

Re-imagining immigration through the ethics of care:  
Reproductive justice and precarious status migration in Canada

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## **Introduction**

The phenomenon of migration and immigration presents challenges for states, their citizens, and newcomers (Dauvergne, 2016). Not least of these challenges, is how to ensure that migrants and their families have access to the basic things that we as a society have decided should be afforded to people in virtue of their humanity and basic ideas of social justice (Noll, 2010). While the degree to which migrants are able to access these rights varies among receiving states, even states such as Canada where the immigration regime is known for its robust protections and welcoming demeanor certain rights are inaccessible for certain groups of migrants. In Canada, over 6 million people were accepted into the country on the temporary basis in 2017, including workers, students, visitors, and those claiming asylum. Of these, just under 50% were identified as female (Immigration, Refugees and Citizenship Canada, 2018). As these numbers increase, it becomes increasingly important to understand the gendered impacts of access to rights for temporary residents – especially when considering issues related to creating and caring for families.

This paper uses a post-structural policy analysis to examine the issue of pregnant precarious status migrants in Canada creating and caring for family. In order to do so, it looks at policy documents and state political discourse reported in the media to analyze how pregnant precarious status migrants are being problematized in Canadian policies and politics. The analysis unpacks the ways in which this problematization is grounded in our existing narratives of what citizenship and immigration mean for Canada – nation-building, economics, and human rights – which prevent us from re-imagining an alternate representation. Finally, it is argued that the ethics of care (Hankivsky, 2004) could present an alternative set of priorities and values that could ground immigration policy. A greater understanding of the function of relationship in immigration and citizenship policy helps to highlight the ways in which immigration status

constitutes a particular relationship between citizens, migrants, and the state, a function of which is to categorize who should and should not be cared for.

### **Increasing precarity under the new politics of immigration**

Recent numbers show a continuous increase in the number of international migrants moving across the world – compared to 2000, estimates from 2015 suggest an increase of 57% over 15 years to a total of 244 million international migrants (International Organization for Migration, 2018). Individual states experience these numbers in different ways, with various capacities to respond, and various imaginings of what they mean and what needs to be done, in addition to taking on various roles in perpetuating these different forms of migration. As Catherine Dauvergne (2016) points out, traditional “settler states” – like Canada, for example – which have historically relied on permanent settlement of its immigrant population, have begun to shift immigration policies to prioritize temporary migration or maintain prolonged states of partial-citizenship for residents. As of 2008, for example, Canada has accepted more people into its borders on a temporary basis than as permanent residents. In particular, part of what Dauvergne (2016) refers to as the “new politics of immigration,” this shift away from permanent settlement or status upon arrival, in the Canadian context as well as other migrant-receiving states, leads to intensified experiences of precarity for non-citizens (Goldring & Landolt, 2013).

Understanding the procedures that produce precarity and their impacts on migrants’ lives has emerged as an ever-growing field of migration research. Precarious immigration status “refers to authorized and unauthorized forms of non-citizenship that are institutionally produced” through Canadian immigration policies and procedures, “and share a precarity rooted in the conditionality of presence and access” (Goldring & Landolt, 2013, p. 3). This includes a status that does not confer the right to stay permanently within Canada, as well as those which requires formal or informal conditions to be met or includes reliance on third party actors (such as employers or family members) to reside within Canada (Oxman-Martinez et al., 2005). Within the contemporary Canadian immigration context, this includes individuals living in Canada with temporary work permits (and their families), as visitors, as international students (and their families), those entering Canada through family sponsorship, those who have fallen out of status or who entered undocumented, and refugee claimants, and in some cases accepted refugees (Goldring, Bernhard, & Berinstein, 2007). Additionally, precarious immigration status cannot be understood without an acknowledgement of how it intersects with other forms of precarity (Goldring et al., 2007; Stasiulis & Bakan, 2005) – for example in employment, in health, and access to other public resources and services that generally fall under the purview of human rights. The increase in precarious status residents and the general shift toward policies and programs that produce and reproduce this experience, prompts questions regarding what place non-citizens have in the states they are residing in and what role states should have in protecting the human rights of non-citizen residents (Goldring & Landolt, 2013).

How to secure human rights – through equal access to basic services and protections, for example – for precarious status migrants within a given state has been a growing cause for concern.

