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Introduction

We see all around us the evidence of a new politics of immigration. On any given day in the major newspapers and Twitter feeds of Western states, there is some story about immigration. These stories span people needing refugee protection, people being deported, people threatening our border, people dying in search of a new home, people in detention, international students, wealthy investors buying up real estate, communities welcoming newcomers, or dividing along previously invisible cultural cleavages. Immigration is big news. And even bigger politics. President Obama has an immigration agenda. Chancellor Merkel and Prime Ministers Cameron, Turnbull, and Trudeau are regularly involved, along with almost every leader of a Western democratic state. Immigration is an issue in every election in Europe, North America, and the antipodes. And while much of the new politics of immigration is Western driven, Western states are not its only location. When Indian Prime Minister Modi visited Canada in 2015, one of the key issues covered by the Canadian press was whether the visit would be a catalyst for allowing Canadians to participate in a preferential visa scheme. Kenya has called for closure of the world’s largest refugee camp. Kiribati is calling for new laws to allow its citizens rights of entry elsewhere when their island nation sinks below sea level. South Africa is grappling with anti-immigrant violence.

The newness of this politics is found in its intensity, its urgency, and its legality. Never before have immigration issues been at the center of the political stage in so many places at the same time. Never before has the political attention to immigration drawn such a highly legalized response. Never before has hostility towards immigrants been quite so widespread, and quite so nasty. The politics of immigration has taken a sharp turn in the early years of the twenty-first century. This turn is decisive and irrevocable, and we are only just beginning to grapple with the how and why of it.

For some time now, analysts have been writing about the global convergence of immigration policy. This convergence is a vital clue to explaining the new politics. The explanation takes the multilayered dimensions of convergence as a starting point and looks behind them to see what has changed, and what the consequences will be for the future. This leads to the insight that the new politics of immigration arises because the era of settler societies has ended. There is no longer any basis, other than history, for saying that settler societies are different in regard to migration than other Western liberal democracies. Instead, a global convergence in migration policies has emerged, bringing with it a new, mean-spirited politics of immigration. This change is vitally important at a time when the global pace of migration is higher than ever, and migration aspirations even higher. It is now evident that the idea of a settler society, previously an important landmark in understanding migration, is a thing of the past. What are the consequences of this for how we imagine immigration? And, following from this, for how we regulate it? This book explores this dramatic shift, mapping the contours of the new politics of immigration.

With the close of the settler society era, the foundations for our global understandings of migration have vanished. We are left with an architecture that is no longer grounded; it has lost its supports. Like any structure with a weakened base, our vocabulary and theoretical framing of immigration can no longer bear the weight that they once did.

There are important consequences of this shifting foundation and chief among them is policy paralysis. The vocabulary with which immigration was first imagined as a global phenomenon, the terms with which we came to understand immigration politically, publicly, and legally, have been hollowed out. When we use this old vocabulary, it has less traction than it once did, less precision and less substance. This contributes to policy paralysis because we keep trying to talk about something that we cannot quite name. It also nurtures paralysis because the old vocabulary opens a gulf between our policy objectives and what is happening on the ground. In scientific terms, this is an instrument calibration problem: if we set out to determine whether something is a particle or a wave, but it is instead something else entirely, we will find that there are fewer waves and particles than that last time we took stock. But if our instrument can only look at those two things, it will not tell us what else is there. This can stifle innovation because it is easy enough to look at the policy terrain in this way and see simply that some good idea that we have already all agreed upon is simply not working. If we believe that our observation is accurate, a logical response is to work to tune up the way the idea is being implemented. But because our observations about migration policy are not

accurate – they are reflecting back to us through a broken lens – this leads to repeated attempts to implement a policy that no longer fits the world we live in. It's like building a better mousetrap in an attempt to catch a butterfly.

Part of my endeavor in this book is to demonstrate how the old lens has cracked and to begin grinding a new one. A new way of thinking about immigration will emerge, but slowly. I want to hasten the process, because the old framework is harming people and frustrating states and fragmenting the law. The first half of the book examines why this has happened. The second half takes up the more challenging questions of how to describe the shift and what new frameworks for analysis are likely to work best in navigating the new politics of immigration.

LOCATING THE NEW POLITICS OF IMMIGRATION

The contemporary politics of immigration has global reach. This is not to say that it is the same everywhere. In contrast with many important policy areas in our post-globalization world, a great deal of migration regulation continues to be generated at the national level. Beyond this, there is also enormous variation in migration impacts on diverse states because of how states are situated geographically and economically. Despite a considerable array of variation, however, it makes sense to speak of a global politics of immigration for three reasons.

