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Institutionalizing precarious migratory status in Canada

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This paper analyzes the institutionalized production of precarious migration status in Canada. Building on recent work on the legal production of illegality and non-dichotomous approaches to migratory status, we review Canadian immigration and refugee policy, and analyze pathways to loss of migratory status and the implications of less than full status for access to social services. In Canada, policies provide various avenues of authorized entry, but some entrants lose work and/or residence authorization and end up with variable forms of less-than-full immigration status. We argue that binary conceptions of migration status (legal/illegal) do not reflect this context, and advocate the use of 'precarious status' to capture variable forms of irregular status and illegality, including documented illegality. We find that elements of Canadian policy routinely generate pathways to multiple forms of precarious status, which is accompanied by precarious access to public services. Our analysis of the production of precarious status in Canada is consistent with approaches that frame citizenship and illegality as historically produced and changeable. Considering variable pathways to and forms of precarious status supports theorizing citizenship and illegality as having blurred rather than bright boundaries. Identifying differences between Canada and the US challenges binary and tripartite models of illegality, and supports conducting contextually specific and comparative work.

Keywords: illegality; immigrants; legal status; precarious; undocumented; Canada

Introduction

'Illegal', 'unauthorized', 'alien', 'undocumented', 'wet-back', '*sin papeles*', and '*sans papiers*'. These and other terms are used in North America and Europe to describe people who cross borders without authorization, or who reside or work without the presumed 'full' legal status of citizenship or the 'nearly full' status of permanent residence.[1] In the United States, word choice is associated with political perspective in politically charged debates over unauthorized migration and persons: advocates usually use 'undocumented' while critics use 'illegal'. In Canada, activists and academics introduced *non-status* as a replacement for *undocumented* because most people in this situation *are* documented. They are known to the state but no longer have lawful status (Status Campaign 2003).

Following De Genova (2002) and others, we enclose 'illegal' and 'illegality' in quotes in order to interrogate the social, administrative, legal and political construction of the category as applied to migrants. The US and Canadian based terms capture different ways of becoming and being 'illegal'. However, each of them reinforces a *binary* categorization

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of migrant and refugee status that distinguishes those with lawful migration status from those without it. This dichotomous contrast gained currency in the context of the United States, where unauthorized border crossing is the main pathway to being categorized as illegal by virtue of unlawful migration status. However, national contexts with different modes of legal and unauthorized entry, policies, and pathways to 'illegality' may call for a different vocabulary and conceptualization of migrant legal status.

In the United States, undocumented immigration is extremely contentious, but also an openly discussed feature of the society and economy. The size of the undocumented population is estimated to be 12 million (Kiely 2007), a figure notable for its magnitude and the fact that it reflects substantial efforts and resources dedicated to gathering data and developing techniques to produce such estimates (Warren and Passel 1987, Van Hook *et al.* 2005). In contrast, in Canada, migrant illegality is largely a non-issue and certainly not a significant research area. Public debate regarding immigration may address immigrant integration, the non-recognition of foreign credentials, the refugee determination backlog, or sector-specific labour shortages and the demand for temporary foreign workers. Specific events, such as the arrival of boats bearing 'illegal' migrants, deportations, and debates concerning the validity of some refugee claims have received bursts of media coverage and draw attention to migrant illegality. In spite of this and activist campaigns, the issue remains at the margins of mainstream discussions. What explains this variation in the treatment of the issue? Are differences in location, geography, history, and southern borders enough of an explanation? Is it enough to replace the documented/undocumented binary with another: using *non-status* as a contrast to those *with* status? Or do we need to develop an alternative conceptualization of migrant status?

This paper develops a conceptual approach to *precarious* migrant status[2] in Canada that draws on theoretical work on the production of migrant irregularity (Calavita 1998) and illegality (De Genova 2002), and efforts to go beyond dichotomous approaches to legal status (Menjívar 2006). Our interest in theorizing lack of migratory status was initially motivated by the practical and conceptual challenge posed by the discrepancy between binary or dichotomous approaches (documented/undocumented, *or* status/non-status) and our analysis of the Canadian context. A review of relevant policies and programs, available research, and observations led us to propose that the Canadian context produced a confusing array of gradations of uncertain or 'less than full' migration status (Goldring and Berinstein 2003). We used 'gradations' to draw attention to (1) variability in configurations of 'less than full' or precarious status and (2) the possibility of movement between gradations of such status.[3] We did not use the concept of gradations to refer to a scale or hierarchy of status, although the term lends itself to that interpretation. We thus sought an alternative conception and vocabulary.

In this paper, we elaborate our conceptual framework by examining the production of *precarious status*, which includes undocumented and documented illegality, and other forms of insecure and irregular migrant status. We argue that precarious migratory status, like citizenship, is multi-dimensional and constructed by specific state policies, regulations, practices of policy implementation, activism, discourses, and so forth, and that there may be multiple pathways to precarious status, depending on the context at various levels. To explore the implications of precarious status for differential inclusion, we link forms of precarious status to the presence/absence of rights and entitlements.[4]

In our view, precarious status is marked by the absence of any of the following elements normally associated with permanent residence (and citizenship[5]) in Canada: (1) work authorization, (2) the right to remain permanently in the country (residence permit), (3) not depending on a third party for one's right to be in Canada (such as a sponsoring

spouse or employer), and (4) social citizenship rights available to permanent residents (e.g. public education and public health coverage).[6] This definition disturbs interrelated assumptions about the stability, coherence and boundaries of concepts such as citizenship and illegality in several ways. First, it challenges the binary between citizen and non-citizen with the introduction of the less brightly bounded conceptual category of precarious status, which clearly occupies some space on the non-citizen side of the division but may intrude on the citizen side. Another draws attention to the instability of illegality as a category, since the 'threshold' question of who is and who is not (illegal, undocumented, an alien) is not set in stone, nor are the specific configurations of statuses that fall under the *precarious* category in given socio-temporal contexts (Bosniak 2000). Third, it underscores the potential multi-dimensionality of insecurity (e.g. work, residence, entitlements, rights). Our work is thus consistent with scholarship that questions sharply drawn and normalized lines between citizens and non-citizens (cf. Isin 2002, Sharma 2006), or citizens and aliens (Bosniak 2000).

Our fuzzier and non-binary conceptualization of precarious migrant status is relevant for several reasons and constituencies. From an academic, rights-based, policy, service delivery and activist perspective, recognizing the institutionalized production and the complexity and confusion of precarious status in Canada helps to make visible the presence and potential vulnerability of people living with variable forms of precarious status, including no status. Lack of visibility compounds the vulnerability and marginalization of people with precarious status and their families by reproducing an underclass that is vulnerable on several fronts, including inadequate access to health and other services, limited recourse in the event of abuse at work or other arenas, and deportation.

It is also important to recognize the systemic production of illegality as an ongoing process tied to elements of existing policies and/or their implementation, as this shifts responsibility for precarious status and illegality away from individual failure to the terrain of policy and structural processes. This perspective, and identification of the multiple ways that people end up with precarious status, is crucial for efforts to change policies. In addition, limiting critical analysis to those without any migratory status (the non-status population) reduces the scope and size of the category, which has additional implications. These include: deflecting attention away from understanding how people are irregularized by immigration and related policies, and that as policies change, the specific ways that illegality is produced may change along with the numbers; undermining the potential for solidarity among people with variable forms of precarious status in nominally different legal situations; and narrowing the scope of advocacy through an implicit triage based on who is considered most vulnerable. Furthermore, the invisibility of the topic can make legal status an unspoken dimension of social exclusion. Given the implementation of Canadian immigration and refugee policies, people with precarious status also tend to be negatively racialized;[7] this raises questions about the legal production of racialized illegality and precarious migration status as a dimension of social exclusion and/or differential inclusion.

