurring of partisan boundaries and increasing legalization. In the case of the Trump regime, the strongest marker thus far is legalization, we see very clearly in the onslaught of executive orders and legal battles that the era of large spaces for discretionary government action in the immigration arena is over. Trump's America remains a very partisan place, although on a number of the highest profile immigration matters, high ranking members of Trump's own party have clearly asserted that they do not agree with his stance – the most recent example being those who have announced their rejection of the border wall project. This fits with Wright and Levy's data. For Brexit, the decline of partisanship on the basic issue is more marked. The January 2019 defeat of Prime Minister May's negotiated departure deal with the EU was based on more than half of the MPs of her own party rejecting the plan. Prime Minister Johnson's December 2019 election gambit relied heavily on the fact that the Labour Party had also backed Brexit.

The Trump and Brexit stories are also instructive regarding the explanatory paucity of the economics–human rights dyad. Asserting that economics and human rights form a dyad in immigration policy is a reference to the tendency of policymakers and immigration advocates to assert that positions are justified or should be changed either because of economic rationales or because of human rights principles. This dyad contributes strongly to policy paralysis, as it creates a narrow framing that curtails the development of potential new ideas. I think this downward spiral is shown well in Ellermann and Gorokhovskaia's work on decreasing permanence. Furthermore, despite repeated assertions, neither economic nor human rights arguments provide much insight into how immigration politics unfold in the contemporary era. Neither President Trump's immigration agenda, nor the Brexit, are primarily justified in economic terms. And on the other hand, opposition in each case makes some use of human rights arguments, but such arguments are lightly dispersed in a rhetorical field that is more significantly preoccupied with national identities and national values. Even in the paragon case of the detention of child migrants crossing the southern border, outrage was frequently directed against this “un-American” policy or at an intolerable offence to national

values, despite the fact that this was a human rights breach by the American state that was more evident than even the detentions and use of torture at Guantanamo Bay. The problem with a policy discourse that alternates predictably between economic and human rights arguments is that it manages to sidestep the concerns that truly animate the new politics of immigration. Vives' work on child migrants crossing the Mediterranean shows this clearly.

The most instructive elements of these two tales, however, are the puzzle of why they took intellectual elites by surprise. In this "revisiting" exercise, this is my most serious concern about my own reflections on the Trump Presidency and the United Kingdom's departure from the EU. In mid-2015 when I finished the *New Politics of Immigration* manuscript, I did not believe that either of these decisive shifts would actually happen. Looking back, I think the problem was not with the analytic framework I had built in *New Politics*, but, rather, with my own faith in that analysis. The turn towards greater salience of immigration in national politics, increasing fear and securitization, temporization and heightened legality, all of these factors contribute directly to both the rise of Donald Trump and the success of the Brexit referendum. Even the stubborn failure of policy wonks of all ilks to step outside the economics–human rights dyad prepares a rich terrain for these types of populism. My own failure to see this four years ago may be no more than an ironic example of how blinkered intellectual elites have been on this issue: I could not see it even as I was working on describing the terrain that made it possible. I console myself somewhat with Wright and Levy's evidence that the mainstream (at least in the United States) has not shifted its views to the same extent as elites clearly have. This is one reason for a lack of prescience. The 2015 Canadian national election is a contrast to these examples in several ways: it sheds a different kind of light on the contours and consequences of the new politics of immigration. The election of a centrist government, while more foreseeable, has ushered in a different type of evidence of a deep shift in immigration politics.

