

No documents, no entry: The Canada–US border transformed

HOMELAND SECURITY AND THE CANADA–US BORDER

As of January 31, 2008, every individual travelling to the United States by car or boat is required to hold a valid passport or driver's licence plus a birth certificate or citizenship card. For those under 18, a birth certificate is mandatory. Canada had hoped for an exemption from the sweeping consequences of the new legal requirements passed by the United States Congress, but none was obtained. If a Canadian citizen does not have the required documents, he or she will be turned back at the border. The new stringent requirements transformed the management of North America's borders overnight and effectively established a new border regime for Canadians.

In theory, the model of border management should be one of cooperation and close coordination. Canada and the United States, as well as Mexico and the United States, have a long history of formal and informal cooperation among law enforcement, intelligence, and the bureaucracies charged with protecting their country's national sovereignty and national security. Each year, over 300 million cross-border visits occur, and it remains to be seen how the dramatic increase in workload will be handled by the US Customs and Border Protection Agency (CBPA) and the Canada Border Services Agency (CBSA).

Already, many problems have arisen. Document verification at heavily used border crossings is a logistical nightmare. Papers for every occupant in each car have to be verified by the border official. It is maddeningly slow and time-consuming work. Imagine a vehicle arriving at the Ambassador Bridge with four individuals—one born in Canada, the other three, naturalized citizens. The car pulls up and stops; the individuals fumble around looking for their papers (first delay). They hand their papers to

BY DANIEL DRACHE

Daniel Drache is the associate director of the Robarts Centre for Canadian Studies and a professor of political science at York University.

Since 9/11, Canadian governments have invested over 10 billion in enhancing border security, behind and at the thickening border, with respect to passport issuance, port inspection, and air and land traffic.

the border official (second delay); the passports are scanned (third delay). These are then returned to the car occupants and further questioning and verification occurs (more delays). Should an individual be born in one of the 20 or so countries on the US watch list, the individual will be asked to leave the car for further verification, including fingerprint and document scanning, as well as a photograph (another even longer delay).

Compare the typical major land border-crossing experience to Pearson International Airport's pre-US customs clearance security process. Pearson has 30 agents on duty processing between 10,000 and 20,000 visitors daily during heavily travelled periods. Passengers are required to fill out customs forms and

have their passports at the ready. The pre-clearance area is well lit, indoors, and secure. Even so, wait times vary from 10 to 30 minutes during peak periods. Border-crossing customs processing zones are never a good environment; they are places of delay, irritation, and inefficiency. The hope is that a return to a heavily bureaucratized and policed, Central European-style border will not occur between Canada and the United States, but it is difficult to see how this scenario will be avoided. The Department of Homeland Security expects a high standard of document verification and leaves it to the front-line officers to enforce the rules.

THE PUBLIC POLICY CHALLENGE

Given the magnitude of the new procedures and the volume of work for Canadian and American border officials on the northern border, the questions are: Are the existing financial resources adequate to cope with the intensity of these changes? How many more agents do the CBSA and the CBPA require? Do Ottawa and Washington have a full-fledged management strategy to address the legal and administrative challenges that will inevitably arise? How are the rights of Canadian citizens to be protected from intrusive and arbitrary decisions at the border by officials? Is there a consensus between the American and Canadian publics on the need for more and heightened security measures?

Since 9/11, Canadian governments have invested over \$10 billion in enhancing border security, behind and at the thickening border, with respect to passport issuance, port inspection, and air and land traffic. At the Cabinet level, both the Paul Martin and Stephen Harper governments appointed high-level ministers to coordinate public safety and security policy across the face of government. The current minister, Stockwell

No documents, no entry, page 26

Day, and his predecessor Anne McLellan, liaised with their American counterparts on a regular basis. As well, there is a vast ongoing administrative network across the face of both governments between officials charged with transportation, food security, immigration, commerce, justice, and intelligence gathering. Despite the ideal scenario where cooperation provides the framework of management of the Canada-US border, Canadian politicians and bureaucrats face three major challenges.

First, only 15 percent of Americans have passports, compared with 35 percent of Canadians; as a result, the border will be seen increasingly as a zone of bureaucratic inefficiency, frustration, and delay. It is expected that the number of those refused entry into the United States and Canada will rise dramatically, due primarily to individuals lacking the proper documentation. It is predicted that there will be a strong backlash by both individuals and commercial establishments in both countries against the new inflexible requirements of cross-border travel that will reduce visits, cross-border shopping, and other kinds of commercial activity.

Second, although the new documentation requirements are not in themselves onerous, they nonetheless harken back to the kind of borders that existed in the 1960s and 1970s when border officials were slow and methodical and the queues were long and trying. The staffing levels required to inspect the travel documents of millions of visitors will require massive investments from both Canadian and American governments. The number of border officials during peak times will have to be doubled or tripled. Border crossings are very difficult to manage because, even with modern scanners, much of the work is labour intensive and cannot be automated.

The question is: Do Ottawa and Washington have contingency plans for dramatically expanding, improving, and enhancing border management practices at the same time as the processing

[T]he border will be seen increasingly as a zone of bureaucratic inefficiency, frustration, and delay.

of individuals becomes more time consuming and labour intensive? Experts now acknowledge that most of the delays and bottlenecks at the Peace Bridge crossing between Buffalo, New York and Fort Erie, Ontario and the Rainbow Bridge between Niagara Falls, Ontario and New York—the two bridges responsible for three-quarters of all cross-border movement—are due to financial cutbacks and staff shortages.