International human rights organizations have put forward conventions, such as the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, to encourage international cooperation on protection of human rights across borders. While symbolically important, these conventions tend to have low numbers of signatories, especially among globally privileged states, and lack legislative weight. States themselves also express concerns about perceived restrictions on their own ability to manage their borders and state sovereignty more broadly. Uncertainty and lack of clear guidelines for how to protect their human rights has severe impacts on people's lives (Goldring & Landolt, 2013; Lenard & Straehle, 2012).

### **Reproductive justice for precarious status migrants in Canada**

Maternity, as an experience and identity, is socially-constructed by the state and through political discourse and practice, with policies creating different maternity experiences for different groups of people (Jenson, 1986). This produces patterns of "stratified reproduction" along a hierarchy often determined by race, ethnicity, immigration status, and class (Colen, 1995). Within this paper, the rights associated with creating and caring for families are conceptualized through the lens of reproductive justice. Reproductive justice emerged from activist movements of racialized and otherwise marginalized women – for example, the SisterSong Women of Colour Reproductive Health Collective in the United States and the Native Women's Sexual Health Network in Canada – calling for a more expansive, more intersectional understanding of reproductive rights that includes the (1) the right not to have a child; (2) the right to have a child; and (3) the right to parent children in healthy environments (Ross & Solinger, 2017). Reproductive justice advocates and scholars have highlighted the state's role in constructing and managing these experience of creating and caring for families through various policies and programs – for example, reproductive policy and programs (for example, Chrisler, 2014), indigenous issues, criminal justice and immigration (for example, Galaneau, 2013; Hartry, 2012).

A number of recent studies have included discussion on various dimensions of the experiences of precarious status residents and pregnancy in Canada. Speaking to the criminalization of the migrants, Silverman (2014) discusses the detention of vulnerable people, including pregnant women (see also, Bhuyan, 2013). Concerning employment, it has been demonstrated, for example, that migrant workers are fired or pressured by employers to terminate the pregnancy (Hanley & Shragge, 2009), and may feel compelled to hide the pregnancy from their employers and avoid accessing prenatal service or pay out of pocket to avoid being found out (McLaughlin & Hennebry, 2013). Much like healthcare, in general, it is well-documented that for migrants without access to public health insurance, the high cost of service prompts people to put off accessing care, which in some circumstances, like pregnancy, can have serious, long-term consequences – some of which may include increase risk of emergency caesarean section (Merry, Vangen, & Small, 2016) and post-partum depression (Gagnon et al., 2013), as well as other health complications such as higher incidence of stillbirth, early neonatal death, and maternal death (Almeida et al., 2013). Furthermore, even when precarious status migrants have access to public health insurance, as migrant workers do after the first three months, their immigration status

may defacto prevent them from accessing benefits like preventative, maternal, and parental leave which are intended to allow for a healthy pregnancy and post-birth recovery (Oxman-Martinez et al., 2005). Poor interactions with the healthcare environment and service providers has also been a barrier to maternal healthcare access (Almeida et al., 2013).

Each of these issues speaks to the conditionality of access and can be understood as documenting barriers to reproductive justice for people with precarious status. This research will build on this work to critically examine the issue of reproductive justice for people with precarious immigration status are represented and why accessing these rights is seen as a particular problem.

### **Method: Problematization of the precarious status pregnant body**

This research will use a post-structural policy analysis to examine the ways in which reproductive justice for pregnant precarious status migrants has been problematized in Canada over the last ten years. Problems are seen as the product of government practice. Discourse and practice is not only key in developing representations of particular problems within the political and social sphere, but also becomes constitutive of a particular group or problem (Ball, 1993). These representations come to shape the policies, lived experiences, and social and political narratives that have enduring effects on the population at the centre of the problematization and the policy solutions deemed necessary or even possible. The goal of using this approach is to understand how “governmental practices, understood broadly, produce ‘problems’ as particular kinds of problems’ and to “make the politics involved in these productive practices visible.’ (Bacchi & Goodwin, 2016, p. 14).

Starting from policy documents, discourse, and debate, the analysis then asks how the issue is being problematization through state discourse and practice, examines the presuppositions underpin these, and the effects of this problematization, and finally how would the response may differ if the representation were thought about differently (Bacchi & Goodwin, 2016; Bacchi, 1999). The analysis focuses on the political discourse mobilized by federal level politicians in the press regarding pregnant precarious status migrants during this period as well as a review of current (2018) federal and provincial policies documents and webpages relating to programs and policies that when accessed facilitate access to reproductive justice – for example, health insurance, child benefits, child care programs, family reunification policies, and labour policies aimed at preventing unfair treatment against pregnant women. In total, 108 newspaper articles were reviewed, focusing predominately on Canada’s most widely read newspapers, Globe and Mail, Toronto Star, and La Press, as well as, 11 federal level policy documents and webpages, and 37 provincial level policy documents and webpages. The following section will present the findings from this analysis on the problematization of reproductive justice for pregnant precarious status migrants in Canada from the state’s perspective.