CANADA: A PERMANENT LOSS OF THE PAST

The election campaign that brought Justin Trudeau's Liberal party to power in Canada began in early August 2015. By that time, the refugee exodus from Syria was approaching its peak. Germany's Chancellor Angela Merkel announced three weeks later that her government was stepping away from a key part of EU asylum policy and opening Germany's borders to asylum seekers arriving via the Mediterranean. On September 2nd, 1 month into the Canadian campaign, 3-year-old Alan Kurdi's body was found on a Turkish beach. Prior to these events, immigration matters were already central to the election campaign largely because the governing party had spent the preceding decade fundamentally reconstructing Canadian immigration policy. However, the announcement following Kurdi's death of the Liberal party's commitment to bring 25,000 Syrian refugees to Canada prior to the end of 2015 if elected in October of that year quickly became the most high-profile campaign promise of any party (overshadowing even the Liberal Party's commitment to legalize recreational use of marijuana).

For anyone who has paid close attention to refugee resettlement in Canada over the years, by far the most astonishing part of the story is that after being elected on October 19, 2015, the new Liberal government met the 25,000 arrivals target by February 2016. Not quite within the calendar year, but so very close that no one has criticized the difference of a few weeks. Not only was this campaign centred on immigration matters in a completely unprecedented way, but it also appeared to usher in a government with a commitment to behave completely differently than its predecessor. By early 2016, migrant advocates in Canada were euphoric.

The ensuing four years, however, have not borne out this ebullience. Rather, the record of Justin Trudeau's government from 2015 to 2019 shows how deeply immigration politics have shifted,

and demonstrates that a return to past optimism is probably impossible. While electoral politics are inevitably partisan, one of the largest lessons of the Canadian exemplar is that the entire terrain of partisan discord has shifted, and the record of the Trudeau government shares more with that of its predecessor, at least in immigration matters, than it would like to admit. Again, Wright and Levy show this is the case in the United States as well. For starters, the extensive effort to rapidly resettle Syrians stopped abruptly in 2016. In the ensuing years, resettlement has continued at a pace that is somewhat higher than during the 2006–2015 Conservative government, but that is much closer to the status quo ante than the 2015 election campaign rhetoric suggested. The Trudeau government's 3-year plan for refugee resettlement that runs from 2019 to 2021 includes targets for government resettled refugees of 10,950 for 2019 and 11,700 for the two subsequent years. These target numbers are considerably lower than the Syrian push of late 2015, and while they are bolstered by private sponsorship targets of 19,000 (2019) and 20,000 (2020 and 2021), the government's proposed commitment in the 2019 campaign was closer to that of its predecessor than to its 2015 campaign pitch.

The overall difference in rounded terms of something in the neighbourhood of 10,000 resettled refugees is tiny in the perspective of an immigration plan that currently hovers around 350,000 admissions annually. And the comparison between these two numbers signifies the main difference between the centrist Trudeau government and the Conservative government of 2006–2015: the changes brought in by a major partisan shift have all been like this – more symbolic than anything else.

Between 2006 and 2015, with first a minority and later a majority government, the Conservative Party led a major overhaul of Canada's immigration programme. This shift frequently happened out of the spotlight, in the name of security, and without an sustained attention to how it challenged Canada's historical immigration trajectory. The key pieces of the Conservative immigration reform agenda included the following: altering asylum processes by introducing categories of access and appeal (dependent on modes of arrival – the *Balanced Refugee Reform Act* S.C. 2010, c.8), tightening provisions of criminal inadmissibility (*Faster Removal of Foreign Criminals Act* S.C. 2013, c.16), upending the skills-based economic admission system ("Express Entry"), restricting the ability to pass on Canadian citizenship, introducing a Safe Third Country agreement with the United States, ending healthcare access for refugee claimants, restricting grandparent immigration, introducing a citizenship stripping provision for those accused of terrorism and other serious crimes, and pursuing a number of other changes by shifting enforcement priorities. It is impossible not to mention the *Zero Tolerance for Barbaric Cultural Practices Act* (S.C. 2015 c. 29), because it was one of the final pieces of immigration law amendment legislation that the Conservative government created and because its outrageous title speaks for itself. This legislation attracted considerable critique in immigration advocacy circles when it was introduced, despite the fact that its immigration law content was almost nil: it makes practising polygamy in Canada, a basis for barring immigration – a result that was already possible under pre-existing law.² This legislative agenda is the basis of the rise of precarity that Ellermann and Gorokhovskaia analyse.

