

A Family Matter

Citizenship, Conjugal Relationships,
and Canadian Immigration Policy

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Introduction

“Immigration control is not just a power symbol of nationhood and people, but also a means to literally construct the nation and the people in particular ways.”

– EITHNE LUIBHÉID

In March 2013, Immigration, Refugees and Citizenship Canada (IRCC) launched its “Fraud Prevention Month” specifically to generate social awareness on the issue of marriage fraud. Contending that abuse of Canada’s current family reunification program had reached a crisis point, the Harper government introduced a series of initiatives for fraud prevention and penalization, with then minister of citizenship, immigration and multiculturalism Jason Kenney stating, “Canada’s doors are open to the vast majority of newcomers who are hard-working and follow the rules, but Canadians have no tolerance for anyone who tries to jump the immigration line to gain entry to Canada or acquire permanent residency or citizenship through fraudulent means” (*National Post* 2013).¹ The target of Fraud Prevention Month was therefore the undesirable immigrant falsely using family to obtain Canadian citizenship. As such, reforms focused on further restricting what constitutes family for the purposes of reunification, establishing a role for the state to critically assess the intimate details of one’s conjugal relationships in order to protect Canadian citizens and the immigration system from perceived external threats.

Campaigns like Fraud Prevention Month have called into question the state's role in our intimate lives, a historically contentious issue. Then minister of justice Pierre Trudeau's assertion in 1967 that what was done in private between consenting adults should not concern the state – “there's no place for the state in the bedrooms of the nation” – assumed that our private lives should be impermeable to state influence. Fast-forward fifty years, Canadian law and policy have undergone a significant transformation with respect to relationship recognition, with the legalization of common-law and marital relationships for both opposite-sex and same-sex couples. Ironically, the extension of benefits to common-law and same-sex couples has solidified to a more permanent place for the state in the families – and ultimately the bedrooms – of the nation. While the state's view of marriage has been altered, this extension of protections and benefits occurs within a pre-existing framework, one that favours conjugality. State governing of our personal relationships transpires within a framework where conjugality continues to define the norms and limits of permissibility. As a result, not only does the state dictate which actions in the bedroom are acceptable and, consequently, which actions are not; it also establishes the conjugal family unit as the primary space for relationship recognition.

This intertwining narrative of family, citizenship, and security – front and centre in the Harper government's Fraud Prevention Month – was not an isolated incident; rather, similar narratives have been prominent in multiple immigration policy initiatives and actions taken by various federal governments. In 2002, Barthélémy Angba, a permanent resident from Côte d'Ivoire, was accused by IRCC of providing “false declarations to obtain his permanent residence” and was subsequently deported (Touzin 2006). His ex-wife, a Canadian citizen, sponsored Angba in 1992 after they married, and before they divorced in 1996, accused him of polygamy – he was simultaneously married to a woman in Côte d'Ivoire, an illegal practice in Canada – and applied to have his sponsorship revoked. In his defence, Angba claimed that he assumed his first wife was dead and, as such, believed he was single at the time of his second marriage. Complicating this particular situation, Laetitia Angba – Barthélémy's daughter whom he sponsored three years after receiving permanent residency – had her citizenship status called into question by IRCC in 2005 as a result of her father's polygamous activity, despite having lived here for over ten years.

The precariousness of her citizenship status in Canada was a direct result of her father's failure to adhere to the conditions of acceptable immigrant family practice. Simply put, in order for the Canadian state to maintain a particular definition of the conjugal family unit used to reinforce its physical borders, both Barthélémy and Laetitia had to be “excluded from the (socio-cultural) intimate space of legal citizenship” (Rambukkana 2015, 42). This case garnered a significant amount of media attention in Québec, resulting in government intervention and Laetitia Angba receiving permanent residency when she turned eighteen.

Also in 2002, IRCC imposed a lifetime ban on the sponsorship of family members who had not been declared and subsequently interviewed by an immigration officer when the sponsor immigrated to Canada. As a result, undeclared family members are excluded from IRCC's definition of family class and fail to qualify for sponsorship. In doing so, IRCC constructed a category of legal turned illegal family members, ultimately reinforcing a particular definition of family for the purposes of obtaining citizenship. Critics argue that this ban simultaneously punishes those who knowingly attempted to cheat the system and those who either misunderstood application protocol or opted to leave family members off their applications for legitimate reasons (e.g., unknown children, fear of claim refusal, cultural shame) (Canadian Council for Refugees 2007; Liew 2016; Liew, Balasundaram, and Stone 2017). This sponsorship ban ultimately delineates the parameters of an immigrant's family – both those already in Canada and those seeking access – and prohibits any flexibility with respect to familial composition, a privilege awarded to Canadian-born citizens.