In the next section we develop our conceptual framework. This is followed by an overview of Canadian immigration policy and trends. Then, we analyze modes of authorized entry Canada and pathways to precarious status, showing how variable forms of precarious status are routinely produced through elements of contemporary Canadian immigration policy and procedures. The next section addresses the implications of precarious status for to access to social services. We conclude by discussing theoretical and practical implications of the analysis.

Theorizing illegality and immigration status: different contexts and scholarship

The literature on the unauthorized, 'illegal', or undocumented is vast. The topic has been approached from various disciplines, and several theoretical approaches and political perspectives. We briefly review US and Canadian work to contrast the scholarship produced in these two national contexts. US-based work can be clustered based on the theoretical and practical questions investigated. First, there is a longstanding tradition of analyzing the political economy of undocumented labour and its effects on or role in various levels, scales, institutions and social processes (e.g. local and transnational labour markets, economic sectors, families, communities, social reproduction, border enforcement, etc.) (Burawoy 1976, Bustamante 1977, Portes 1978, Mines 1981, Massey *et al.* 1987). A second area of scholarship covers methodology and measurement. Analysts have developed sophisticated approaches to counting and estimating the size of this 'hidden' population (Warren and Passel 1987). This has, in turn, enhanced quantitative analyses of the labour market and other effects of the undocumented. Policy studies constitute a third area that includes mainstream analyses of regularization programs and border enforcement, as well as critical policy studies. Fourth, is work on the everyday experiences of illegality (Chavez 1991, Menjívar 2000), the process of becoming legal (Hagan 1994), and the political engagement of undocumented workers (Delgado 1993), to name only a few (cf. De Genova 2005, Zloniski 2006). A fifth area addresses responses to the undocumented including both the new immigrant rights movement and the anti-immigrant backlash (Pulido 2007, Fleury-Steiner and Longazel 2008). The enormous body of work on the topic in the United States reflects the pervasiveness and visibility of the issue as well as its politically contested nature. However, whether one uses *illegal* or *undocumented*, there is a shared commonsense understanding these terms, and little or no call for discussing who or what is meant.

In Canada, the context and scholarship are different. There are no efforts to collect large-scale systematic data about people with confusing or no migratory status, and the body of scholarship is much smaller and has a narrower thematic range. Estimates of the number of people without an authorized migratory status in Canada range from 200,000 to 500,000 (Jimenez 2003, 2006, Vickery 2004, Robertson 2005). This range reflects the problem of defining the population in question[8] and the absence of systematic empirical analyses of 'the numbers' by academics, government, or NGOs. Although there is anecdotal evidence of the importance of unauthorized workers in the construction industry, there are no socioeconomic studies of the role of unauthorized workers in specific labour markets or industries, or research on other aspects of migrant legal status that would begin to parallel the array of US-based studies on the undocumented.[9]

Available social science research on the experiences of non-status migrants takes the form of case studies (PCLS 1998, Díaz Barrero 2002, San Martin 2004, Young 2005, Bernhard *et al.* 2007), and analyses of service providers and access to services for people without status (Berinstein *et al.* 2006, Khandor *et al.* 2004, CSPC-T 2007). Within this category, the impact of inadequate access to health services is an emergent area of research (Simich 2006, Simich *et al.* 2007, Oxman-Martinez *et al.* 2005). There is, however, considerable community and activist organizing, and research on the mobilization process (Wright 2003). Community organizations, activists and people without status have organized and lobbied for regularization programs (Guang and Jin 1996, Status Campaign 2003, Khandor *et al.* 2004, Lowry and Nyers 2003) and 'Don't Ask, Don't Tell' municipal policies (Keung 2005).

Part of the explanation for the smaller volume and range of research on unauthorized migration in Canada is that the population is relatively small and the topic is not as visible, widely understood, or recognized as a relevant research area. This generates a vicious circle that is difficult to surmount. In spite of the differences, binary terminology also prevails in Canada. Activists, academics and community workers tend to use *non-status* or *undocumented*, while others use *illegal*. These terms reproduce the US-based undocumented-documented binary, with the twist that people with precarious status in Canada may be documented or formerly documented.

The legal production of illegality

The literature on migrant illegality has taken a new turn that offers valuable conceptual tools for building alternative formulations to address the shortcomings of binary approaches and opening up to investigation the question of how migrant illegality is produced. In particular, scholars are producing innovative analyses of the historical and contemporary construction of illegality in the United States (Bosniak 2000, Ngai 2004, De Genova 2005) and elsewhere (Calavita 1998).

To develop a conceptual framework for analyzing this process, we draw on two strands of scholarship on migrant illegality. One addresses the 'legal production of illegality'; the second questions dichotomous approaches to migrant legal status. In addition, we draw on the literature on precarious employment and work on citizenship policy in the context of neoliberalism. Insights gained from these discussions are critical to our conceptual framework and use of 'precarious legal status' because they draw attention to the systemic, *legal* and normalized production of a *range* of precarious, or less than full, im/migration statuses.

Producing illegality

Calavita's (1998) work on immigration policy in Spain broke theoretical ground by theorizing the production of illegality as an ongoing process of 'irregularization' set in motion through state and provincial policies and administrative requirements that ran counter to the official government discourse, which emphasized immigrant integration. Drawing on Calavita and others, De Genova (2002) elaborated the concept of the 'legal production of migrant "illegality"'. This framework is significant because it does not take for granted the term or the 'problem' of the undocumented. Instead, De Genova calls for a critical examination of the social and political conditions under which people are legally and routinely constructed as 'illegal'. His project is related to Heyman's (2001) analysis of immigration classification, and also draws on Coutin's (2000) analysis of Salvadoran legalization as a legal process – rather than a study of a particular group (De Genova 2002, p. 423).

We operationalize the call to examine how illegality is legally produced through an analysis of contemporary Canadian immigration and related policy that identifies the main ways people may become illegal, including unauthorized entry and authorized entry followed by various pathways to precarious status and illegality.[10] While inspired by Calavita (1998) and De Genova's (2002) work, our approach focuses less on the discourse surrounding immigration policy, and more on policy as a set of practices whose implementation produces potentially changeable pathways to loss of migratory status.

De Genova's framework is crucial for understanding how state policies produce the category of 'illegality' and normalize 'illegality' as a problem. However, it implicitly reproduces a bright line approach to the distinction between legality and illegality.

We never glimpse the construction of categories or in-between locations outside of this binary. Bosniak's (2000) critique of approaches to citizenship that draw a sharp and unproblematized distinction or bright line between citizenship and alienage (non-citizenship) is crucial. She argues that this approach ignores the historical, social and contingent development of citizenship and thresholds of citizenship (e.g. who is and who may become a citizen). While we perceive a bright line between citizens and non-citizens, that line has changed over time, which suggests that a fuzzy- and shifting-line model is more defensible. Her argument can be brought to bear on the distinction between legality and illegality, but this requires attention not only to how illegality is produced, but also to how illegality is theorized, and in particular, to approaches that consider the possibility of non-dichotomous models, particularly models of illegality that allow for a fuzzy line between legality and illegality and the threshold of illegality.

