

Barred from the Border: Disability Discrimination within Immigration Systems

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ABSTRACT: This article critically examines how disability discrimination manifests within the immigration systems of Canada, the United States, the United Kingdom, and Australia. Despite Canada's reputation as a welcoming nation, the article argues that its points-based immigration system perpetuates ableist notions, treating disabled immigrants as economic burdens. The analysis explores the historical context of Canada's immigration system, its impact on disabled immigrants, and draws comparisons with other nations. Examining the immigration regulations of the United States reveals discriminatory practices and ableist language, while the United Kingdom's points-based system emphasizes economic contribution, hindering disabled immigrants' integration. In Australia, despite having an anti-discrimination act, disabled immigrants face barriers, including detention. The article concludes that these countries, despite differing immigration systems, share a commonality in excluding disabled immigrants based on eugenic and ableist ideologies rooted in neoliberal democracies. Overall, the points-based systems, intended to eliminate biases, inadvertently reinforce discrimination against disabled individuals, highlighting the need for a more inclusive approach to immigration policies.

Introduction

Canada prides itself on being a welcoming nation that opens its borders to immigrants from all walks of life. However, on-par with the majority of nations around the world, disabled immigrants are not offered the same opportunity as non-disabled immigrants. Immigrants with disabilities are seen as an economic and social burden to their prospective countries. Regardless of the immigration system employed by a country, disabled immigrants are disproportionately viewed through a cost-benefit lens, as if an individual's ability is a form of capital. Canada uses a merit-based system, aiming to reduce discrimination and biases, but closer analysis may suggest that that is not the case. The question that arises is how does Canada's points-based immigration system discriminate against disabled immigrants and do differing immigration practices around other neoliberal democracies result in less discrimination towards and better accessibility for disabled immigrants? This paper argues that the Canadian immigration system embodies notions of compulsory able-bodiedness and employs cost-benefit analysis which results in the negative treatment of disabled immigrants that limit their opportunities to immigrate and integrate into society. On top of that, it posits that these notions, behaviors, and outright discriminatory policies are not unique to Canada but rather are found in other neoliberal democracies and are rooted in eugenic and ableist thought characterized by the determination of desirability based on economic potential. This paper will start with an analysis of Canada's points-based system and its relationship with applying immigrants, focusing on disabled immigrants. Cases from the United States, the United Kingdom, and Australia will be used to critically compare their immigration systems in order to understand their respective relationships with disabled immigrants. From that analysis, this paper intends to reach a conclusion that highlights how other systems around the world are not more effective in limiting ableist notions and practices than in Canada.

Canada's Merit-Based Immigration System

Canada's immigration selection procedures opened up following the conclusion of World War II. Prior to that, Canada was extremely selective of who it let into the country, openly discriminating based on factors like race, religion, class, health, and ability. The implementation of the points-based system in 1967, saw an increase of immigration to Canada

from Asia, Africa, and Latin America (Elrick, 2022, 110). This new merit-based system is still in use today, and it assesses one's value to the country based on factors such as language, education, work experience, age, family connections, and how likely one is to permanently settle in Canada (Government of Canada, 2023). For other nations, Canada's system has "long been considered an example of international best practice" (Elrick, 2022, 110). However, the system should not be freed from criticism.

Some critics suggest the individualistic nature of the points-based system is detached from the social groups the individuals belong to (Elrick, 2022, 110). The goal of introducing a merit-based system was to eliminate discrimination from the screening process. However, in its early days, bureaucrats would still admit based on race, not merit as they were supposed to (Elrick, 2022, 111). The power that officers hold over decision making would suggest that those practices are still seen today but are not as overt. This is due to the economic importance placed on immigrant applicants. Merit equates to ability which is often measured by productivity and results based analysis. The officer is delegated the authority of making decisions based on their assumption of who will meet and fulfill the productivity and economic thresholds. Overall, it is essential to understand that Canada prioritizes economic potential when screening applicants, as that is what contributes to its ableist immigration practices.

Impacts on Disabled Immigrants

The Canadian immigration system has both historically and contemporarily outlined its disapproval of accepting immigrants with disabilities. Based on records from laws and House of Commons debates, the exclusion of immigrants with mental disabilities was a deliberate decision "to ensure the proper 'character' of immigrants coming to Canada" (Chahda, 2008, 1). Prior to the postwar era, the language was more direct – the term "feble-mindedness" was used to describe disability is evident in historical documents (El-Lahib, 2016, 770). Whereas in the new iteration of criteria barring the disabled, it is much more sensitive and politically correct, citing strain on the nation and resources. This shift in language is intentional, which is to be less explicit with its discrimination but continues "to serve a gatekeeping function to keep people with disabilities out by facilitating their construction as

an inadmissible social group” (El-Lahib, 2016, 770). By manipulating language to focus on an economic system to move society away from the individual, it relieves the pressure of seeming exclusionary or ableist.