## Representing migrant pregnancy & family

Examination of policy documents (federal and provincial) and state discourse in the press shows a particular problematization of the issue people without permanent status giving birth and caring for their families in Canada. Overwhelmingly, pregnant migrants are problematized as taking advantage of the generosity and integrity of Canada's immigration system and welfare state – specifically as migrants seeking to benefit from the Canadian state, while not contributing economically or socially. The following sections will, first, outline examples of restricted access to services through policy and the political discourse surrounding provision of access, second, unpack the hegemonic discourses underpinning this problematization, and lastly, outline some implications of this problematization.

### *Immigration and citizenship integrity*

*“The truth is that for too long, perhaps because of the Canadian characteristic of always wanting to be nice and never wanting to say no, we looked the other way when significant numbers of foreigners sought to acquire Canadian citizenship even illicitly... All of this indicated to me a cheapening of the value of Canadian citizenship.”*

Jason Kenny, former Minister of Citizenship and Immigration<sup>1</sup>

*“Birth tourism may be legal, but it is unethical and unscrupulous.”*

Joe Peschisolido, Liberal MP for Richmond, BC<sup>2</sup>

One of the primary ways that precarious status pregnant women are represented as taking advantage of the Canadian state is by fraudulently representing themselves in the immigration process to gain access to citizenship for their child born on Canadian soil and permanent residency for themselves and other family members.

Canadian birth certificates and citizenship is granted to anyone born within Canadian borders (with the exception of children born to foreign diplomats) regardless of the immigration and citizenship status of their parents (Canada, 2018). Hospitals across the country do not habitually inquire about the status of parents, and when they do only to the extent of establishing whether the mother and child are covered by a health insurance program. Although possessing Canadian citizenship, children born to precarious status parents may have unequal access to citizenship benefits – for example, in Quebec a child's access to the public health system aligns with the status of their parents rather than the entitlements of their own citizenship. When the child turns 18, they are eligible for full citizenship benefits, including a pathway to sponsor their parents and grandparents. In 2012, the Harper Conservative government issued a number of reforms aimed at toughening up access to Canadian citizenship but fell short of abolishing it as a birthright. Now in opposition, the Conservatives under the leadership of Scheer have reintroduce the topic of

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<sup>1</sup> As quoted in Brean, J. (17 March 2012). The changing meaning of citizenship; How the Tories are making it harder to be a 'Canadian of convenience'. *National Post*.

<sup>2</sup> As quoted in Bilefsky, D. (3 January 2019). 'Birth tourism' legal, but sparking controversy; B.C. a favoured haven for 'unscrupulous' practice. *National Post*.

birthright citizenship as an area of needed reform, by focusing in on concerns around “birth tourism”. Though the Conservative party has certainly been the most vocal and has played a significant role in framing the issue, it is not wholly bipartisan, with one BC Liberal minister recently raising the issue in the House of Commons and current Minister of Immigration, Refugees, and Citizenship, Ahmed Hussen, calling for further investigation into the issue.<sup>3</sup>

The debates surrounding the Canadian birthright citizenship and who should have access to it often centre on the figure of the pregnant precarious status woman as threat to, in the words of the former Minister of Citizenship and Immigration, Jason Kenny, the “integrity of our immigration system”<sup>4</sup> and the “value of Canadian citizenship.”<sup>5</sup> Whether cast as a “bogus” refugee claimant or a “birth tourist” entering Canada on a visitor visa with the sole intention of giving birth, pregnant precarious status women are represented as a threat, and criminalized in this discourse as fraudulently representing their motivations for arriving in Canada in order to “[exploit] the loophole in the law to obtain citizenship for their children when they are not entitled to that.”<sup>6</sup> Represented this way, people are birthing their children in Canada in order to circumvent certain migration controls and have access to family sponsorship opportunities in the future. Furthermore, concerns have been expressed that allowing people with no prior formal connection to Canada to birth citizens devalues Canadian citizenship and undermines a vision of Canada “characterized by social cohesion and a sense of mutual obligation and civic responsibility.”<sup>7</sup>

### *Health and social welfare generosity*

*“We condemn the practice of circumventing our laws to game the system, leaving Canadian taxpayers with the bill. This is unfair and not right.”*

Candice Malcolm, Citizenship and Immigration Canada representative<sup>8</sup>

*“These reforms allow us to protect public health and safety, ensure that tax dollars are spent wisely and defend the integrity of our immigration system all at the same time.”*

Jason Kenny, former Minister of Citizenship and Immigration<sup>9</sup>

In addition to taking advantage of Canada’s immigration system, precarious status pregnant women are also represented as exploiting Canada’s welfare state at the expense of taxpayers.