Theorizing illegality

How can we theorize illegality and the production of illegality in a way that takes into account Bosniak's critique? How do we theorize citizenship and illegality in a way that does not take for granted a bright and fairly fixed line between legal and illegal? The literature includes several proposals that go beyond dichotomous conceptions. Menjivar (2006) introduced 'liminal legality' to describe the feeling of being legally and socially in-between as experienced by undocumented Salvadorans, many of them caught in the legal limbo of Temporary Protective Status (TPS). Drawing on Victor Turner and Susan Coutin, Menjívar noted that the categories of documented and undocumented did not adequately capture the legal gray area experienced by the people among whom she worked. Building on Coutin's analysis of the 'legal nonexistence' of undocumented Salvadorans, Menjívar theorized an additional category, that of 'liminal legality', which stands between being legal and 'illegal', or between undocumented and documented. In doing so, she also echoed Bailey *et al.*'s (2002) use of 'permanent temporariness' to describe the situation of many Salvadorans.

A related non-binary conceptual move was made by Aleinikoff (1997, cited in Heyman 2001, p. 131), who conceived of US rights and membership as 'circles of membership', a set of concentric circles, with citizens at the center, and progressively larger circles of people with fewer rights and weaker belonging (permanent residents, followed by non-citizens, long-term residents and the undocumented at the outer edge). This echoes earlier hierarchical conception of citizenship that used the terminology of denizenship to describe non-citizen long-term residents with limited or de-facto rights (Hammar 1990).

These contributions underscore the inadequacy of dichotomous approaches to legal status. However, we do not find them entirely satisfactory for the Canadian context for several reasons. First, the specific national or regional context in which migrant illegality is produced may generate different constellations of categories of legal status, each associated with specific configurations of rights or limitations. Liminal legality and related concepts used to describe Salvadorans under TPS rest on a tripartite categorization: legality, liminal legality, and illegality, which is certainly useful for understanding the undocumented and refugee experience in the United States, especially for Salvadorans. This model may overlap with elements of precarious status in other contexts – but it may obscure aspects of the production of illegality in some of those contexts. Second, racial formation and negative racialization may intersect with the production of illegality in different ways depending on time and place. This too calls for a more flexible approach.

Third, policies, regulations and administrative practice change over time, leading to the re-classification of particular people or groups – something that needs to be investigated through context-specific and temporally dynamic analyses of the legal production of illegality. If the legal production of illegality and precariousness leads to a diverse array of marginalizing legal statuses, which can change over time and place, and operate unevenly across differentially racialized bodies and groups, then what is needed is a more robust way of defining and conceptualizing illegality and its production.

Precariousness

Our response is to use 'precarious legal status' to describe multiple and potentially variable forms of non-citizen and non-resident status that are consistent with the definition set out earlier. This approach has the advantage of breadth: we use it to refer to various forms of precarious status, including non-status. It also conveys a combination of ongoing risk and uncertainty, or ongoing vulnerability to precariousness, because it connects to the literature on precarious employment (Vosko 2006, Fudge and Owens 2006). That literature is attentive to the legal, political economy, and structural transformations that shape the context in which the terms of employment are being restructured to assure flexibility for employers, which tend to generate instability and vulnerability for workers. In a similar fashion, citizenship and rights associated with legal immigration status are becoming increasingly precarious and conditional on requirements that are often difficult to meet or maintain.

Borrowing this use of precariousness underscores the importance of locating discussions of citizenship and immigration status in the context of broader trends and tensions, including neoliberal citizenship and nation-building. The concept of precarious status reflects insecurities associated with policies designed to control immigration and curb the overall number of permanent immigrants on the part of states of immigration,[11] and the tendency to make citizens increasingly individually responsible for their existence, which is part of a broader process of reducing the welfare state and social citizenship. This is compatible with Joppke's (2007, pp. 38–39) analysis of transformations in citizenship, which identifies the contradictory tendencies of liberalizing access to the status of citizenship (e.g. removing racialized and gender barriers); reducing social citizenship rights (while moving other rights to the fore); and decoupling identity from citizenship (e.g. through multicultural policies).[12] This framework allows us to locate processes of irregularization and/or the legal production of illegality that generate precarious immigration status within a broader analysis of the political economy and cultural politics of citizenship, in which downward pressures on citizenship become normalized through cultural representations that contribute to the hegemonic but necessarily incomplete project of producing migrant illegality, worker flexibility, and responsible and deserving citizens.

Producing migrant illegality in Canada[13]

Different contexts, differences in the production of migrant illegality

Canada's geography, immigration policy and border enforcement landscapes differ from those of the United States, making the two countries different contexts of entry and reception for migrants (Reitz 1998, Goldring 2006, Bloemraad 2006). In the United States, the large-scale unauthorized movement of migrants – primarily from Mexico across the southern border – has been and remains the main pathway to undocumented status in that

country.[14] Responses to the presence of the undocumented run the gamut from large-scale pro-immigrant marches and advocacy, to criminalization, raids, detention and deportation (Friesen 2008). The visibility of unauthorized entry and the presence of the undocumented are undeniable: the unauthorized population enters into public discussions and press coverage on a regular basis.

In contrast, Canada's large, comparatively un-policed southern border is with the United States, a relatively prosperous country. Rather than unauthorized land entry, other pathways to illegality and precarious immigration status are more common. Although the absence of reliable data on unauthorized entry and residents make comparison difficult, reports on enforcement by the Border Services Agency indicate that border enforcement focuses on goods, arms and 'fugitive criminals' (Corelli 1996, Raymont and Tracey 2002).

The state's relative lack of concern is reflected in the sporadic media coverage of the topic, which emerges periodically in connection to *crises*. These include instances of relatively large-scale attempted unauthorized entry or asylum claims (Hier and Greenberg 2002, Greenberg and Hier 2001, Mountz 2004, Waldie *et al.* 2007), smuggling (Kaihla 1996, Richards 2001) or deportation (Mickleburgh 2000, Waldman 2006). The language of 'crisis' used in covering unauthorized entry supports the contention that unauthorized migration is understood as an occasional aberration, and not as a pervasive and structural feature of Canadian society and economy.

Since 2005, however, unauthorized migrants have begun to receive media and public attention in Toronto. The combined effects of a reported labour shortage in the construction sector, several high profile raids and deportations (The Globe and Mail 2006), a government report on 'illegal immigrants' who evade removal (Chase *et al.* 2008), and the work of pro-migrant activist organizations have helped to raise awareness. Activists succeeded in having the Police Board adopt a 'Don't ask' policy (Cowan 2006), and gained acceptance for a 'Don't ask, don't tell' policy by the Toronto District School Board (CBC 2007). Recently, the Community Social Planning Council of Toronto produced a guide of services available to people regardless of status (CSPC-T 2007). In spite of these signs of recognition, the topic remains largely outside the agenda of public discussion.

Trends in Canadian immigration policy and patterns

Official discourse frames immigration policy as efficient and compassionate because it selects qualified immigrants, supports family reunification and admits refugees[15] (CIC 2004). The current policy framework was introduced with the 2002 Immigration and Protection Act (IRPA), which replaced the 1976 Immigration Act (CIC 2004). The 1976 Act produced important changes: First, it institutionalized educational and occupational qualifications and investment potential as a basis for selecting most immigrants through the 'point system' and investor programs. Second, it removed earlier source-country and regional criteria that expressed a racialized and racist hierarchy of eligible immigrants. The 1976 Act led to significant diversification in the source countries and regions of immigrants, and helped change the face of the nation.