Canada views the disabled immigrant through a cost-benefit analysis. The immigrant’s educational and employment history are taken into account to assess whether they have value and prior knowledge they could deploy when integrated into the system. However, oftentimes, due to ableist and discriminatory practices in their country of origin, immigrants with disabilities are left uncompetitive due to the lack of opportunity within their home land. Since Canada’s points-based system heavily favours work experience and education, the exclusion that people with disabilities experience in their countries of origin has a “direct bearing on their admissibility as immigrants to Canada” (El-Lahib & Wehbi, 2011, 98). These individuals face the same barriers within their country of origin hoping to seek more opportunity through immigration but, because of perceived lack of ability, they encounter the same problems or integration and acceptance into society.

Immigrant families are not safe from being separated and destroyed as a result of this points-based system that meticulously screens potential immigrants for any perceived burden or strain on society or medical resources. A prime example of this is discussed in El-Lahib and Wehbi’s (2011, 100-101) research; a French family immigrated to Montreal in 2005 for economic reasons, they integrated and contributed to the Canadian economy by relocating their business into the country. The Canadian state granted permanent residency to the entire family excluding the applicant’s youngest daughter who had a pre-existing disability. The Canadian government prioritized the perception of disability as a deterrent over the potential economic benefits that the family brought. When going about obtaining PR for the dependent, the business man even guaranteed he would take on the responsibility of paying for any medical costs needed by his daughter, therefore relieving responsibility from the state. The ministry of immigration did not loosen up when the family tried to go through the humanitarian stream; which shows that people with disabilities face challenges when immigrating through three of the four streams.

Analysis of the United States

Looking beyond Canada, the first immigration system I intend to analyze is that of the United States. Unlike Canada, the US does not use a merit-based system. The US claims to focus primarily on family reunification with 69% of their visas being approved on the grounds of family connections whereas 14% are employment-based visas (Bristol & Choi, 2022, 1). With this distinction from Canada it may be presumed that the US would be less discriminatory if the objective is reuniting families. However, they have in place the public charge rule. The public charge rule was introduced with the Immigration Act of 1882 and put in place to hinder the mobilization of disabled people into the US as they would become a liability, or a public charge, by depending on public services (Weber, 2015, 24). The criteria for the public charge rule targets people with disabilities, making it a highly exclusionary policy.

As a result, the US perceptions and attitudes toward disability are much more openly discriminatory and ableist. Most prominently, those with disabilities wishing to immigrate to the US are required to provide medical notification to prove a normal state of well being (Wilson D. J., 2009, 37). Ableism is also embedded in the country’s foundations as the US Constitution uses intense language that reflects not only racial biases but also regarding who is considered to be worthy of entry into the United States of America, with usages like ‘broken down human beings’, ‘poorly built human beings’, and ‘bad economic risk’ to describe disabled people (Gerber, 2005, 50). Historically, procedures were put in place to screen individuals wanting to come into the country to determine if they had a disability or what counted as a perceived disability, typically for immorality, and if they managed to reach the port and disability was suspected or revealed, arrangements would be made for deportation of the individual (Ressa, 2022, 20). In 1986, the US attempted to change their system with amendments to their immigration act pertaining to individuals with disabilities, emphasizing family unification over economic prosperity. However, in practice, the system still emphasizes and expects economic independence and contribution to the labour market (Ressa, 2022, 22). As Gerber observed, when making decisions, immigration officials “included judgments about which individuals were deemed attractive enough to walk the American streets as well as the more understandable calculations about the individual’s

capacity to be productive” (2005, 52). This approach is similar to Canada’s barring of disabled immigrants based on ensuring the proper ‘character’ of immigrants.