Third, increased security practices require increased protection of citizen rights, particularly with respect to naturalized Canadians who were born in many parts of the world that American authorities consider high risk, such as Pakistan, India, and the Middle East. In 2006, 80,000 Americans were refused the right to board airplanes for flights they had purchased because they were on the no-fly list. The bureaucratic process for removing one's name from the list is slow, costly, and time consuming because US authorities have been overwhelmed by the workload. Both in terms of privacy issues and constitutional guarantees, the Canadian government requires a means of protecting its own citizens from the arbitrary and discriminatory actions of border officials block-

The prospects for disaccord and clashes of national sovereignty have never been more imminent.

ing access to the United States. As yet, no mechanism or tribunal has been established to protect Canadian and American citizens from perceived prejudicial behaviour on the part of customs agents.

NEW CONSTITUTIONAL ANXIETIES

The unilateral decision on border crossings by the Bush administration under the *Homeland Security Act* will continue to challenge the legal responsibility of Canadian authorities to manage borders in accordance with Canadian law and the *Charter of Rights and Freedoms*. American authorities are equally charged with implementing the *Homeland Security Act* and protecting American national interests through the laws of Congress and the US constitution. The prospects for disaccord and clashes of national sovereignty have never been more imminent.

In the Strategic Council poll published in *The Globe and Mail* on January 15, 2008, only 4 percent of those surveyed indicated that security was a primary concern. By contrast, the economy trumps terrorism and government leadership as a source of worry. The dissimilarity with the United States could not be starker. In an October 2007 *Wall Street Journal* poll, Americans responded that terrorism, health care, and immigration were their primary concerns. Why is the Canadian public offside on the importance of security while the American public is dramatically onside?

One key factor is that the Maher Arar inquiry in Canada left Canadians deeply skeptical of the Homeland Security doctrine of rendition and alarmed at the role of the RCMP in providing false information to US authorities. This information resulted in Arar being sent to Syria where he was imprisoned and tortured for a year. In the public inquiry, headed by a Superior Court judge, Arar was vindicated and the government apologized to Arar and his family and paid \$10 million in compensation. Canadians were told that the RCMP wrongly acted against an

innocent Canadian citizen. Significantly, Arar remains on the US security watch list; no apology has been offered by the Bush administration, and he remains barred from any travel to the United States. The fallout from the Arar inquiry focused Canadian attention once again on very deep problems between the two countries on the management of the Canada-US security file.

These anxieties were heightened further in late December 2006 when the Canadian Supreme Court struck down the use of security certificates to hold suspects indefinitely without trial, access

to a lawyer, or constitutional protections and required the government to provide new legislation. The court gave the government one year to change the law and more legal challenges to the new legislation are anticipated. Many legal experts believe that the rights of the accused are not adequately protected. There is a growing consensus among human rights activists, legal activists, and key opinion makers in the mass media that Canadian governments have gone too far with intrusive security measures and have neglected due process and the rule of law guaranteed by the *Charter of Rights*

and Freedoms. As Ottawa continues to struggle to find the right balance between security and individual rights, the new border regime adds a whole new layer of complexity and urgency to Canada-US security relations. Finding adequate solutions to the new border regime will take the better part of the next decade as costs, delays, and diplomatic conflicts inevitably multiply and spin out of political control without the proper oversight and regulatory mechanisms in place. ❁

Detroit's demise, security-first agenda continued from page 24

movement toward the suburban periphery. The separation of this border region began as communities on both sides plotted their exit from the city, and the current border problems have been a long time coming. As a relic from an earlier industrial era, the border crossings traverse their respective inner cities, which have become legendary dead zones where one waits to cross between the two countries. The closing of the pedestrian lane of the Ambassador Bridge many years ago sealed off any casual contact between the two cities. Today, the picturesque order of the Windsor waterfront serves as a temporary viewing platform to gaze out at the spectacle of Detroit's impressive collection of glass towers and art deco skyscrapers without the supposed dangers of an encounter with inner city Detroit. But behind these waterfront facades, the urban centres have hollowed out. Traveling by car is a precondition to crossing, and this has affected the downtown regions; as a result of this cultural and geographic fragmentation, communities on both sides are less connected than at any point in the last 80 years.

SECURITY AND HISTORY

This steady suburbanization is by no means unique; however, in looking to Detroit's history we might read a series of population movements and urban planning events that laid the groundwork

The Cold War legacy that underwrites the development of a suburban nation has hardened into an ideology that will take generations to challenge.

for the security-first agenda. The prioritization of security in recent years was not solely born of the events surrounding 9/11. Detroit's legacy of racial segregation coupled with its wartime role as the "arsenal of democracy" made it the first American city to self-destruct, and its decentralization and sprawl became a model for suburban development in the United States from the 1950s onward. Detroit's downfall began long before the 1967 riots. In the late 1940s and 1950s decentralized planning schemes were set in motion first by the Federal Housing Administration, which moved to block financing of new urban housing in favour of suburban planning, and then by the *National Defense and Interstate Highway Act* of 1956, which financed the construction of freeways that effectively moved affluent white urban populations out to the suburbs, as southern black immigrants moved in as Detroit's wartime economy boomed. The strategy of decentralization that took place in these years was military in essence: the United States wished to avoid centralized urban

concentrations in order to be less susceptible to foreign bombing campaigns like those carried out by the US forces that devastated the cities of Hiroshima and Nagasaki. However, the legacy of a bunker mentality emerged as Detroit became increasingly decentralized.

The Cold War legacy that underwrites the development of a suburban nation has hardened into an ideology that will take generations to challenge. No change of administration, however drastic, could possibly counter the bunker mentality that began long before the Department of Homeland Security was established. The erosion of the public sphere that had been fully achieved by the 1970s has only recently been challenged by the substitution of virtual communities in the last decade; however, the kinds of sequestered spaces that are the mainstay of American life show no signs of changing anytime soon. The kind of thin or porous borders anticipated in the 1990s after the fall of the Berlin Wall now seem like utopian visions for a transnational future that never arrived. ❁