The 2002 IRPA retained the overall emphasis on labour market and humanitarian criteria for selecting immigrants established in the 1976 Act and also introduced the Safe Third Country Agreement (STCA), which was implemented in 2004 and required refugees to seek asylum in the first safe country they enter after leaving their country of origin. The exceptions are nationals from countries that do not need a visa to enter Canada (e.g. Mexicans). Refugees from other countries making claims from the United States can be turned back at the border, which produced a chilling effect on the

number of inland refugee applications. In July 2005, seven months after the implementation of the STCA, Citizenship and Immigration Canada reported a 40% reduction in the number of refugee claims for 2005 compared to the same period during the previous year (CBC 2005).

Authorized entry

Legal entry into Canada under the IRPA is possible under various *resident* entrance statuses – some permanent, others temporary, and under *non-resident* tourist or visitor statuses, in many cases with a visa required.

Temporary residents

Temporary residents fall into four categories: foreign workers, foreign students, humanitarian cases (refugee claimants and those granted residence on humanitarian and compassionate grounds) and other cases (CIC 2006, p. 59). The temporary foreign worker category includes longstanding programs for specific sectors, occupations and 'skill' levels, e.g. domestic workers (Live-in-Caregiver Program), agricultural workers (Seasonal Agricultural Workers Program), highly skilled workers (NAFTA), and a series of new categories including the Low-Skill Worker Program (formally called the Pilot Project for Occupations Requiring Lower Levels of Formal Training NOC C and D) (HRSDC 2008) and programs for construction workers. The boom in Alberta's oil industry has also generated mechanisms for hiring temporary foreign workers (HRSDC 2006).

   The number of people admitted to Canada each year between 1980 and 2006 under temporary categories ('flow' data) has fluctuated. However, the number of temporary residents present at any given time ('stock' data)[16] has increased over time, and rose sharply around 1990 (CIC 2006, p. 61). Increases in the 'stock' of temporary residents compared to the flow data indicate that, in any given year, more temporary residents stay than leave. The composition of temporary entrants has also changed. Between 1980 and 2006, the share of foreign workers rose considerably, as did that of foreign students. In contrast, the humanitarian population fluctuated at lower levels (CIC 2006, pp. 64–65). The most recent decline, after 2004, reflects the drop in applications at the border following implementation of the Safe Third Country Agreement.

   Canada's growing reliance on temporary workers is evident in government statistics. The stock of foreign workers grew fourfold between 1980 and 2006, starting at 39,234 people and increasing to 171,844 (CIC 2006, pp. 64–65). Figure 1 shows temporary stock and flow data on the same scale together with data on permanent entries. It shows that the annual number of temporary and permanent resident entries (flow data) has been fairly similar over time, with some fluctuations. It also shows that the *stock* of temporary residents has climbed steadily. Temporary residents thus account for a growing and significant share of migrants in Canada, and many are remaining in the country.

   The shift in policy toward greater use of temporary admissions, particularly temporary foreign workers, has not gone unnoticed. Several authors (Stasiulis and Bakan 1997, Sharma 2001, Basok 2002, Preibisch 2004) have raised concern over temporary or migrant worker programs, arguing that they generate a class of people who live and work in Canada without full resident, citizenship or labour rights. This contributes to the social, political and economic marginalization of temporary workers, and generates hierarchies of rights and membership in the Canadian nation. These analyses have shed light on crucial issues related to Canadian citizenship, inclusion, and society, for example by noting that
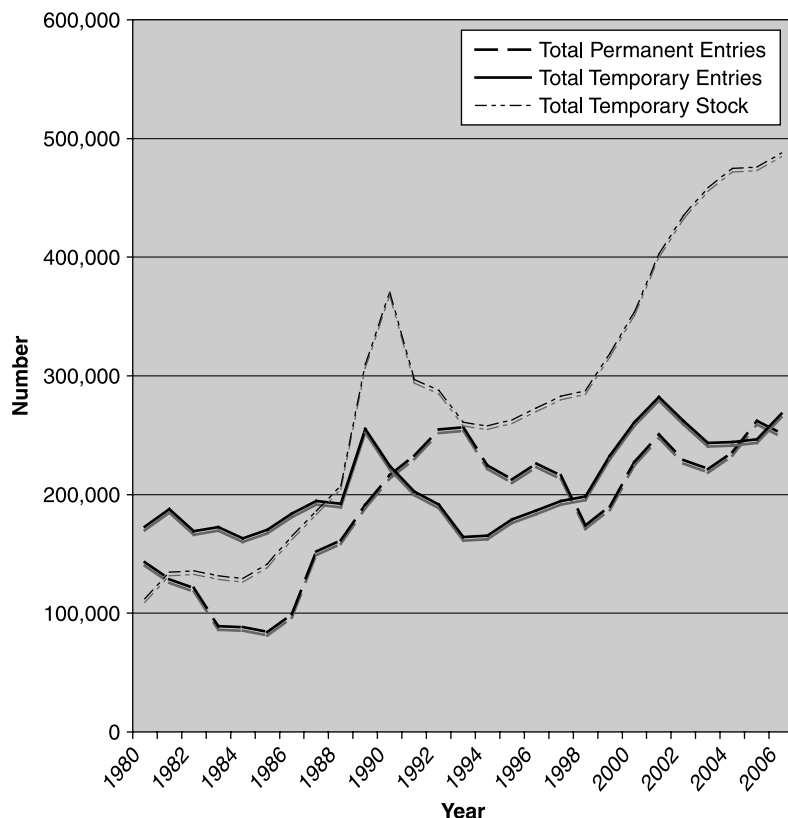
Figure 1.   Canada: total entries of permanent residents, stock and entries of temporary residents, 1980–2006.
Source: Calculated based on data in CIC (2006).

long-term temporary residents lack many of the rights enjoyed by others. Our work contributes to this scholarship by including temporary foreign workers under the rubric of precarious status and analyzing its production.

Pathways to precarious status

We turn now to an analysis of pathways to precarious status, including loss of status, deportability and illegality. Entering Canada as a permanent resident gives most migrants secure status and a pathway to citizenship, while temporary resident categories explicitly do not contemplate pathways to permanent residence or citizenship – with the exception of the Live-In Caregiver Program. However, permanent residents can lose their status if they are convicted of an indictable offense, if they fail to maintain residency requirements regarding time spent in Canada, or, under certain conditions, if a relationship breaks down during the process of family sponsorship. Thus, in some cases, permanent resident status does not prevent moving into precarious status.

Family sponsorship, and sponsorship breakdown

Canadian citizens and permanent residents may sponsor close relatives or family members who wish to reside in Canada. Sponsors are responsible for supporting the sponsored

family member for three to ten years (CIC 2002a). Sponsorship applications are usually processed while the person being sponsored is outside of Canada, but in the case of spousal sponsorship, partners can be in Canada while the application is in process. A study by the Latin American Coalition to End Violence (LACEV 2000) documents the abuses that women in this situation can experience because of their dependence on the sponsor for their immigration papers and economic livelihood. If a woman being abused chooses to leave the relationship before she has become a permanent resident, she may be left without valid migratory status.[17] In some cases, women have had children born in Canada while their applications are being processed, and are unable or unwilling to go back to their home countries when the relationship breaks down and they are left without status (LACEV 2000). There is a clearly gendered dimension to this pathway to loss of status. Anecdotal evidence suggests that sponsorship breakdown disproportionately affects women and children, but there are no comprehensive data.[18] Even when sponsorship is approved and people obtain permanent residence – which is very difficult to revoke – they may continue to feel precarious (Status of Women Canada 2001).