The centrist Trudeau government has indeed taken action to roll back a number of these provisions. But close attention to what has been changed and what has not reveals a clear pattern: the changes are largely symbolic, and the "new" directions are not novel. New laws introduced by the Conservatives that altered large parts of Canada's immigration architecture and that apply to tens of thousands of people have not been changed. The two best examples here are the new Express Entry system for skilled worker immigration (which disrupts the idea of waiting in a queue to have one's application processed) and the *Faster Removal of Foreign Criminals Act* (which lowers the threshold of "serious criminality" that leads to deportation from a sentence of 2 years to a sentence of 6 months). On the other hand, the Trudeau government did garner headlines for ending the citizenship stripping law (which had only been used once) and for restoring healthcare funding to refugee claimants (which was largely being covered by provincial governments in any case). The

Trudeau government has not moved to reject the United States as a “safe country” for asylum seekers, not even after the transformation wrought by the Trump government; nor has it considered restoring the ability for Canadians born outside the country to pass on their citizenship to their children on a *jus sanguinis* basis. Both of these Conservative shifts also affect thousands of people each year. The one new Trudeau government policy initiative that cannot be read as responding to the agenda of their predecessors – limiting health inadmissibility provisions so that illness is less of a barrier to immigration – is a curious potential counter example. The provision does affect a large number of people, but it is also the case that the principal change is likely in terms of processing routes, because a significant number of people each year had the former restriction waived on the basis of a detailed humanitarian and compassionate application. As the number of waivers that were related to health is not officially reported, it is not possible to assess how many additional people will be admissible because of this policy change. Thus, it is possible that there is one major policy shift that affects a large number of people, but this is impossible to verify, and for this reason alone I am sceptical about its significance.

Sadly, the *Zero Tolerance for Barbaric Cultural Practices Act* has been left in place, although in a cynical move the government has removed its offensive so-called “short title”. This is a counter example to my analysis, because the legislation is primarily symbolic and could be repealed with little legal effect. What is most offensive about the law is, of course, its title and the message embedded in that title. Given the other changes introduced by the Trudeau government, it is odd that this has not been changed, and perhaps suggests that the government has been wary of the difficulty of being able to succinctly and clearly present a manoeuvre that could be parodied as dismantling protection against forced marriage.

In sum, despite the commitment to “doing immigration differently” that was central to the campaign that brought the Trudeau government to power, as it heads into a re-election campaign the overhaul of Canada’s immigration law which took place between 2006 and 2015 has largely been untouched. The Liberal government has chased a few headlines with the reforms it has introduced, and it continues to attract some very high-profile resettlement headlines (Rahaf Mohammed’s resettlement in January 2019 is a powerful example), but the day-to-day working of Canadian immigration law has largely been unchanged from the state it was left in by the Conservative government. This is indicative of a permanent shift to a new politics of immigration: even a progressive centrist government seeking to forge a new path on immigration matters is content with a fundamentally more restrictive framework. The new politics of immigration have proven in Canada to be highly resistant to partisan shifts.

The actions of the Trudeau government also shed some light on the economics–human rights dyad. This government has often presented itself as motivated by human rights concerns. From the “gender-equality” cabinet, to feminist foreign policy, a high-risk transformation in Canada–China relations, and re-establishing governmental funding for rights challenges in Canadian courts, human rights have been at the top of the agenda. Given all of this, it is surprising that the government has not pursued a deeper rights-based reform agenda in immigration matters. It is certainly accurate to say that a number of the changes introduced have had human rights objectives, but it is equally accurate to say that there is not a genuine “reform” agenda here. Almost all of the legal and policy changes of this centrist government have amounted to returning to rules from an earlier time. Further, the government is keen to justify its increase in annual immigration intake targets in economic terms. Nothing has happened to displace or weaken the economic–human rights paradigm, and without this, nothing new is possible.