The first and most important of these reasons is that the prosperous industrialized states that are the most sought-after migration destinations in the world have enormous influence over the contours of migration policy worldwide. This influence is partially explained simply by the fact of being sought after. Prosperous states that people from around the world queue to enter are in a very strong position to set the terms of global migration. It is no coincidence that these states are global leaders economically and politically, and their hegemonic position adds to their capacity to enforce the immigration rules they design. State capacity is a closely related reason that the industrialized states set the tone for migration politics. In immigration matters, state capacity is visible in the capacity to control the border: to determine who gets in and who is put out. Here, geography strengthens the capacity of prosperous states. The principal contemporary migratory pressures arise in the global South. The principal location of prosperous industrialized states is the global North – distant, even when not literally North. The states that are setting the tone for global immigration politics are not – in the present or the recent past – anywhere near the places where millions of people flow over the borders in desperate need of assistance, and in circumstances where they cannot be sent

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home. And where exceptions to this rule arise they are well-known crisis points – the island of Lampedusa, the Rio Grande – that are highly policed and scrutinized and discussed, even though none of these crisis points see nearly the number of migrants annually as do the migration hot spots of the global South. The states of the global North have the power to determine what will be perceived as a crisis as well. These states normalize the aspiration to complete migration control, and set this as a goal for any state anywhere that believes it is sovereign.

The second reason to speak of a worldwide politics of immigration is that one feature of the contemporary landscape is that despite a surprising amount of national autonomy, immigration policies are converging. States watch each other closely, keen to copy or adapt ideas that seem to be working. As the older way of understanding immigration fades away, the goals of migration regulation have become the same for all states. This fosters both convergence and competition, as state objectives are now identical.

Finally, a vital underlying reason that it makes sense to speak of immigration politics globally is that the way immigration is conceptualized and the systems for regulating it are globally congruent. A central plank of this book's analysis is that this conceptualization has shifted. We can imagine the new politics of immigration as an eruption along a fault line created by the clash between an old vision of immigration and a new one. Part of my project here is to map out the contours of the new politics in order to foster understanding of this fault line, and to encourage a move away from it.

For this reason, settler societies are central to my analysis. There is no longer any logic in saying that settler societies are different in regard to migration than other Western liberal democracies. The global convergence in migration policies that has emerged has brought with it the new, mean-spirited, politics of immigration. This change is vitally important at a time when the global pace of migration is higher than ever, and migration aspirations even higher. It is now evident that the idea of a settler society, previously an important landmark in understanding migration, is a thing of the past. What are the consequences of this for how we imagine immigration? And, following from this, for how we regulate it? Answering these questions must begin with the idea of the settler society, because this is the paradigm in which global understandings of migration are anchored.

Settler societies, nations built through extensive migration, and which as a consequence led the world in developing migration regulation, are the settings that established our global understanding of migration. They are the crucible of our regulatory frameworks and of our immigration mythologies. Understanding the new politics of immigration requires that we understand

that the settler society era is finished, and the paradigm has faded away. For this reason, the work of this book begins with examining what distinguished these societies and their particular embrace of immigration.

My settler society examples in this book are drawn primarily from the United States, Canada, Australia, and to a lesser extent, New Zealand. These paradigmatic settler societies have most fully embodied the immigration “ethos,” and share broadly common trajectories – with comparable and instructive variations – in their immigration policies and politics. Part of their “success” as nations of immigration has been their capacity to almost fully erase the indigenous societies they displaced. This reality forms part of the backdrop to the new politics of immigration because it means that the paradigmatic settler states have not experienced a robust politics of decolonization. The politics of decolonization shaped migration patterns for a time between former colonies and former colonial masters. These contours do not have the same form in the paradigmatic settler states, which, when one considers an indigenous perspective, still carry many colonial markers and practices. Moving beyond both colonization and decolonization is part of what shapes the contours of the new politics of immigration.

POLITICS – LAW – POLITICS

It used to be the case that lawyers and legal scholars had a sideline role in migration analysis. This was certainly the case when I began working in this area twenty years ago – migration studies were firmly located with sociologists, geographers, political scientists, economists, historians, almost anywhere else really. Within the discipline of law, immigration and even refugee law were regarded as marginal areas of inquiry. This marginality was supported by the acute observation that law did very little to shape immigration policies and outcomes, and therefore, politics. From a domestic law point of view, migration was an area marked by broad swathes of discretion where executive power was often determinative of outcomes. From an international point of view, states were very minimally constrained in decisions about how to determine their membership rules, who to let in, and how and why. When I began teaching immigration law, there were very few decisions from final appellate courts on the syllabus. These days, those same courts make so many important pronouncements in migration law that it is challenging to keep a syllabus up to date.