Furthermore, there are other policies and practices that separates the US and Canadian immigration systems. American structures are firmly rigid, making it immensely more difficult for immigration policies to be relaxed and changed due to the contentious nature and polarization surrounding the topic of immigration (Bristol & Choi, 2022, 3). Agency to change immigration policy, however, is much more prevalent within the Canadian system because of the differences between Parliament and Congress (Bristol & Choi, 2022, 3). Additionally, the attitudes towards immigration are noticeably different as Canadians generally have a more positive attitude towards accepting new immigrants and refugees provided that they can take on jobs, especially ones that are in high demand in the labour force (Bristol & Choi, 2022, 4). Americans on the other hand are more nationalistic and protective of their border, having more of an emphasis on assimilation rather than multiculturalism (Bristol & Choi, 2022, 3). However, in practice, the American diaspora resembles a melting pot of cultures. Despite these different attitudes towards immigrants, those feelings are not tolerant or welcoming to disabled immigrants as they are seen to both as incapable of economically contributing or assimilating to the normal.

Analysis of the United Kingdom

Although Europe has a variety of different immigration systems, and some may have offered a more unique perspective for this paper, the existing research is limited. Therefore, the second case for analysis is the United Kingdom. The United Kingdom’s immigration system is a points-based system that was revised in 2021 following the UK’s departure from the European Union. The revised system is mostly similar to the system prior, but the major difference is that it now aims to select migrants who will contribute the most to the UK’s economy (Walsh, 2021). The slight relaxation of their immigration policies only benefits skilled workers, and does little to prevent discrimination against disabled immigrants. Under the old system, immigration was restricted across the board but points could be earned for language ability, work experience, education, and family connections (Walsh, 2021). Now, with emphasis placed on skilled workers,

the most common visa type is awarded based on the applicant having a job offer already lined up in the UK in addition to their language ability, work experience, education, and salary (Walsh, 2021).

The impact on disabled immigrants does not change between the systems, rather as the UK continues down a path that values contribution and productivity, disabled people continue to face barriers both at the border and within the nation. Hughes argues that “Neoliberal Britain has made significant headway in dismantling the ‘safety net’ of welfare support that once helped to protect disabled people from the discrimination and exclusion” (2017, 476). This bleeds into the immigration policies within the United Kingdom as the mere presumption that disabled people are not contributing to the economy strengthens the barrier preventing disabled workers from integrating into the country and labour market.

There is also a lot of pre-existing research regarding refugees and asylum seekers in the UK. This research is not as prevalent for Canada or the United States so offers a new perspective. Disabled refugees are almost completely ignored both throughout the immigration process and once they are settled in the UK (Roberts, 2000). Despite refugees and asylum seekers acquiring the same rights as a British citizen once they have been granted entry, “refugees face significant difficulties when attempting to access services and resettle” (Roberts, 2000, 945). The services and support available to both refugees and disabled people have been gradually reduced (Yeo, 2019, 676) which suggests that barriers in access to support are heightened for disabled refugees. Disabled refugees and asylum seekers are a minority within both the disabled population and refugee population, therefore it is easier for their needs to be dismissed by service providers (Roberts, 2000, 944). Furthermore, the language used regarding disability continues to uphold ableist constructs as Yeo suggests, “labels of ‘vulnerability’ obscure systemic oppression and distract from the rights and achievements of disabled people” (2019, 676). These presumed notions are what limit opportunity for disabled refugees and immigrants, even before entering the country.

Analysis of Australia

The final system to analyze is the Australian immigration system. Australia uses a points-based system that judges applying immigrants based on age,

education, and work experience similar to Canada (Waldeck & Guthrie, 2017, 219). Australia has two acts in place relevant to this analysis; the Migration Act of 1958 and the Disability Discrimination Act of 1992. Canada does not have an anti-discrimination act for people with disabilities, the closest policy in place in Canada is the Human Rights Act of 1985. The fact that Australia has the Disability Discrimination Act in place however, does not actually protect disabled immigrants. The Disability Discrimination Act does not apply to the Migration Act which means that discrimination on the grounds of disability is lawful under the Migration Act (Waldeck & Guthrie, 2017, 219). This is intentional as the Migration Act replaced the highly discriminatory Immigration Restriction Act of 1901 (St Guillaume & Finlay, 2018, 123). Although abolished, it can be inferred that the Immigration Restriction Act, also referred to as the White Australia Policy, still has underlying influence in Australia's immigration policy (St Guillaume & Finlay, 2018, 123). The act sought to deny non-white and non-normative bodies, which meant people with disabilities were explicitly targeted, and while it may not be as explicitly written in policy today, disabled immigrants still face discrimination in Australia.