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<sup>3</sup> See Selley, C. (26 November 2018). Liberals swivel on ‘birth tourism’; Statistics reveal it might be an issue after all. *Montreal Gazette*.

<sup>4</sup> As quoted in Keung, N. (16 July 2012). Nurses and MDs enlisted to defy refugee health cuts. *Toronto Star*.

<sup>5</sup> As quoted in Brean, J. (6 March 2012). Tories look to eliminate ‘passport babies’; Undermines value of citizenship, Kenny says. *National Post*.

<sup>6</sup> Andrew Griffith, as quoted in Keung, N. (22 November 2018) Number of women coming to Canada to give birth far greater than previously estimated, study shows. *Toronto Star*.

<sup>7</sup> Jason Kenny as quoted in Brean, J. (17 March 2012). The changing meaning of citizenship; How the Tories are making it harder to be a ‘Canadian of convenience.’ *National Post*.

<sup>8</sup> As quoted in Stchyson, N. (27 February 2012). Canada to crack down on ‘birth tourism’; Consultants coach pregnant women in China. *National Post*.

<sup>9</sup> As quoted in Keung, N. (26 April 2012). Ottawa to end health care for thousands. *Toronto Star*.

Depending on immigration status and province, people have conditional access to benefits that support their well-being and the well-being of their children while in Canada. Across provinces and territories, as well as at the federal level, people in Canada on visitor visas have no access to public health care or other social benefits. Many visitors will opt to procure private health insurance; however, the majority of private health insurance companies operating in Canada will not cover costs related to pregnancy and birth. When they do, only under certain conditions – for example, if the insurance is bought prior to the pregnancy. Visitors are therefore expected to cover all the costs associated with their pregnancy and birth in Canada out of their own pocket. These costs range considerably even from hospital to hospital within a given city – for example, pre-birth deposits of \$4,845 to \$16,100 in Montreal (Medicins du Monde, 2018). Additionally, doctor fees and anesthesiologist fees are not formally regulated. As found by one study, on average OBYGNs in Montreal charged a rate of 200% more to non-insured patients than Quebec’s public health insurance would give them for insured patients (Nicoud, 2015). Visitors are not the only migrants with limits on their access to health care insurance. Most international students in Quebec, Ontario, and Manitoba, as well as Nova Scotia (for the first year), and their spouses and dependents, do not have access to public health insurance. People with work visas also have limits on their access to health care insurance. Most provinces require workers to have a work permit lasting at least six or twelve months and impose a three month wait period before workers are able to access it. Refugee claimants are another group considered ineligible for provincial public health insurance but have been covered through the federal government’s *Interim Federal Health Program* (with limited access between 2012 to 2016 when the Harper government sought to cancel the program). Although children born in Canada automatically become citizens, as discussed above, their access to the benefits of citizenship is uneven. In Quebec, for example, access to the public health system for citizens born to precarious status parents follows the status of the parent until the child is no longer a dependent. Other provinces, like Alberta, Ontario, and New Brunswick impose a wait period or require documentation asserting that the family plans to stay in the province for a certain period of time. Access to other social welfare provisions is also uneven or restricted – for example, temporary residents can only access the Child Tax Benefit after living in Canada for 18 months with a valid work or student visa, and as of 2018 refugee claimants may no longer access subsidized childcare services in Quebec.

What these policies depict is a highly regulated system of access and distribution of benefits determined by immigration status at the federal and provincial and territorial levels. It reveals a welfare regime that is in many ways generous to precarious status migrants, but also highly restrictive in important and often politicized ways. Non-insured pregnant migrant women, often collectively referred to as “birth tourists” despite the diversity of the group, are consistently characterised as a “financial liability”<sup>10</sup> unlikely to pay their hospital bills, who are in “blatant violation of Canada’s generosity.”<sup>11</sup> Furthermore, those who are insured, like refugee claimants under the IFHP, are represented as likely to have made an unfounded claim in order to benefits

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<sup>10</sup> Andrew Griffith, as quoted in Keung, N. (22 November 2018) Number of women coming to Canada to give birth far greater than previously estimated, study shows. *Toronto Star*.