Refugee policy and process: protection and precariousness

Canada's Immigration and Refugee Protection Act provides two avenues for refugees to receive protection: one is an overseas resettlement program and the other is an inland application process. Refugees resettled abroad 'usually become permanent residents as soon as they arrive in Canada. However, in some urgent cases, processing is not completed by the time the refugee family arrives and several months or more pass before they become permanent residents' (CCR 2002). In 2006, 7316 government-assisted and 3337 privately sponsored refugees were admitted in Canada (CIC 2006, p. 3). During the waiting period, these seemingly 'permanent resident' refugees are given temporary work authorizations, which must be renewed, and Social Insurance Numbers that start with a 9, which signal their non-permanent or precarious status. Although they are authorized to work, some employers hesitate to hire people whose status determination is not final.

It is possible to make a claim for refugee status at any Canadian border or from within the country. However, the inland and border refugee determination process is lengthy and involves various forms of precarious status along the way. Failure to fulfill certain requirements in time may lead to a loss of status and produce illegality. For example, refugee applicants are granted status as refugee claimants once their refugee claim is determined to be eligible by Citizenship and Immigration Canada. Persons who make their applications at a point of entry generally have this determination made immediately, and enter the country with documentation but limited status. Persons who apply when they are inland, however, must wait several months for their claims to be deemed eligible. During this waiting period they are known to authorities (they are documented), but have no legal status recognized by the Canadian government – they have precarious status.

Eligibility for making a refugee claim is determined by Citizenship and Immigration Canada. Persons are deemed ineligible if (1) they have previously applied for refugee status in Canada; (2) they have convention refugee or protected status in another country to which they can return; (3) they have been determined to be inadmissible on grounds of security, human rights violations, serious criminality or organized criminality; or, (4) they have come to Canada by way of a 'safe third country'. Claims that are deemed eligible for review are called finalized. The number of claims finalized between 2003 and 2006 declined steadily. In 2003, 42,477 claims were finalized. The figures dipped to 40,408 in 2004, then plummeted to 27,212 in 2005, and 19,828 in 2006 (CCR 2007). This reduction

is attributed to the Safe Third Country Agreement (CBC 2005, CCR 2005a). Critics speculated that these changes could result in more people finding alternate means of entering and remaining in Canada, which would translate into higher numbers of people without recognized legal status.

Not all refugee claims are successful. Of the 40,408 refugee claims finalized in 2004, 40% were accepted and 47% were rejected (CCR 2004). In 2006, the number of claims finalized fell to 19,828. Of these, 47% were accepted, 41% were rejected, and the remaining 12% were abandoned or withdrawn (CCR 2007). Not all rejected applicants are immediately removed from Canada because the government does not have the resources to issue and enforce all removal orders. In effect, there are at any time tens of thousands of denied refugee claimants, some with a legal right to be in the country, whose status is precarious and are subject to deportation (Auditor General 2003, 2008).

Our purpose in discussing these issues is not to analyze the politics of refugee determination or the quality of decisions rendered, which others have done (Adelman 1983, Basok and Simmons 1993, Boyd 1994, CCR 2002, 2006, 2007, Lacroix 2004, Lowry 2002, Nef 1991, Richmond 1994). Rather, we seek to emphasize the complexity of the process, and show that while there are avenues for humanitarian entry – which are narrowing – these also generate pathways to forms of precarious status as people navigate the system.

Temporary workers

Various temporary worker programs have existed since the mid 1960s. They address perceived labour shortages in specific sectors or regions, and employers go through steps to demonstrate the lack of locally available labour. Each temporary worker program has its own characteristics, but most tie workers to a particular employer, making workers vulnerable to mistreatment and abuse. If an employment relationship is severed, the worker may be left without any valid migratory status. The programs also vary with respect to workers' eventual eligibility to apply for permanent residence and citizenship. For example, live-in caregivers can eventually apply for citizenship, but other temporary workers cannot.[19] Technically, temporary workers have legal status in that they are authorized to live and work in Canada. However, their status is precarious because temporary status means one is not a permanent resident, lacks rights and entitlements, depends on a third party for one's right to be and work in Canada, and in most cases, is not eligible to become a permanent resident and cannot come with family. Losing the status afforded by these programs compounds people's vulnerability and precarious status.

Seasonal workers

The Seasonal Agricultural Workers Program (SAWP) brings approximately 16,000 workers from Latin America and the Caribbean for periods of three to ten months a year. Workers who do not meet the employer's standards can be removed from the list of workers hired the following year. If a worker leaves his or her employer, s/he loses the authorization to be and work in Canada, although in some cases, workers are given time to find another employer.

Temporary foreign workers

The Temporary Foreign Worker Program allows employers to hire foreign workers on a temporary basis after receiving a positive labour market opinion from Citizenship and Immigration Canada certifying the unavailability of Canadian workers. Permits are issued for jobs in various sectors (e.g. construction, information technology, oil and gas,

agriculture and hospitality) and vary with respect to the provisions required of employers. The program has expanded dramatically in Alberta in response to growth in the oil sands development. Recent modifications have made it easier to hire workers in particular occupations, at several skill-level classifications, and for some workers to bring their spouses (Elgersma 2007).

Construction workers

In 2001, the Greater Toronto Home Builders' Association entered into a sectoral agreement with Human Resources Development Canada and Citizenship and Immigration to permit entry of up to 500 temporary foreign workers to fill labour gaps in the residential construction industry (CREWS n.d.). This program is less restrictive than other temporary worker programs because it gives certain skilled workers the opportunity to bring their families to Canada during the length of their contract (CREWS n.d.). However, the application process is complicated, not well known, and has not resolved employers' need for a stable work force.

Caregivers

The Live-In Caregiver Program brings workers to Canada to perform live-in work as caregivers for children, elderly persons, or persons with a disability. Women from the Philippines and the Caribbean are the main participants in this program. After completing two years in the program within a three-year period, participants may apply for permanent resident status (CIC 2002b). Critics have noted several problematic issues including sexual harassment, labour violations, and employee dependence upon employers to remain in the program and become eligible for permanent status (Makeda 1983, Arat-Koc 1997). Scholars have also noted that immigration policy has established increasingly higher requirements for women entering the program, while maintaining downward pressure on their rights (Stasiulis and Bakan 1997, Arat-Koc 1997).

Other temporary residents: visitors and students

Citizenship and Immigration Canada issues Visitor visas to people who wish to enter Canada for a temporary purpose. There are less than 50 countries from which citizens do not require visas to enter Canada.[20] In 2005, 920,664 temporary visas were issued for tourists and business visitors to Canada, a 7.6% increase over the previous year. In addition, 105,149 visitor records were issued. Student authorizations were issued to 61,703 foreign students in 2007. The total number of foreign students present in Canada that year was 156,955 (CIC 2006, pp. 78–81). Since Canada does not have exit controls, it is impossible to know how many people on temporary resident permits stay in the country after their permits have expired.

Recourse after falling out of status

When refugees and others lose their original migration status and are in situations of precarious status, there are a few, but limited, options for regaining status. One is a **Judicial Review**. Between 1998 and 2004, only 11% of applications to the Federal Court for judicial review were granted. Just under half of these reviews (43%) overturned the original negative decision. However, to put these figures in context, only a fraction (4%) of all refused claimants filed appeals during this period (CCR 2005b).

Second, anyone who has been issued a deportation or removal order is entitled to a **Pre-Removal Risk Assessment** (PRRA). In order to be successful with a PRRA application, it must be demonstrated that if returned home, the applicant would face a serious risk not faced by others in that country. Only new information can be presented at this stage, and legal fees for this avenue are rarely covered by Legal Aid Ontario. The acceptance rate for PRRAs is quite low: It was 3% in 2005 (CCR 2006).