The Harper government's *Zero Tolerance for Barbaric Cultural Practices Act*, aimed at “protecting Canadians from barbaric cultural practices such as child, forced, or polygamous marriages and gender-based family violence” (Alexander 2014), included an amendment, Bill S-7, 41.1(1), in the *Immigration and Refugee Protection Act* (IRPA) that renders all permanent residents or foreign nationals inadmissible on grounds of practising polygamy. As such, the act authorizes immigration officers to deport permanent residents and noncitizens suspected of engaging in polygamy without a Criminal Code conviction or finding of misrepresentation and to refuse sponsorship to applicants believed to be polygamous. Framing this as an initiative to protect women and children from harm, then

minister of citizenship and immigration Chris Alexander stated, “Our stance is clear: women and girls in Canada deserve the full protection of the Canadian law. When people try to bring these barbaric cultural practices here, our Conservative government has one response: that is not our Canada” (Alexander 2014). In framing polygamy as both foreign and culturally specific, a narrative of the polygamous family as the non-Canadian family emerged (Gaucher 2016). Moreover, it solidified the monogamous conjugal family as a marker for citizenship for immigrant families both prior to and after obtaining permanent residency.

Most recently, in honouring its pledge to welcome twenty-five thousand Syrian refugees to Canada in November 2015, the Trudeau government limited admittance to women, children, and families (Barton 2015). A response to ongoing security concerns regarding unaccompanied men seeking asylum, particularly following the terrorist attacks in Paris earlier that month, the privileging of female refugees reinforces the gendering of refugee camps as “feminized charitable environments” that rarely frame female refugees as a threat to the “global relations of inequality” (Strong-Boag 2015). As a result, single male migrants are portrayed as potential terrorists, the absence of family acting as an indicator of threat to the Canadian state. Historically, single male migrants have benefitted from Canada’s immigration programs; male temporary foreign workers were framed as “desirable” because they were assumed to be less likely to establish permanent roots once their labour was no longer needed, and skilled worker programs favoured male-dominated areas of work and education. Post-9/11, however, the single male migrant of colour is now labelled a security threat (Strong-Boag 2015). In this particular instance, the absence of family no longer acts as an access point for citizenship for the single male refugee, and “young male Syrians, Iraqis, and others captured on today’s newscasts, loom as simultaneously undeserving and threatening” (Strong-Boag 2015).

What ties these examples together is that this normalization of acceptable family practice in policy discourse highlights the ways in which the privileging of conjugality is intertwined with discussions of state power and citizenship. How the state defines family determines who has access to certain benefits and privileges reserved for those in relationships deemed legitimate by the state.² Through limited access, individuals are able to

realize their rights as conjugal citizens to the exclusion of those whose familial arrangements fail to uphold this ideal. Moreover, this book examines how this narrative quickly became an integral part of the Harper government's immigration mandate. In power from 2006 to 2015, the Conservative Party of Canada – under former prime minister Stephen Harper – initiated a series of reforms to Canada's immigration, refugee, and citizenship programs.³ The party's focus on family members as potential queue jumpers and system cheaters simultaneously established foreign families as threats (in comparison to the nonthreatening Canadian-born family) and the use of family as a clear access point to Canadian borders. Therefore, while the discursive intertwining of family, citizenship, and security was not unique to the Harper government, their use of this narrative was arguably more blatant and aggressive.

Scholars taking up the question of Canada's ever-restrictive family class have typically relied on two frameworks: a neoliberal explanation that frames the family as an undesirable grouping of dependents (Abu-Laban and Gabriel 2002; Richardson 2005; Luibhéid 2005; Abu-Laban 2009; Harder 2009a; Dobrowolsky 2013; Gabriel 2017) and a framework focused on security, explaining restrictions to the family class as an extension of border control post-9/11 (Dhamoon and Abu-Laban 2009; Salter 2013; Fleras 2015). Generating a remarkably coherent form of citizenship (Richardson 2000), the neoliberal state is defined by its population's ability to be economically self-sufficient citizens. Considering the family unit is composed of undesirable dependents, conjugality becomes a marker of privatized interdependency. Applying strict restrictions to spousal sponsorship and support obligations thus highlights the push for the self-sufficient migrant. For those using a security framework, family class migration has become part of a securitization project aimed at protecting Canada's borders, both physical and ideological. Migration has become increasingly securitized post-9/11, and therefore states have adopted various border controls to keep undesirable migrants out (Dhamoon and Abu-Laban 2009; Watson 2009; Salter 2013; Côté-Boucher 2015). Narratives framing restrictions to family class migration as being motivated by security concerns analyze this particular policy shift as one in a long list of shifts aimed at protecting Canada's borders from potential security threats.