<sup>11</sup> Jason Kenny in Brean, J. (6 March 2012). Tories look to eliminate ‘passport babies’; Undermines value of citizenship, Kenney says. *National Post*.

from Canada's welfare state. Given this, pregnant precarious status migrant women are represented as a threat to taxpayers and Canada's welfare state.

### *Grounding representation in hegemonic discourses*

The problematization of precarious status pregnant women as taking advantage of the Canadian immigration system and welfare state is grounded in long-standing assumptions and hegemonic discourses surrounding immigration, in particular as immigration in Canada being about nation-building, economics, and human rights.

One of the key drivers for immigration in settler states like Canada is nation-building, which historically has been highly racialized (Thobani, 2001). Although the dominant neo/liberal political discourse restricts explicit racial and ethnic discrimination to access to reproductive rights, this kind of discrimination is de facto maintained through, among other methods, pervasive categories of *citizen* and *migrant foreigner* "in a manner that roots questions of immigration control in histories of colonialism, globalized capitalism, and systemic inequality" (Luibhéid, 2015, p. 127). Citizens are produced through strategic immigration selection and control and through reproduction within Canadian borders. Pregnant precarious status migrants who give birth in Canada create citizens outside of this careful managed system of state control. By creating families within Canadian borders (and sometimes with Canadian citizens), precarious status residents challenge their state-imposed temporariness through the creation of home and family, and furthermore challenge the true temporary nature of certain im/migration programs (Sharma, 2012). Sexualities and intimacies have been used by the state to ground distinctions between migrant and citizens, but as Luibhéid (2015) also points out, they are also the grounds where these distinctions threaten to blur. Within this context, material and symbolic efforts to delegitimize and discourage this activity can be seen as an effort to maintain state control over nation-building, wherein policies that support reproductive justice are applied unevenly across groups of women, such that some groups are empowered to birth and nurture children and others are not.

Secondly, immigration politics and "policy development is presently dominated by economic discourse" (Dauvergne, 2016, p. 118). In particular, since the 1990s Canadian immigration policy has developed according to the neoliberal presuppositions that valorize the economically engaged and entrepreneurial individual and work to limit government intervention and regulation of the free market (for example, Arat-Koc, 2012). Immigration policies are largely leveraged in order to achieve these ends and tend to reveal, for example, a strong preference for highly skilled and educated workers that can easily integrate into the Canadian labour market and readily contribute economically to society and, conversely, a cheap disposable labour force that can adapt to an ever-changing market. This perspective on the ideal immigrant has gendered implications, with state policies favouring economic migration while working to decrease other streams of immigration, like the more feminized categories like the family class (Thobani, 2001). As the economic migration is represented as controlled migration through the points-system leading to integration, with family migration, as a less structured category, constructed as a source of diversity and problematic to national cohesion and threatening to Canadian values



(Thobani, 2001). This category has consistently been disproportionately women and children (IRCC, 2015). Immigrant women, especially mothers with dependent children, are far less likely to be considered an economic asset, and more likely to be represented as someone who will be in dependent on social and economic resources of the state and society than contributing to them. The problematization of pregnant precarious status migrants builds on these assumptions, with the emphasis solely on the costs these migrants incur to the taxpayers.

Finally, human rights has emerged as another “hegemonic discourse” within immigration politics (Dauvergne, 2016), with Canada in particular embracing the identity of a robust welfare state that protects the rights of citizens and as a humanitarian, immigrant-receiving nation that provides others with the opportunity to join in this project. Although there are still limitations, human rights discourses have been integral to pushes for access to services for precarious status people within Canada. With the increasing securitization of immigration, however, it is possible to see this discourse used more often by the state to push for the protection of rights for citizens and the state from the threat of outsiders who may seek to exploit our generous system or threaten our way of life (Dauvergne, 2016). The discourse of human rights as it informs our immigration narratives has then become about the trade-off of protecting citizen rights over non-citizen rights, or vice versa – in this case, concerns about Canadian taxpayers rights and security as citizens may be put ahead of migrant women’s rights to establish or care for her family.

Nation-building, economics, and human rights represent three fundamental narratives about what immigration politics and policies in the Canadian context are about. The presuppositions perpetuated in these narratives are visible in the representation of pregnant precarious status migrants, such as they are not recognized as full rights-bearing maternal subjects, but as unmanaged migration subverting nation-building efforts, an economic drain, and a threat to Canadian citizens.