Another option open to anyone living in Canada without recognized migratory status is to make an application for permanent residence based on humanitarian and compassionate considerations (an H&C application). Applicants must prove that they would face 'undue hardship' due to circumstances beyond their control if they were to return to their home countries, and demonstrate 'successful establishment' in Canada. Applications can take several years to be determined, and submission of an application will not automatically stop a removal or deportation order. Application fees are $550 per adult applicant, and $150 per applicant under 22 years of age. Although there are no official statistics from Citizenship and Immigration Canada on the rate of acceptance for H&C application, immigration lawyers and advocates agree that it is between 2.5 and 5%. There is no appeal or review recourse in case of a negative H&C decision.

Precarious status, precarious access to services and social exclusion

Citizenship and immigration status play a decisive role in shaping the rights and services to which individuals are entitled and/or have access (Calavita 1998, PCLS 1998, Bosniak 2000, Sharma 2001, Goldring and Berinstein 2003, Basok 2004). Access to services, in turn, contributes to people's wellbeing, health, social inclusion or exclusion, and sense of belonging to society (Omidvar and Richmond 2003, Berinstein *et al.* 2006, Goldring and Berinstein 2003, Oxman-Martinez *et al.* 2005, Bernhard *et al.* 2007, Simich *et al.* 2007). Examining the relationship between immigration status and access to services is central to theoretical and policy discussions regarding citizenship rights and migration status, and for understanding the lived effects of precarious status and illegality.

Formal entitlement is not the only determinant of access to services or related aspects of life, like wellbeing. Class, gender, age and racialization can limit the exercise of entitlement and access to services, generating or accentuating inequalities among people *with* formal rights (Lister 1997, Stasiulis and Bakan 1997, Goldring 1998, Bosniak 2000). In some situations, the inverse may hold: lack of citizenship or permanent residence status may not limit access to services if they are available through other public or private institutions (e.g. ethno-cultural and faith-based). Similarly, the absence of formal citizenship does not necessarily stop people and social movements from organizing to obtain or expand their substantive and formal citizenship (Brubaker 1990, Flores 2003, Goldring 1998, Guang and Jin 1996, Lowry and Nyers 2003, Wright 2003). Moreover, in Canada, as in other localities, there are organizations that provide some services to people with various forms of precarious status and illegality, mitigating the effects of their legal status (Berinstein *et al.* 2006, CSPC-T 2007).

Nevertheless, citizenship rights and regimes do make a difference in people's everyday lives (Marshall and Bottomore 1992, Bosniak 2000, Basok 2004, Kymlicka 1995, Richmond 1994). In Canada, federal and provincial health care provisions limit access to most public services, including health, to citizens and permanent residents. More generally, citizenship regimes and rules shaping citizenship acquisition shape the way immigrants are incorporated and minority groups are treated in 'host' countries (Castles and Miller 2003, Richmond 1994), particularly under conditions of differential

incorporation (Portes and Rumbaut 1996) or segmented assimilation (Portes and Zhou 1993, Labelle and Salée 2001).

Publicly funded social and settlement service agencies play a fundamental role in mediating access to services for all newcomers in Canada. In Toronto, several factors contribute to variation in the ways that agencies deal with migrants and refugees without permanent residence, which affects their wellbeing. One is the confusing array of forms of precarious status in which people may find themselves and move between as they lose or attempt to gain secure migration status. A second factor stems from funding sources: federal and provincial eligibility criteria impose constraints, limiting the funds that may be spent on people with precarious or no status. Third, agencies have distinct cultures and policy implementation practices set by their directors, although frontline workers may exercise discretion in implementation. These differences can translate into uneven experiences of access to services for people with precarious status and contributes to ongoing confusion about who is entitled to what, for service providers, seekers and users. The remainder of this section highlights the importance of the relationship between migratory status and access to services in Ontario.[21]

Sponsored family members

While a sponsorship application is in process, whether the person waiting for a decision is here legally (as in the case of a spouse) or not (as in the case of any other family member), does not make a difference when it comes to entitlements to publicly funded services. Before a positive decision is rendered, sponsored family members do not have any entitlements: they cannot study, work, or receive health or social services. In situations of sponsorship breakdown, the non-citizen spouse loses any entitlements and access.

Refugee claimants

Refugee claimants have limited rights to health care, education, social services, income support programs and employment protection. They are eligible for social assistance, employment insurance, and workers' compensation; they can apply for a work permit, and belong to a union; but they are not eligible for federally funded settlement services such as employment training and Language Instruction for Newcomers to Canada (LINC),[22] making it very difficult to receive language training. While they are eligible for provincially funded English as a Second Language (ESL) classes, these classes do not provide childcare services or public transportation tickets, which limits access for mothers with young children and those on fixed incomes. Refugee claimants' children do, however, have access to public schools. For health care, refugee claimants are covered by the Interim Federal Health Plan, which only covers 'urgent and essential services' (CIC 2001).

Denied refugee claimants maintain their entitlements if they file for a judicial review, or while their PRRA is being determined, or before their removal date. If they choose to remain in Canada past their removal date, they lose the legal right to be in Canada and most of their entitlements.

Temporary workers

Each program has its own guidelines as to whether participating workers are entitled to health, social or education rights. In the Construction Recruitment External Workers Services Program, for instance, families are allowed to accompany the worker, and the

spouses of designated tradespeople are eligible to apply for an open work permit while they accompany their spouse in Canada. However, the spouses of construction labourers are not eligible to work in Canada (CREWS n.d.).

Caregivers, seasonal and construction workers are all entitled to provincial health care after their initial three months in Canada, although in practice it appears that many are not aware of this entitlement and therefore do not exercise it (Hennebry 2009). Similarly, while in theory workers in these programs are entitled to employment rights and services, in practice, many find that they will be sent home early or that their contracts will not be renewed if they try to access benefits such as employment insurance or workers' compensation (Raper 2007).

Visitors and international students

Persons with valid visitors or student visas are authorized to live in Canada, but generally not entitled to receive publicly funded services. Community health centers in Ontario, which receive some provincial funding to provide services to non-insured persons, are excluded from providing services to persons with valid visitor and student visas. Children of parents in this category can attend public schools but must pay foreign student fees. With limited exceptions for students, people in this category are not entitled to work in Canada.

Persons with no status

Persons from any of the above groups who choose to stay in the country after a final negative decision, or after a visa has expired, have no recognized migratory status. They are not legally entitled to work, although if they find work they could theoretically, in some circumstances, access workers' compensation. People without any status have very limited access to publicly funded health care, social services and employment protections. They are not entitled to provincial health insurance, but are eligible to receive primary care at a local community health centre. Centers that work with people without status usually have long waiting lists. People in this situation can receive emergency hospital services for which they will be billed.

People without status are not entitled to receive settlement services, social assistance or to participate in federally funded language instruction classes. Their minor children however, are legally required and therefore entitled to attend school. However, school boards' responses across the province of Ontario have not been consistent with the legislation or each other (Koehl 2007). At worst, this leads to children being denied access to school, and at best, to parents being required to prove that they have no status in order for the children to be granted access (Koehl 2007). In May 2007, the Toronto District School Board approved a Don't Ask Don't Tell policy with respect to parent's immigration status (CBC 2007). It is too early to tell how implementation has proceeded.

Ambiguous and precarious access to services

Health and social service delivery organizations often ask for identification to establish status and entitlement. Needing to show identification may cause fear for people with precarious or no status, and often results in that person choosing not to come forward for a needed service because of fear of being reported to Citizenship and Immigration (Berinstein *et al.* 2006).