THE GLOBAL COMPACTS

While the Trump government and the Brexit saga have dominated front pages over the past three and a half years, in immigration terms the potentially most significant shift in this time has been

the endorsement of two new international statements by the United Nations General Assembly in December 2018. The *Global Compact on Safe Orderly and Regular Migration* and the *Global Compact on Refugees* are not new law, but they do signify new political direction, and their origin can be traced directly to the significant upsurge in asylum seeker arrivals in Europe during 2015. The most interesting question about these significant agreements is whether they are truly cause for optimism, or whether they fit closely enough within existing exemplars that their potential will dissipate over time. Now just a year after their conclusion, it is too soon to know for sure.

Perhaps the most important thing about these twinned compacts is that they happened at all. The growing global alarm about extra-legal migration in 2015 was triggered by the large number of arrivals in Europe, which had two vital consequences: first, this ensured that states of the global North were engaged in the debate; and second, this triggered Chancellor Angela Merkel's Germany to step out of line with the European status quo on migration. I wrote about Merkel's actions in opening Germany's borders and accepting more than a million asylum seekers in the late-addition preface to *New Politics of Immigration*, saying then that this was one of the most optimistic gestures towards change in immigration politics. I have not resiled from that assessment, despite the evidence that Merkel paid a political price for this decision and was unable to secure the European multilateralism that she judged ought to follow. The facts of mass arrivals in Europe and Merkel's unexpected response ensured that powerful Western states paid attention to migration matters in a way that had not happened since the aftermath of World War II. This created the momentum that led first to the *New York Declaration for Refugees and Migrants* adopted by the UNGA in September 2016,³ and onwards to the two global compacts just over two years later.

The key features of the global compacts are worth sketching. First and foremost: there are two. This reflects a persistent and troubling unwillingness to consider migration and asylum seeking in the same frame. Until the whole picture of global migration can be brought together, policy revolution is impossible. The upside of this approach, of course, is that it underscores the strength of international refugee law, and the global commitment to treat refugees as a distinct group of rights holders. In an imperfect world, this commitment is a vital bulwark. It is unfortunate, however, that the two compacts really do look as though they were drafted in isolation from one another. The compacts do not speak to one another, even at junctures when it would be absolutely logical to do so. Emphatically, the Preamble of the Global Compact on Safe, Orderly and Regular Migration states that migrants and refugees are distinct groups and that only refugees have a right to international protection (Article 4). This is an inauspicious starting point to be sure.

In very broad brushstrokes, the compacts do not stake out much significant new ground. The Global Compact on Refugees focuses strongly on "burden and responsibility sharing", a theme that has been well and frequently articulated in the past two decades, and that is even embedded in the Preamble of the 1951 *Refugee Convention*. The new agreement does include considerable detail on what burden and responsibility sharing could look like, which is welcome, even if its content is predictable. Discouragingly, the four central principles of this Compact focus (as ever) on state interests and the goal of eliminating any responsibility for refugees:

The objectives of the global compact as a whole are to: (i) ease pressures on host countries; (ii) enhance refugee self-reliance; (iii) expand access to third country solutions; and (iv) support conditions in countries of origin for return in safety and dignity. The global compact will seek to achieve these four interlinked and interdependent objectives through the mobilization of political will, a broadened base of support, and arrangements that facilitate more equitable, sustained and predictable contributions among States and other relevant stakeholders. (Article 7)

Hidden among these objectives is the goal of increasing resettlement (the only "third country solution"), which would be a marked improvement on the status quo and which has rarely been strongly promoted internationally given the paucity of state support for it. Resettlement is not new,

of course, but an broad agreement supporting it (it is addressed directly in later paragraphs) certainly is.