### **Implications for reproductive justice and the right to family**

A critical analysis of this problematization reveals the implications of it on precarious status migrants’ access to reproductive justice and the right to family. It is important to highlight what is made invisible by this representation. In particular the shifts in the Canadian immigration system that lead to intensified precarity, that pregnancy and family caregiving are a fundamental part of human life, and lastly the gendered implications of defacto criminalization of pregnant precarious status migrants.

Concerns about pregnant precarious status migrants are consistently represented as concerns about birth, maternity, or obstetric “tourism,” despite there being very few exact numbers available to back up these concerns. What is consistently used as a proxy for people with visitor visas coming to Canada with the intention of giving birth is the number of uninsured hospital births. One recent report cited 3,628 births to non-residents across Canada in 2017 (not including Quebec), and while acknowledging briefly the variation of immigration statuses potentially represented in this number, nonetheless used it to speak of a spike in birth tourism specifically,

as opposed to increases in precarious migration overall (Griffith, 2018). While this is highlighted by service-providers on the ground and within Health Departments,<sup>12</sup> it is not emphasized in general state discourse. As discussed above, there are numerous situations in which someone may find themselves without public health insurance, for example, while on a student visa in certain provinces, during the wait or transition period under a work visa, or while waiting for an in-land family sponsorship application. Given the consistent increase in migrants accepted to Canada under student visas and temporary work visas, it should not be surprising that when these groups do not have access to health insurance we also see an increase in uninsured hospital births.

That students and workers on temporary visas may also comprise part of these statistics but are left out of the conversation highlights the way which pregnancy, birth, and caregiving experiences are marginalized within Canadian society – in particular, through particular immigration pathways and categories. The underlying assumption here is that people on student and work visas are here temporarily to study and work and not partake in other fundamental parts of human life, such as creating and caring for families. It also fails to acknowledge that Canada's immigration system is built such that certain international students and workers are more likely to transition to permanent residency than ever before. While policies such as public health insurance, maternity and parental leave, labour policy that prohibits discrimination based on pregnancy, and child care programs and subsidies are designed to help Canadian citizens and permanent residents balance the reality of family responsibilities with work and studying, precarious status migrants have a much more difficult time having full access to these supports. Their reproductive and family lives are invisibilized, or when apparent, potentially criminalized.

This amounts to a fundamentally gendered form of criminalization that puts the female migrant body, as potentially pregnant, under greater scrutiny than others. Although the Canadian government is clear that it cannot refuse entrance “solely on the grounds that [a person] is pregnant or that they may give birth in Canada,”<sup>13</sup> the state is nonetheless interested in determining whether or not a pregnant woman is entering the country solely to give birth, putting her application under a different kind of scrutiny.<sup>14</sup> Not only is this experienced as an extra level of securitization at the border, it is also experienced in access to service – with women experiencing further scrutiny at the hospital and also bearing the costs of an un-insured pregnancy and delivery, both financial, physical, an emotional.

Given these implications, this paper argues that this representation of pregnant precarious status migrants is problematic from a reproductive justice perspective which recognises all people as possessing the right to establish a family and care for their children. It is further argued that our

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<sup>12</sup> See Harris, K. (22 October 2016). Petition to parliament calls for end to automatic citizenship to end ‘birth tourism.’ *CBC News*; Nicourd, A. (5 January 2015). Au-delà du ‘tourisme obstétrical’: Immigrantes ou touristes? *La Presse*.

<sup>13</sup> As quoted in Grauer, P. (22 November 2018). Richmond Hospital is ground zero for the skyrocketing number of ‘anchor babies’ born in Canada, study indicates. *Toronto Star*.

<sup>14</sup> CBSA spokesperson as quoted in Fayerman, P. (6 August 2016). ‘Birth tourists’ buying deliveries at hospitals; ‘Anchor babies.’ *Montreal Gazette*.

current hegemonic discourses and narratives on what immigration is about – nation-building, economics, and human rights – are not enough to support a re-imagining of this representation.