People are eligible for social assistance when they make an application on Humanitarian and Compassionate grounds, although being on assistance may jeopardize one's chances of getting status because that could preclude proving 'successful establishment'. It is worth noting the particularly gendered effects and patriarchal logic of systematically putting (predominantly) women in positions of dependency, first, on the state and then on the family sponsor (often a male spouse or relative). A person with a deportation order is not eligible for assistance unless s/he can prove that s/he cannot leave Canada due to situations beyond her control (i.e. from a country to which Canada is not deporting people).

Agencies that receive federal or provincial funding to operate (the vast majority) cannot serve people with precarious or no status. They are forced to turn people away, or to serve them without being able to report the services provided. This adds work to overworked and underpaid workers. Regarding health care, a person is only eligible for public health insurance (OHIP) if they demonstrate the legal right to reside in Canada (Canadian citizen, permanent resident, and certain types of temporary workers). In addition, all new migrants to Canada have a three-month waiting period before they are eligible for OHIP.

Discussion and conclusion

We set out to examine the legal production of illegality in the Canadian context and discuss practical and theoretical implications of this process. Our review of Canadian immigration and humanitarian policy shows that there are several avenues for permanent and temporary authorized entry. From these legal entrance statuses, there are pathways that may routinely lead people to lose their status. While people in various temporary categories and refugee claimants are most likely to lose status, sponsorship breakdown may also lead some applicants for permanent residence – particularly women – to lose their status. This part of the analysis indicates a strong similarity between the Canadian context and Calavita's (1998) characterization of Spanish immigration policy as 'irregularizing' newcomers. From this we conclude that elements of Canadian policy, particularly the rising number of temporary entrants compared to permanent residents, will continue to produce pathways out of secure and stable status.

Closer examination reveals that rather than legally producing unambiguous and uniform undocumented illegality, elements of the Canadian policy and national context contribute to generating varied forms of irregularity. Moreover, there may be movement between forms of irregularity, and between these and legality. Legal entrants can lose residence and/or work authorization in several ways. In addition to overstaying visas, their status may change through regulatory and administrative changes beyond their control, or through their own efforts to improve their situation. Consequently, people may be entitled to different elements or configurations of rights, for limited and variable durations of time. This translates into uneven and often confusing access to services, which is also shaped by geographic location, service availability, social networks and access to information. In this context of the production of illegality, we do not find a clear dichotomy between legal and illegal, nor a uniform area of liminal legality between legal and 'illegal'. Rather, there are variable forms of less-than-full or irregular status, including *documented* or formerly documented and undocumented illegality.

Having established the legal production of variable forms of irregularity and illegality, the question remains of how to best theorize them. Our analysis calls for a conceptualization that takes into account six aspects: the routes to irregularity and

illegality, including the mix of unauthorized entry versus pathways to loss of status; variability in forms of irregularity; potential movement between these forms; the precarious dimension of some apparently secure statuses – e.g. those that depend on third parties to remain in Canada or to become a permanent resident; the confusion and insecurity of partial and/or absent rights associated with variable forms of irregularity; and the ongoing possibility of losing authorized, often temporary, status. We argue in favour of using *precarious status* to conceptualize the status, lived experience, and multi-layered production of forms of precarious status.

Our formulation of *precarious status* offers contributions to conceptual and methodological discussions. First, it emphasizes contextual specificity in the production of illegality or forms of illegality. Analytical frameworks for studying the legal production of illegality (De Genova 2002) and the process of irregularization (Calavita 1998) are fundamental to our work. Tracing the production of illegality led us distinguish between documented and undocumented illegality, which complicates the uniform model of illegality implicit in most work. Our analysis leads us to call for work that considers how specific national or regional contexts produce potentially distinct and variable forms of illegality and vulnerability to illegality, while recognizing that at a broader level, the production of illegality is becoming generalized (Bacon 2008, cf. Dauvergne 2008).

Although a comparative analysis of the production of precarious status and illegality is beyond the scope of this work, our analysis can advance theoretical and empirical research by underscoring the importance of at least five sets of contextually specific factors that shape the production of precarious status:[23] location/geography, immigration and refugee policy – including the importance of temporary worker programs and other temporary entrance categories, main modes of legal and unauthorized entry, pathways to loss of status, and both the rules and practices of access to and provision of services to people with precarious status.

Second, use of *precarious migration status* to refer to plural forms of irregularity or illegality extends the theoretical precedent established by scholars who first articulated non-binary approaches to migrant illegality (Calavita 1998, Menjívar 2006, Coutin 2000, Bailey *et al.* 2002), and reinforces the importance of linking empirical and theoretical discussions. The empirical specificity of the TPS program and its status implications in the United States as analyzed by Bailey and his colleagues, Coutin, and Menjívar, the case of Spain at the time of Calavita's research, and the Canadian context discussed here all support going beyond a binary approach. These cases, and their relevance to other contexts, also underscore the need for a robust conception of the forms of migratory status considered to be unauthorized, the ongoing construction and production of these as illegal, and the risk of shifting into precarious status and illegality.

Third, *precarious status* questions the sharp and normalized boundary around the category of *illegality*, and thus supports work that critiques the conceptualization of bright boundaries between citizen/non-citizen (Bosniak 2000), and legal/illegal. It is not our intention to minimize the condition of abject illegality. Rather, we want to emphasize that contexts shape variable pathways to illegality, the line separating legality from illegality may be porous and fuzzy, and the illegal side of the line is not a uniform social category. The paradigmatic case of unauthorized border crossing at great human cost is significant, but it can obscure situations where it may easy to cross a figurative line into illegality, or a bureaucratically drawn line may move, rendering people illegal. Moreover, the piecemeal rights or lack of rights that may accompany categories of people on either side of the line also raise questions of classification and boundary drawing. Various categories of people normally considered to be on the legal side of the line may be more appropriately

understood as having precarious status, along with those with documented and undocumented forms of illegality.

The distinction between documented and undocumented illegality has analytical and policy implications which we cannot develop here. However, we wish to signal differences in enforcement and public discourse that may follow. Undocumented illegality usually receives more public attention and entails visible border enforcement as well as variable internal enforcement, as in the case of the US. In contrast, documented illegality may be less visible in public discourse, and locates the bulk of enforcement internally. In addition, documented and undocumented pathways to illegality may be associated with differences in the social and institutional networks of people with precarious status, which is an issue for further research.

A fourth conceptual and policy-relevant point that emerges from our analysis is that precarious status and illegality are gendered and racialized processes. Although not a central focus of this paper, it is clear that to the extent that specific pathways to entry and subsequent loss of status are gendered, women and men will be disproportionately affected by precarious status and illegality. For example, women are more vulnerable to sponsorship breakdown. Similarly, the prevalence of women in the Live-In Caregiver Program (Bakan and Stasiulis 1997), men in the Seasonal Agricultural Workers program (Basok 2002), and men and women under different types of humanitarian admissions (Boyd 1994) indicates that precarious status associated with these entrance statuses is also gendered. To the extent that source countries from the global south are over-represented among refugee claimants and most temporary entrance categories, we can add that racialized minorities are more vulnerable to precarious status and illegality. This would be consistent with research on economic and social inequality Canada (Galabuzi 2006) and policy barriers to immigrant settlement (Wayland 2006).