One feature of the new politics of immigration is new roles for immigration regulation. At a very basic level, there is much more law than there was two decades ago, both the type produced by legislatures and the type produced by

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courts. But the more important part of the change is that what states are aiming to do with immigration law is subtly, and not so subtly, shifting. Some of this is due to the security turn in matters of migration, and some of it is due to increases in rights-based advocacy, while some of it reflects directly and indirectly state ambitions to speed the pace of change, and to get rid of previous frameworks. This change means that legal scholars who think about migration are increasingly involved in the rich interdisciplinary conversation about what migration means. It also means that the disciplinary tools of legal analysis are now integral to understanding the place of migration in our world.

The enhanced place of migration law has direct consequences for the new politics of immigration. With a higher pace of legal changes, and a greater role for courts, migration becomes more politically visible and a greater number of actors are perceived as potentially politically engaged. The politics becomes legalized as actors on all sides of migration debates turn increasingly to law as a tool. In a sense this transformation simply mirrors the broader trend in Western liberal democracies to perceive the law as the most vital social ordering mechanism. But the realm of migration has been slow to join this trend, and thus the effects of this change have yet to be absorbed. There is immense pressure on courts acting in this politicized atmosphere, the volume of cases reaching them is higher, and the political stakes of their rulings are intensified. The legalization of migration politics means that the law–politics dichotomy is often clouded and the distinction between the two is frequently unclear. And the legalization cannot help but work in reverse also, making the law highly politicized. This makes migration law vulnerable to charges of illegitimacy.

The increased importance of law in matters of migration also affects the rule of law. This consequence is more complicated, and it is only now beginning to unfold. The promise of the rule of law is simple enough at its core: that the government will conduct itself according to the law, that it will make law framing its actions, and that all in a society will be subject to the law, equally. A thin version of the rule of law requires little more than this. But it has persistently been the case that a thin version of the rule of law is difficult to maintain over time. A richer reading of rule of law values begins from the basic premises and finds within those premises robust ideas of fairness, substantive equality, and even human rights principles. In other words, rule of law in its richest form treats the law as a force of good in and of itself, rather than a mere *modus operandi* of governance. The tricky thing about the rule of law is that the shift between a thick and a thin version is not a governance choice. As law embeds itself

in the systems it orders, the strength of the rule of law may wax and wane. With more law in the realm of migration, rule of law has more potential. In many migration areas, this is yet unrealized. But the increased importance of law in this area means the groundwork for tapping into this potential has been laid.

Much of what matters about the new politics of immigration can, indeed must, be expressed in legal terms. Following from this, explaining the new politics requires a firm grasp of the law, its limits, and its potential. The new politics of immigration is marked by the transformed place of law in this policy arena.

HOW DID WE GET HERE?

The central project of this book is to account for the current global trajectory of immigration regulation. This endeavor is motivated by a deep concern about the current policy paralysis in immigration regulation. This is not to say that no new policies are being developed, but rather that as prosperous Western states seek to alter their immigration regimes, and enhance their control, no new ideas are emerging. This is despite the fact that many actors – states and migrants – want something different from migration regulation at this point in time. States are not reaching their policy objectives; individuals are often unable to achieve their goals, or to adequately protect their basic rights. Something new is required, and yet we are completely stalled in considering where new ideas might come from. Most “new” policy rollouts in prosperous industrialized states at this point in time involve intensifying ideas that have been tried before, ratcheting up restrictions, heightening privileges for the most attractive migrants, and building bigger fences – literally and legally.

This book recounts the rapid end of the settler society era and the emergence of the new political framing for immigration, because this analysis explains the policy paralysis and provides the necessary groundwork for finding a way out of it. The comparatively rapid demise of settler societies has been brought about by three shifts. The first is the crisis of asylum, which began in the final decades of the twentieth century but has rapidly picked up speed since 2001. The second is the fear of Islamic fundamentalism, which has presented a profound challenge to liberal approaches to immigration and has ushered in a full-scale securitization of immigration questions. The third factor is the end of multiculturalism. While multiculturalism persists as a description of many societies, it has lost its ideological functions, and thus much of its political heft.