### **Re-imagining rights for precarious status migrants through the ethics of care**

In her analysis of the new politics of immigration, Dauvergne (2016) has pointed to a “policy paralysis in immigration regulation” under which our current guiding conceptual narratives of economics and human rights have been inadequate in providing solutions to the globe’s most pressing migration problems. In particular, given the new politics of immigration, what responsibility do states have for migrants within their borders? This paper argues that securing reproductive justice and the right to family for precarious status migrant is one of such migration problems. From this, Dauvergne suggests the need for re-imagining immigration in a way that re-orient us to value “immigration for reasons that are not economic, and [advocate] on the basis of reasons that are not rights” (2016, p. 205). These critiques align with those made by scholars of care ethics, who have voiced concerns regarding the primacy of economics in our politics and the limitations of human rights frameworks to bring about justice (Tronto, 2013). This paper suggests that care ethics provides a plausible framework from which to re-imagine immigration politics, shifting our focus to the relational elements of immigration. Furthermore, care ethics prompts us to think about the particular relationships that provide the context for people’s experiences, including with the state, a respect for people’s articulation of their own needs, and consideration of the lived effects of our policies and decisions (Hankivsky, 2004).

#### *Unpacking care ethics and policymaking in Canada*

In a very broad sense, *care* can be defined as a human “species activity that includes everything that we do to maintain, continue, and repair our ‘world’ so that we can live in it as well as possible. That world includes our bodies, our selves, and our environment, all of which we seek to interweave in a complex, life-sustaining web” (Fisher & Tronto, 1990, p. 40). While care has routinely been delegated to the “private sphere” of homes, characterized as familial or “women’s work” (Duffy, Albelda, & Hammonds, 2013), and limited to consideration of only designated care policy areas, like childcare, education, and health (Folbre, 2008), it nevertheless is present in personal, social, and political lives in ways that are seldom accounted for or valued. Held argues, “We see the deficiencies of the contractual model of human relations within the household, we can see them also in the world beyond and begin to think about how society should be reorganized to be hospitable to care, rather than continuing to marginalize it” (Held, 2005, p. 18). Care theorists like Held, Tronto, and others advocate for a society which positions the flourishing of all members and the development of caring relations within personal contexts, among citizens, and through the use of government institutions.

To this end, some feminist scholars have honed in on the potential practical applications of care ethics to the realms of social policy and the state in order to create more “caring” states (for example, Tronto 2013). This work has problematized the ways in which, despite evolving notions of justice, care continues to be marginalized in the neo/liberal policy paradigm common to many

western states. They critique the ways in which care, as an everyday feature of human life and as a broader orientation toward the world, continues to be made invisible in society broadly speaking, and how that invisibility continues to be institutionalized and legitimized through state policies and discourse (for example, Hankivsky, 2004; Sevenhuijsen, 1998; Sevenhuijsen & Svab, 2004; Tronto, 1993, 2013). The ethics of care is being used in studies of social policy and across substantive social policy areas – for example, ethics of care served as a normative framework and basis of analysis for Selma Sevenhuijsen and Alenka Svab (2004) to examine health and social policy in Europe; Olena Hankivsky (2004) in her study of the Canadian welfare state; Fiona Robinson (2011) on global human security; and Joan (Tronto, 2013) on democracy in the American context. The ethics of care has also been implemented extensively in research surrounding care worker migration relating to global inequalities and the political economy of care (for example, Mahon & Robinson, 2011).

If then, as Tronto suggests, “political life is ultimately about the allocation of caring responsibilities” (Tronto, 2013), p. xiii), one of the key question scholars (and future policymakers, as well as all those engaged in political life) must address regarding the scope and limitations of care and responsibility: Who are we obliged to care for? To what extent do the “universal similarities” of the human experiences of needing and giving care transcend the relations of power and privilege that create categories of “otherness” (Tronto, 1993; Zembylas, 2010)? Much of the work on care ethics as applied to policy has focused on and advocated for an inclusive citizenship-based approach and has largely limited their analyses or scope to the liberal democratic state (Sevenhuijsen, 1998; Tronto, 2013): States should care for their citizens; citizens should care for other citizens. While notable contributions have been made to understanding the transnational and global dimensions of the politics of care, in particular in the context of migrant care workers living as non-citizens in host countries, this work still largely confines itself to this same scope: the way to care for non-citizens is to make them citizens (for example, Mahon & Robinson, 2011). Thus, in these perspectives, citizenship and im/migration policy play a key, if undertheorized, role in a caring state.

The following section will look at the issue of reproductive justice for pregnant precarious status migrants using Hankivsky’s framework for applying care ethics to policymaking highlights the ways in which immigration and citizenship status constitutes a relationship between people and the state and is used by the state to put limits on who should and should not be cared for.

#### *Applying care ethics as a framework for migrant reproductive justice*

This paper argues that re-imagining citizenship and immigration policy through the ethics of care would allow for the emergence of a different representation of pregnant precarious status migrant women and the state’s responsibility to them.