Fifth, our approach to precarious status has implications for citizenship and nation building, in theoretical and practice-oriented terms. There is no doubt that illegality is being legally produced on a global level, in numerous sites, and at multiple scales. This raises questions about citizenship and democracy in states (of immigration and/or transit) with a large population with precarious status. People with precarious migration status are, by definition, not citizens and therefore not entitled to citizenship rights. However, their lack of social and civil rights in particular means that migratory legal status is becoming a salient dimension of social exclusion and inequality – in Canada and elsewhere.

Several questions and challenges follow. A general theoretical question involves the relationship between the production and possible expansion of precarious status and transformations in citizenship. This and the questions that follow are beyond this paper, but are worth signaling. For example, should analysts of transformations in citizenship address who is left out of citizenship and pathways to citizenship, in addition to the already full agenda, which Kivisto and Faist (2007) organize around the four dimensions of citizenship transformation: inclusion, erosion, withdrawal and expansion. Adding those left out through the production of illegality would be akin to adding exclusion as a theme. Second, a Canadian-focused question is how Canadians want to deal with a US-style underclass defined by precarious status and labour market vulnerability. Another question examines how it is possible, in Canada, for legal status to become an important dimension of stratification with virtually no public recognition or discussion of the process.

A conceptual and methodological challenge is that in addition to considering the impacts and intersections of racialization, class and gender on wellbeing, Canadian

(and other) researchers need to include migratory status (and not only foreign birth or entrance status). A related challenge is the absence of systematic data on the topic. Future analysis and consultation should improve the state of available information and research on precarious status and analyze the implications of this form of differential exclusion for the wellbeing of people with precarious status, and society as a whole. With improved information on the Canadian context, analysts can deepen understanding of how precarious status affects specific arenas, such as health, education, labour markets, and particular occupations and industries, as well as the implications of this dimension of differential inclusion for civic participation, citizenship, and democracy.

Use of *precarious status* also has strategic implications. The larger coverage afforded by this conception of variable pathways to and forms of illegality establishes a basis for identifying common challenges and agendas, and forging alliances between people and groups in various situations of precarious status as well as their advocates. A bigger tent (broader term) can contribute to a more inclusive and visible politics of making claims, advocacy, calling for recognition, social mobilization, campaigning, legislative reform, and so forth.

Our analysis emphasized the systemic and contextual production of forms of variable precarious status. As noted earlier, this shifts responsibility for precarious status and illegality away from individual failure, and reframes the process as one embedded in elements of state policy and global trends. This analytical framework can contribute to local advocacy and policy practice at several levels. Identifying the connection between policy, in the form of rising use of temporary entrance categories and relative restrictions in permanent entry, and the production of growing numbers of people with precarious status may push the issue away from the nearly exclusive and marginal domain of activists and some service providers, toward the center of public discussion. We close by calling for further conceptual and policy practice analysis informed by our framework and questions and challenges sketched out in this concluding section.

Acknowledgements

Notes

1. The presumed 'fullness' and security of citizenship are troubled by several factors, including the deportability of naturalized citizens, and inequities based on racism, patriarchy, etc. However, for purposes of this paper, we concentrate on precariousness associated with non-citizen and non-resident status. Also see note 4.
2. Oxman-Martinez *et al.* (2005) analyzed 'precarious status' as a determinant of wellbeing. Perhaps due to disciplinary specialization, we did not find their article until the stage of revising this paper for review. While we do not claim originality in using the term, we present the theoretical framework that underpins our use of the concept.
3. Movement between gradations of status may follow from regulatory changes, regularization programs, failure to meet administrative requirements, efforts to regularize one's situation, etc.

4. We recognize that rights and status (*de jure*) may differ from practice (*de facto*). However, rights and status establish the legitimacy of rights claims, even if they do not always predict perfectly how they are exercised.
5. The high profile case of Maher Arar, a Syrian-born Canadian citizen who was 'rendered' to Syria and tortured there, is a reminder of the potential insecurity of citizenship.
6. We are grateful to an anonymous reviewer for framing these criteria succinctly. One could add that restrictions on family (re)unification be added to the list.
7. Racialization is an uneven and historically situated process whereby social meaning is attached to 'race'. Whiteness is usually racialized in positive or neutral terms, although racialization can intersect with gender, class, nationality or ethnicity to produce additional variation.
8. Defining the population is not straightforward because it is not always clear who fits the non-status label – should it be reserved for people with no authorization to live or work in Canada? What about those with authorization to reside but not work in Canada? Another problem is that the term is also used in relation to aboriginal status: *non-status* refers to aboriginals who lack legal aboriginal status (according to treaties and rules governing marriage and lineage) but claim aboriginal identity.
9. There is, however, extensive Canadian literature on precarious employment, restructuring, union organizing, and related topics (Vosko 2006). There is also research on the racialization of poverty (Galabuzi 2006) and ethnoracial inequality (Ornstein 2006). This work examines gender, racialization and class, and differences between the native born and immigrants, but not precarious legal status. It is only in work on temporary and domestic workers that we find explicit discussions of migration status, rights, wellbeing and social exclusion (e.g. Basok 2002, 2004, Preibisch 2004, San Martin 2004, Sharma 2001, Stasiulis and Bakan 1997, Bakan and Stasiulis 1997).
10. The work of Black *et al.* (2006) on routes to illegality among detainees in the UK is consistent with our approach to pathways to less than full status (Goldring and Berinstein 2003).
11. The trend among countries of *emigration* is to transform emigrants into extra-local citizens who are co-responsible for development (see Landolt *et al.* 1999, Lowell *et al.* 2000, Goldring 2005).
12. See also Kivisto and Faist's (2007) framing of transformations in citizenship.
13. We focus on the contemporary period, with its roots in policy changes initiated during the late 1960s and early 1970s. A historical discussion is beyond the scope of the paper.
14. There is relatively little research on legal entrants to the United States who overstay their visas, thus becoming unauthorized residents. Passel (2006) estimated that 45% of the undocumented population in the United States entered legally and then overstayed. Power *et al.*'s (2004) analysis of two waves of the Legalized Population Survey found that one quarter of respondents entered the US legally, and then became unauthorized. This suggests that the term 'undocumented' is not uniformly accurate for the US context.
15. Canada's refugee determination system is grounded in the United Nations Convention relating to the Status of Refugees, the 1984 Convention Against Torture, and to the International Covenant on Civil and Political Rights, to which it is a signatory.
16. Migration is often described with hydraulic metaphors, e.g. flows and surges, conveying the contradictory messages that flows can be turned off or controlled with the right policies, *and* that flows are beyond control – acts of nature. Meanwhile, *stock* recalls the language of eugenics, but is commonly used by demographers. We use quotation marks the first time we employ these terms to interrogate them.
17. This happens if in there is a declaration of false representation in the initial application (e.g. marriage of convenience) accompanies the relationship break-up.
18. Personal communication, Rhonda Roffey, Executive Director of Women's Habitat, Toronto, a shelter for women in crisis, 17 October 2007.
19. In some provinces (e.g. Manitoba) and sectors, employers are helping temporary foreign workers obtain permanent residence through the provincial nominee program (Annis 2008).
20. This list of countries is subject to change. For example, Costa Ricans did not need a visa to enter Canada, but now do. When regulations change, people may get caught in situations where members of a family have different migration status, including no legal status.
21. We limit our discussion to Ontario because many of the services we discuss are provincial, or receive federal funds but are implemented according to provincial policies.

22. LINC classes are available to refugees and permanent residents.
23. There are, of course, other important factors, including enforcement and surveillance technologies, border enforcement, the hegemony of anti-terrorism discourse, securitization, etc.

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