The Global Compact on Safe, Orderly and Regular Migration similarly stakes its ground in its preamble. Among a number of other objectives, it states:

The Global Compact reaffirms the sovereign right of States to determine their national migration policy and their prerogative to govern migration within their jurisdiction, in conformity with international law. Within their sovereign jurisdiction, States may distinguish between regular and irregular migration status, including as they determine their legislative and policy measures for the implementation of the Global Compact, taking into account different national realities, policies, priorities and requirements for entry, residence and work, in accordance with international law.

This statement emphasizing national sovereignty, in combination with the emphasis on migrants being distinguishable from refugees primarily on the basis of not having any distinct international rights, means that in key aspects this Compact does not go any further than the thus far ill-fated *Convention on the Rights of All Migrant Workers and Their Families*. At least in the *Convention*, there is specific recognition of extra-legal migration and some (albeit limited) protection for people who move outside the law. The Compact focuses on fresh commitments to international cooperation, and lists twenty-three objectives for collaboration, with some ideas about specifically how to move forward. There is little on these lists that Canada and other similarly situated states would not already claim to be doing.

Despite my scepticism, given the combined political shifts that add up to a new politics, the fact of these compacts is startling. The UNGA resolutions that accepted each compact in December 2018 were remarkably strong supported. Only the United States and Hungary opposed the Compact on Refugees, and they were joined by the Czech Republic, Israel and Poland in opposing the Compact on SOR Migration.⁴ The number of states in support, 152 for the Compact on SOR Migration, is more than any previous international statement on migration and notably is even more than have ratified the well-respected *Refugee Convention*. This was undoubtedly made possibly by the non-binding character of the compacts, but is politically significant nonetheless.

The Compacts together do contain some features to be optimistic about. One of these is that both Compacts urge a greater commitment to gathering data about migration and making that data publicly available to ground policymaking. This measure acknowledges the damage that uninformed migration rhetoric does to sound policy reform, and in this respect shares one of my central concerns in *The New Politics*. I am hopeful this commitment will come fully to fruition, and even more encouraged (and surprised, frankly) by the Compact on Refugees' commitment to establishing a global network of academics working on relevant issues. The Compacts also both acknowledge roles for non-state actors in supporting migrants and refugees. This acknowledgement has some potential to contribute to dislodging the state from the centre of the framework, and there is much to celebrate both in the recognition that it is often not states that are doing vital support work, and in the possibility of diminishing state centrality in this policy realm.

Most importantly, I see in these compacts some shift away from the human rights–economics dyad. The principal way this happens is that these documents do not seek to create new rights. This is remarkably novel and deeply refreshing. As the Compacts recognize, there are already ample rights commitments for both refugees and migrants. Indirectly, the Compacts recognize that the existing rights have often not been supported – the compacts encourage but do not require more states to sign on to key commitments. What is most interesting is that the Compacts do not make rights, or even rights rhetoric, the centrepiece of the plan for improving circumstances. This is useful primarily because of the repeated failure of human rights commitments to make meaningful differences for migrants. Not centring rights is a positioning that on its own serves to weaken the dyad. This position is bolstered by the statements in the Compact on SOR Migration that value

migration without using specifically economic discourse. The Compact does not go so far as to value migration in other terms, but it does at least dial down the familiar economic refrain.

It is difficult as a scholar of migration not to cling to reasons for optimism. I think that if we did not have this bent, we surely would not do this work. While I do not consider that the unique opportunity of global attention that emerged in 2015 has been truly honoured in these Compacts, the Compacts are in fact something new in world of immigration politics, and they contain some glimmers of optimism. Everyone interested in immigration will be paying close attention to what happens next.