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The new politics of immigration is marked by the end of both “settlement” and “society” as key values in migration. The shift away from Old World versus New World migration models has severed the linkages between migration and former colonial powers. Thus the new politics of migration belongs to a *post*-post-colonial era, and therefore, provides support for European citizenship and all it entails on the immigration front. Freed from settlement, society, and colonial linkages, the new politics of immigration is grounded in sharp distinctions between sought-after highly mobile individuals on the one hand, and illegal migrants on the other. This divide is the basis of the current policy convergence, and must be reinterpreted to successfully map the future. This book begins that process.

One of the book’s central preoccupations is the place of economics, on the one hand, and human rights, on the other, within the new politics of migration. Contemporary policy adjustments are often cast in these terms: aiming to improve economic indicators concerning immigration or to improve human rights protections, or both. This makes sense, because there is much to be gained on either of these yardsticks. Economic outcomes are the logical domain of state policy across almost every sector. Human rights are the most powerful legal tools that migrant advocates can deploy. It would even be well worth doing sustained work on how economics and human rights could, within migration policy, develop a less antagonistic relationship. My argument, however, is that both economic and human rights discourses do not get to the root of the issue in terms of understanding the new politics of immigration. This insight has three consequences. First, these twinned discourses obscure features of the new politics, distracting us from the underlying currents that generate the present dilemmas. Second and closely related, these discourses as currently constructed contribute to policy paralysis, rather than providing avenues for innovation. Finally, neither economics nor human rights analyses have much predictive effect in matters of migration. This is essential for policy development, which is always about shaping what will happen in the future.

The new politics of immigration is characterized by legalization, rapid change, defiance of partisan expectations, a new worldwide “us” and “them” divide, existential fear, and an unprecedented place on the central political stage of all Western liberal democracies. Along with this runs a competitive convergence between states, and a persistent engagement with economic and human rights discourses. The level of hostility towards migrants is higher than ever before, and this hostility sweeps along with it a strident objection to asylum.

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My analysis of this new politics draws on considering migration events and trends of the past decade or so, and considering what they have in common, and how each can be used to interpret the others. The book seeks to step back from isolated events or policy areas, and to look at the big picture that unites them. In this broad ambition, I build on the work of many others, and on the insights of teaching and supervising excellent research in this area for the past twenty years. The conclusion looks to the future, assessing what would be required for us to alter the new politics of immigration and where we will end up if we do not achieve this.

The book opens by outlining what the settler society paradigm has contributed to global, and national, mythologies of immigration. This outline is the foundation for my argument that something important has been lost since the opening of the twenty-first century, and for understanding why this loss is both permanent and deeply consequential. The trio of chapters that follows considers in turn, and in chronological order, the three factors that have brought the settler society era to a close: the asylum crisis, the fear of fundamental Islam, and the demise of multiculturalism. These three factors are anchored primarily in the settler society states, where the shifts they have brought are most profoundly felt. The second half of the book then turns to the new politics, exploring the loss of settlement and society as immigration values, as well as the concomitant shift in how immigration is understood in the so-called “Old World” nations that were the primary sending states for migrants to the New World. The conclusion attempts to unravel the consequences of the new politics – to consider what will happen if we ignore them and to raise the faint hope of finding new ways to imagine immigration futures.

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Settler societies and the immigration imagination

Throughout the entire first century of global migration regulation, from the early 1900s to the present, a distinction between settler societies and others has informed and predicted patterns of migration and migration regulation. This distinction served as a guide to strategies of recruitment and reception, to global alliances around migration questions, to approaches to asylum, and to citizenship. This era has now come to a close. The work of this book is to demonstrate how and why this is so, and to outline what new predictors or patterns of migration and migration regulation may now be valuable. Global migration regulation first developed in the context of settler societies, and their demise contains key markers for the future. To understand why any of this matters, however, it is first crucial to understand how the concept of a settler society ordered global migration for more than a century. This chapter begins with unraveling this ordering, and then examines the legal architecture of migration in the settler society and considers the insights of critiques of the settler society concept.

Settler society is not a scientific category. It is an idea with a core of meaning, and considerable slippage around the edges. One is just as likely to see the term used by social commentators and politicians as by academics. This low-key omnipresence is part of its importance – it has slipped into everyday discourse. A rigorous definition is not helpful, as my purpose is not to stake out and police boundaries of a certain category. Indeed, some of the work of this book depends on a degree of wobbliness in the concept, on its ability to mean different things at different times or for different people. But it is important to set out the broad parameters of the idea. When a journalist, a politician, or a geographer talks about a settler society, we do know what they mean.¹

A mythology of immigration is the core of the settler society. Settler societies were built from the ground up by people who left European nations and