Australia uses policies of both locking out and locking up to ensure that the undesirable remain blocked from entering or integrating within the country. Their policies are aimed to bar entry for disabled immigrants and refugees but those who manage to be granted entry then face the risk of being detained. Australia has an issue with wrongfully detaining refugees, and a disproportionately high rate of detained refugees are disabled (Soldatic & Fiske, 2009, 289). When taking refugees into account, even though they are granted entry, it often remains the fact that they do not have the resources necessary to settle including access to medical, health and social care (Dew et al, 2022, 33). Additionally, when factoring in the presence of disability, it is found that there is a lack of accountability on the part of the state in ensuring accommodation and medical needs are met. There needs to be a collaborative effort between refugee specific services, disability services, and health services in order to ensure that intersectional identities do not fall through the cracks (Dew et al, 2022, 33). This means individuals that are a part of multiple marginalized identities can get the resources and care they need.

Furthermore, the "Migration Act gives extraordinary powers to individual officers to deprive a person of their liberty with little administrative and no judicial oversight" (Soldatic & Fiske, 2009, 299). This means that officers may infringe on the freedoms of the immigrant that would otherwise be respected within Australia's borders for the purpose of determining who is worthy of being granted entry. Not only has this been observed with the detainment of disabled migrants but also with the mistreatment of disabled asylum seekers coming to Australia (St Guillaume & Finlay, 2018, 119). The goal of the border seems to be to ensure that society is made up of what the state claims to be of elite stature. One that promotes the advancement of the country rather than its supposed hindrance by unwanted disabled individuals which are determined to be flawed bodies that subside the progress and prosperity of all due to their supposed reliance on the state.

Discussion on the Different Systems

In the immigration systems that were explored, it's clear that the points-based system is an increasingly preferred approach among the West. The merit-based systems of Canada, the United Kingdom, and Australia can be compared and contrasted with each other as well as the system within the United States. The point-based systems explicitly choose who they admit based on a cost-benefit analysis that prioritizes potential economic contributions and in contrast, the US claims to prefer to admit based on family connections yet it too heavily emphasizes economic contributions and independence. Regardless of how these neoliberal nations define their immigration systems and policies, it is clear that disabled immigrants and refugees are prevented from settling. Those with disabilities or families with disabled family members face a multitude of barriers that construct a notion that they are unwanted on the grounds of being a burden on the economy and social services. Families are left divided, refugees are detained, and disabled immigrants do not get access to necessary services, presuming that they are even allowed entry into their new country in the first place.

The points-based system was created with the intention of removing all racial, ethnic, national, and religious biases alongside any discriminatory factors that may disadvantage marginalized peoples when immigrating. However, since merit is awarded based

on skills associated with health or economic potential, the points-based system is rooted in eugenic ideology. Eugenics is an ideology that reinforces compulsory able-bodiedness, which is the standardization of hiding disability and operating under expectations of physically typical conditions (McRuer, 2013, 301). Eugenic thinking is deeply embedded within neoliberal democracies, which translates into policies with the underlying intentions to discriminate against or even remove disabled people from society (Wilson, R.A., 2018, 1). Disabled individuals are simply seen as a population to be taken care of hence the idea that with disabled immigrants comes a burdensome responsibility on the state (Dolmage, 2018, 134). Canada, the United Kingdom, the United States, and Australia are the beacons of neoliberal democracy, and in turn embody the hidden discrimination enacted on disabled people, both within their borders and those seeking out immigration. This is despite the differing immigration systems between the parliamentary democracies versus the US since ultimately they result in the same action and, with regards to services, inaction taken by these countries that effectively alienate immigrants and refugees with disabilities from the rest of society. The liberal democracy is the foundation for these immigration policies (Natter, 2018, 1) Therefore, regardless of their similarities or differences, they all work to uphold a neoliberal hegemony, which shuts out disabled people.

Conclusion

We tend to think of the international reputation of Canada and its Western allies as nations that are welcoming towards immigrants and refugees. However, disability has not reached that level of welcome and tolerance; it lacks the societal and governmental push to be fully embraced within a nation's borders. As explored, the points-based system is the ideal immigration system for many neoliberal democracies as they cite it to be the system that moves away from historical prejudices. However, the points-based system relies on a list of skills one must possess or obtain in order to be considered valuable and worthy of admission, skills which may present barriers for disabled people. The points-based system of Canada, the UK, and Australia employs a cost-benefit analysis which prioritizes economic contributions and views disabled people as a potential strain or hindrance to economic prosperity. The

treatment of disabled immigrants is no better in the US, where they claim to focus on family reunification in their immigration system. All these systems rely on compulsory able-bodiedness to construct ableist policies and practices, ultimately excluding disabled immigrants and refugees by determining those individuals to be undesirable.

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