CONCLUSION

In this revisiting project, I set out to consider whether the world has shifted closer to releasing its grip on the old settler state mythological framing for immigration policy and whether there are any additional reasons for optimism than the few that I gathered up in the conclusion to *The New Politics of Immigration*. For the most part, I do not think that the lessons of the past four years suggest that our underlying and problematic embrace of the logic of an older time has changed. Among Western liberal democracies, we really have not seen significant policy innovation, and Western publics appear to be even more inured to news reports of human beings dying as they attempt to reach safety. In 2020, immigration politics looks to me even more mean spirited than it did in 2015. Predictable. And heartbreaking. Whether additional optimistic fragments can be gathered, especially those that trouble the human rights - economics dyad, or that make sensible rather than kneejerk use of human rights arguments is unlikely, but the Global Compacts do offer some as-yet-unrealized movement in this space. The fact that Angela Merkel is still Chancellor of Germany and is currently orchestrating an orderly handover to a chosen successor is also encouraging. Her bold and human stance in 2015 has not proven her undoing. Finally, the American courts, in their on-going dance with President Trump, have shown that persistent legalization does sometimes have upsides for migrants. The arrival of the global pandemic is presently wreaking havoc on all notions of predicting future developments, but if nothing else it has provided the fiercest justification for closed borders that the twenty-first century has seen, and its effects are sure to be long-reaching.

In sum, the past four years have not diversified the sparse reasons for optimism that I was able to glimpse in 2015, and the current moment (May 2020) has scattered those sparse reasons to the wind. This revisiting endeavour has caused me to reflect on why I was surprised by the power of the political vitriol of that time. It may be that contemporary immigration politics are even more dire than I had diagnosed. It is my fervent hope, however, that the next four years may deliver surprises of a different ilk.

NOTES

1. These states are the principal examples that I explored in *The New Politics*. New Zealand also partially fits into this group; however, as the example of Indigenous political positions demonstrates, New Zealand immigration politics have some marked distinctions for the other three paradigmatic settler states. In the book, I address at some length the need to trouble the term “settler society”, and its application well beyond these four states. I will not reprise that argument here, but it is found centrally at pages 10–28 in the book.
2. This result was already possible because the *Immigration and Refugee Protection Act* (S.C. 2002, c. 27) provides that non-citizens are inadmissible on the basis of criminal conduct, which in Canada includes polygamy. Beyond this provision, the *Zero Tolerance* legislation includes provisions shoring up condemnation of forced marriage. While some new legal content is provided, there was no question that forced marriage

was illegal in Canada. The legislation fits squarely within the analysis of the intersection of forced marriage and immigration law that I set out in *New Politics of Immigration*.

3. UNGA A/Res71/1 adopted 19 September 2016 and distributed 3 October 2016.
4. In addition, several states abstained from voting: Libya, Eritrea and Liberia in the case of the Refugee Compact, and 12 states (Algeria, Australia, Austria, Bulgaria, Chile, Italy, Latvia, Libya, Liechtenstein, Romania, Singapore and Switzerland) in the case of the Migrant Compact.

REFERENCES

- CBC News “Canada will grant Asylum to Saudi woman fleeing alleged abuse”, *CBC* (11 January 2019), online: <<https://www.cbc.ca/news/politics/canada-saudi-woman-asylum-alleged-abuse-1.4974344>>.
- Global Compact for Safe, Orderly and Regular Migration UNGA Resolution December 2018 (A/RES/73/195).
- Global Compact on Refugees, UNGA Resolution December 2018 A/73/12 (Part II).
- Dauvergne, C.
2016 *The New Politics of Immigration and the End of Settler Societies*. Cambridge University Press, New York.
- Hui, A. “Saudi teen fleeing family arrives in Toronto after being granted asylum”, *Globe and Mail* (12 January 2019), online: <<https://www.theglobeandmail.com/canada/article-saudi-teen-who-fled-abusive-family-lands-in-toronto/>>.
- International Convention on the Protection of the Rights of All Migrant Workers and the Members of Their Families 18 December 1990, 2220 UNTS 3 (entered into force 1 July 2003).
- Supplementary Information 2019–21 Immigration Levels Plan dated at Ottawa, 31 October 2018 <https://www.canada.ca/en/immigration-refugees-citizenship/news/notices/supplementary-immigration-levels-2019.html> accessed on 4 February 2019.