While both of these frameworks have obvious utility, underlying them is the state's desire to construct "good" citizens through membership. As Jenson and Papillon explain, "The state plays an essential role in delimiting the boundaries of belonging and the result of such process is to create a political identity, based on the distinction between members and non-members" (2001, 12). In dictating the rights and responsibilities of citizenship, who has access to state institutions and public services, and ultimately who belongs to any given political community, the state creates members and nonmembers. Moreover, the parameters that delineate membership are in constant flux. State treatment of the family class not only dictates which migrant families are desirable as potential members, but also, more importantly, which ones are not. Citizenship, through the privileging of conjugality, is awarded to those who develop their personal relationships in a manner consistent with state views on relationship recognition – "It is kinship rules rather than consent that determine state membership" (Harder 2010, 204). Political societies are reproduced generationally, establishing rules of kinship as both "the product of state law and definitive of the state itself" (205; see also Stevens 1999). As such, what constitutes good citizenship involves state-defined expectations of "civility and good behaviour among individuals" (Jenson and Papillon 2001, 5). While changes to Canada's immigration and refugee program are motivated by economic prosperity and security concerns, these frameworks fail to fully account for the complexity of what Jenson and Papillon refer to as a "citizenship regime" (13) and how a specific version of family is used by the state to construct the parameters of this regime and, ultimately, political membership.

More often than not, family is absent from mainstream debates about Canadian citizenship. This is largely attributed to the fact that citizenship discourse in Canada relies on the individual as the primary unit of analysis. Though varied in their normative positions, Canadian citizenship theorists broadly claim that the equal treatment of citizens relies on state acknowledgment of individual difference. Relying solely on the individual, however, disregards the role of family and family construction in the provision of citizenship. Whether the family is welcome or unwelcome, an individual's conjugal relationship status results in the provision of certain state protections and the withdrawal or refusal of others. Conjugality therefore

acts as an access point for Canadian citizens, challenging the individualist nature of citizenship discourse.

This focus on the individual in Canadian citizenship scholarship is compounded by the popular position that citizenship, a public mechanism of state governance, and the private domain of the family are separate. Often framed as the antithesis to political society, the family unit is typically conceptualized as apolitical. The assumption here is that family structure plays no role in the provision of citizenship, as it exists outside the parameters of state power. The conceptualization of these spheres as distinct negates the fact that the very drawing of a line between what constitutes the public sphere and, consequently, the private is a political act. Moreover, this position is tenuous, as it ignores the reality that even when the government claims there is “no place for the state in the bedrooms of the nation,” the state’s position within the private sphere is solidified through its privileging of conjugality. By using an individual’s conjugal status to determine access to certain state protections, the line between citizenship and family is blurred.

Family class immigration continues to provide a steady source of immigrants for Canada, spousal/partner sponsorship having the highest rate of admittance (Immigration, Refugees and Citizenship Canada 2017b). It is important to note, however, that state monitoring of one’s personal relationships is not limited to the family class. Regardless of an applicant’s immigration category – family class, skilled worker, or refugee – immigration officers work under the assumption that successful applicants will apply to sponsor their immediate family members in the future. Moreover, for specific categories of refugees, the presence or absence of a relationship pattern is used by the state to legitimate one’s claim of persecution. Family therefore influences multiple areas of migration policy development. The prominence of family migration is a simultaneous force of stability and instability for the Canadian state; reunification allows the state to reproduce the nuclear family unit while subjecting the “Canadian family” to perceived threats of otherness. State treatment of family reunification, particularly its reliance on the conjugal family unit, therefore warrants continued attention. If we are to continue relying on family reunification as a primary source of immigration, then we need to be cognizant of the state’s inconsistent and unfair expectations for those seeking access to the Canadian state, both present and future.

In this book, I argue that the Canadian state relies on the conjugal family unit as a point of access in its immigration and refugee program, ultimately creating distinctions between families with Canadian citizenship and immigrant families seeking reunification. In the case of family reunification, it is not simply a case of individuals sponsoring individuals; it is about the state producing and maintaining the ideal family unit through the provision of citizenship. Immigrants and refugees are conceived of as citizens-in-waiting and, as such, the ways in which we define them as individuals, family members, and conjugal beings has important implications for their interactions with the Canadian state.