A key principle of care ethics is the “assumption that humans are specific, concrete individuals rather than abstract, generic beings” (Hankivsky, 2004, p. 32), referred to as *contextual sensitivity*. This includes paying attention to an individual’s social location, identity, and needs as constructed by a range of social and state institutions and norms and the relations that emerge

in this process. This highlights the ways in which humans are involved in each other's lives in a continual way. Attention to relationality and interdependency makes visible the ways in which care exist as a normal part of citizenship, which "allows us to ask questions about whose needs are taken care of, under what circumstances, and by whom" (Hankivsky, 2004, p. 34). Using contextual sensitivity, we must shift our representation of pregnant precarious status migrants as a single monolithic group. For example, we may recognise that there are people with various immigration statuses who find themselves in this situation, with whom Canadian society as various interdependencies – for example, workers in times of labour shortage. We must also recognise that immigration status is a state category that imposes a particular identity upon an individual – for example, a someone with a study visa is first and foremost a student, someone with a tourist visa is first and foremost a student – but that this individual is not only in relationship with the Canadian state, but also with family, community, and others within Canadian borders and outside.

Secondly, engaging in contextual sensitivity requires *responsiveness*, or as described by Carol Gilligan, "an ability to perceive others on their own terms" (Hankivsky, 2004, p. 35) and accept that they are "competent to express who they are and what they need" (Sevenhuijsen, 1998, p. 60). This means taking personal narratives seriously and creating space for new voices and new narratives in the political process. In doing so, we allow for a shift in what we count as knowledge in political decision-making (Tronto, 1995). As applied to this case, this means providing space for pregnant precarious status migrants to tell their stories and have them considered and included in social and political representations of them. In doing so, we expand our analysis beyond nation-building, economics, and human rights analyses, and in turn may expand our conception of what social justice and fairness actually require.

Thirdly, we have a "responsibility to make connections regarding how those around us are affected by our actions" (Hankivsky, 2004, p. 38), referred to as *consequences of choice*. In particular, the practical and lived effects of policies and political representations. Regarding this case then, we would expect research documenting the connection between policy barriers to healthcare during pregnancy – for example, and increased risk of serious, long-term consequences like emergency caesarean sections (Merry, Semenic, et al., 2016), post-partum depression (Gagnon et al., 2013), and foetal and maternal death (Almeida et al., 2013) – to be an integral part of the representation. Additionally, when we consider these impacts, we are forced to consider the ways in which they are gendered and racialized.

By prioritizing contextual sensitivity, responsiveness, and consequences of choice, the ethics of care provides us with a foundation for new stories regarding what immigration and citizenship are about and offer a way to disrupt the problematization of pregnant precarious status migrants in a way that moves closer to reproductive justice.

## Conclusion

This paper aimed to unpack how pregnant precarious status migrants are being represented in policy and political discourses in Canada in the context of increasing precarious status migration and restrictive rights for people falling within those categories. Using a post-structural policy analysis, we found that pregnant precarious status women are consistently represented as not deserving of full access to right because they are taking advantage of the generosity and integrity of Canada's immigration system and welfare state. This representation is grounded on our current understanding of what citizenship and immigration is about – namely, nation-building, economics, and human rights. Furthermore, this representation silences that complexity of precarious migration – in particular, the numerous circumstances under which someone may be both pregnant and with precarious immigration status – as well as silencing the pregnancy and birth as an integral part of human life regardless of visa or status, and gendered effects of the criminalization of this experience. As emphasized by Charlene Galaneau (2013), when precarious status migration is conceptualized in terms of reproductive justice (or lack thereof) we can see how “the regulation of reproduction and exploitation of women’s bodies and labour” as “both a tool and a result of systems of oppression based on race, class, gender, sexuality, ability, age, and immigration status” (Asian Communities for Reproductive Justice, 2005, p. 1) is a form of structural violence perpetuated by the state that uses the control and exploitation of women “a means of controlling entire communities – particularly low-income communities of colour” (Asian Communities for Reproductive Justice, 2009, p. 8). Lastly, it is argued here that care ethics could provide us with an alternative set of values and priorities to ground our citizenship and immigration policy. However, we need to extend our care ethics and beyond the context of a caring state in which members care for each other (Tronto, 2013), to come to understand citizenship and migration statuses more broadly as tools used by the state to set limits on caring obligations (Sharma, 2006). The re-imagining of immigration grounded in care ethics is an imagining which must resist the ways nation states and global systems convince us that “you can’t have affective ties at a global level” (Jefferies, 2015), despite the numerous other ways globalization ties us together.

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