My primary claim is that the Canadian state has had and continues to have a vested interest in the privileging of conjugal families for immigration purposes. Moreover, the perceived purpose the conjugal family unit fulfills has differed across successive federal governments and is contingent on a party's political agenda. While conjugality continues to define the terms of accessibility to state protections for families living with Canadian borders, these terms are increasingly flexible depending on what is at stake. For those living outside Canadian borders, state treatment of conjugality is inconsistent; however, it is clearly used to demarcate families as legitimate and illegitimate and citizens as ideal and not ideal. In doing so, a specific understanding of the Canadian nation is maintained both within Canadian borders and abroad, one that is premised on the conjugal family unit. With respect to Canada's immigration and refugee program, what is therefore at stake is the fear of threat that foreignness presents for normalized assumptions about family, conjugality, and the Canadian nation.

Framing the Book

While the term *conjugal* has traditionally been used in reference to the relationship between husband and wife, a conjugal relationship in Canadian law and policy has been extended to include unmarried cohabiting couples with the *Modernization of Benefits and Obligations Act*, in 2000, and same-sex couples with the *Civil Marriage Act*, in 2005. Conjugal therefore refers to state-recognized conjugal relationships including both married and common-law and both same-sex and opposite-sex. Moreover, legal interpretations of conjugality over the past thirty years have recognized the complexity of conjugal relationships (an argument I develop further in

Chapter 2), understanding conjugality as being composed of multiple levels of interdependency (sexual, economic, emotional, etc.). In assessing the role of conjugality in determining immigrants and refugees' access to citizenship, I account for the multifariousness of the term conjugal and examine its role in a way that both embraces and critiques the state's "more inclusive" approach toward the conjugal family unit.

This book focuses on three specific areas of Canada's immigration and refugee program: the role of relationship history in the state's assessment of sexual minority refugee claimants; spousal sponsorship processes for married and common-law couples; and the Harper government's anti-marriage fraud campaign. Combined, these three areas effectively highlight the state's inconsistent treatment of conjugality as a mechanism to distinguish between the "good" and "bad" immigrant and refugee. Furthermore, the cases draw attention to the reality that the ways in which family acts as an access point for Canadian citizenship are not solely restricted to the family class. The breadth of influence that family has in state governance varies across and within policy domains, and its impact on the immigration and refugee program is no exception. While the assessment of all immigrants and refugees is impacted by the possibility of future reunification, these three cases capture current challenges the Canadian state's understanding of conjugality presents for those seeking access.

Comparatively speaking, Canada provides an intriguing case for analyzing the relationship between family, citizenship, and security. For Canada, the normative status of being an immigrant-receiving nation has resulted in a model of migration management premised on the belief that our society is both defined and enhanced by immigrant admittance (Alboim and Boyd 2012; Fleras 2015). Indeed, the facilitation of migration and a commitment to immigrant settlement and integration through multicultural policies is integral to Canada's national imaginary. Canada's leadership in many areas of immigration and refugee laws and policies places Canadian scholars at the forefront of immigration and citizenship debates taking place in political science (Kymlicka 1995; Abu-Laban and Strong-Boag 1998; Carens 2000, 2003, 2013; Abu-Laban and Gabriel 2002; Dhamoon 2007, 2009; Dhamoon and Abu-Laban 2009; Harder 2009a, 2015); legal studies (Macklin 2002, 2007; Dauvergne 2005, 2016); labour studies and social movements (Arat-Koç 1989, 1997; Macklin 1992, 1996;

Bakan and Stasiulis 1997, 2005, 2012; Gabriel and Macdonald 2007; Gabriel 2011; Tungohan 2012, 2013; Tungohan et al. 2015); and sociology (Satzewich 1993, 2015; Bernhard, Landolt, and Goldring 2009; Goldring and Landolt 2013; Fleras 2015). It is against this backdrop that I examine how the Canadian state, specifically under the Harper government, took up the notion of family as a potential security threat and, as such, an access point for citizenship. Such an analysis will prove to be useful for other immigrant-receiving countries asking similar questions.

The contributions of this book are, therefore, threefold. First, this book provides a much-needed mapping of the Canadian state's approach toward relationship recognition, focusing not only on immigration practices, but also on Canadian law and policy more generally. Second, it thoroughly examines connections between family, citizenship, and security, ultimately providing a novel approach to understanding long-standing debates surrounding Canadian citizenship. Finally, it provides an empirical foundation for analyzing and understanding the role of conjugality in the assessment of incoming immigrants and refugees. In the end, this book provides an innovative methodological approach, linking normative discussions of citizenship with empirical assessment of Canada's immigration policy and practice. The result is an interdisciplinary account of the state's treatment of family as an access point for citizenship and the implications this presents for current and future immigrants and refugees.

Using an interpretive policy analysis approach, the research – derived from a combination of discourse analysis and qualitative interviews – focuses on the “work” of Canadian immigration and refugee policy. The actual wording of immigration and refugee laws and policies provides us with insufficient information regarding application and enforcement, as actions undertaken by decision makers (immigration officers, ministers, courts, etc.) are susceptible to an “enormous scope for discretion and political intervention” (Macklin 2002, 220). Moreover, the execution of immigration and refugee laws and policies often conveys contradictory messaging, suggesting a neutral, bias-free system that in reality remains quite restrictive (Macklin 2002; Thobani 2007; Dharamoon 2009). In addition to examining policy as it is written, an interpretive policy approach involves exploring the very creation of these policies (Yanow 2000). This

methodological combination therefore highlights the language of policy, as well as the motivations behind that language. The book relies on a thorough analysis of Canadian immigration policy documents, examining how discourses of family, citizenship, and security are used to construct the access-seeking immigrant and refugee. While other methodologies are occupied with understanding social reality as it exists, discourse analysis questions the production of that reality (Wood and Kroger 2000; Phillips and Hardy 2002). These policy documents include policy briefs, government manuals, immigration officer training manuals, and government-initiated studies.⁴ My analysis of policy documents and legal decisions is complemented by news coverage of significant changes to the IRPA under the Harper government, as well as by twenty-nine interviews: eight with former and current policy analysts and immigration officers from Immigration, Refugees and Citizenship Canada, two with former members of the Law Commission of Canada, two with immigration lawyers and former Immigration and Refugee Board of Canada (IRB) members, and seventeen with a collection of common-law and married couples – both same-sex and opposite-sex – who successfully applied for spousal sponsorship.⁵

Outline of the Book

Although the individual is the primary unit of analysis for mainstream Canadian citizenship scholarship, I propose a family-based lens. It is not dismissive of this body of literature; rather, it is important to examine how and why this approach has evolved and the logic that drives these individualist approaches toward understanding citizenship. [Chapter 1](#) elaborates on the state of citizenship discourse in Canada, focusing on its reliance on the individual as the primary unit of analysis. From there, I establish a theoretical starting point for incorporating family into discussions of citizenship, using critical citizenship literature to highlight the role that the conjugal family unit plays in the provision of Canadian citizenship.

Domestically, Canadians generally have the freedom to construct their familial units as they see fit; however, this elasticity is not replicated in our immigration and refugee policy program. If anything, what constitutes family has become increasingly restrictive, used to enact stricter

regulations on reunification. In [Chapter 2](#), I examine how this differentiation in treatment creates two versions of the conjugal family – the inside family (families living within Canadian borders) and the outside family (families living outside Canadian borders) – and how the construction of inside and outside families shapes our understanding of the noncitizen seeking access. In addition to examining the evolution of these two categories in Canadian law and policy, this chapter explores the ways in which the Harper government’s use of this distinction differed from governments past. Restrictive immigration programs were not unique to the Harper government; however, changes to the IRPA after the Conservative Party of Canada took power in 2006 were framed in a discourse of security that distinguished this government from its predecessors. This chapter thus focuses on the construction of inside and outside families in Canadian law and policy and how the Harper government used this distinction to shape our understanding of good and bad families and, consequently, desirable and undesirable citizens.

[Chapters 3 to 5](#) delve into the three selected areas of immigration and refugee policy: an examination of the Canadian state’s treatment of conjugality in the assessment of sexual minority refugee claims ([Chapter 3](#)); an assessment of common-law couples seeking spousal sponsorship ([Chapter 4](#)); and the government’s anti-marriage fraud campaign ([Chapter 5](#)). These three cases highlight how the use of conjugality as a point of access for Canadian citizenship is both ambiguous and contradictory, ultimately calling into question its effectiveness. Moreover, it suggests that the state’s targeting of certain groups reinforces a narrative of family premised on a normalized conception of the conjugal family unit, an understanding that cuts across lines both defined and reinforced through sexism, racism, heterosexism, and colonialism. These chapters reinforce my central claim that the Canadian state has a vested interest in privileging the conjugal family unit in its immigration and refugee program.

In [Chapter 6](#), I propose several policy frameworks in which conjugality no longer holds primacy in state-recognized relationships. Through an examination of these frameworks, this chapter aims to take stock of theoretical debates surrounding the state of conjugality in policy development

and to provide a starting point for future discussions on immigration, family, and citizenship. This is complemented by a discussion of several tensions in need of address should the execution of these frameworks be extended to immigration. This chapter establishes a space for discussing the potential of an immigration system in which conjugality no longer dictates the terms of permissibility for those seeking access.

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