

Immigration for Queer Couples: A Comparative Analysis Explaining the United States' Restrictive Approach

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Abstract:

The connection between hardships facing queer individuals and current immigration policies in the United States remains largely unexplored. While many other countries, especially Western democracies, allow bi-national same-sex couples to gain immigration benefits, the United States restricts benefits of sponsorship to heterosexual marriages. This paper attempts to understand why the United States continues to deny spouse sponsorship benefits for bi-national same-sex couples by comparing case studies of Australia and Canada in historical perspective with the United States. Three factors were discovered to uniquely face the United States: the unparalleled securitization of homosexuality, a strategy of non-confrontational assimilation by contemporary LGBT groups, and the establishment of a distinct legal identity for queer immigrants.

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Introduction

Immigration legislation is usually not considered an issue of queer rights. To most, they are separate issues; immigration falls under the conventional auspices of economic and political policies while queer civil rights are a domestic social issue for a subset of the population. It was only until recently that the connection between the two has been acknowledged as deserving research. Homosexual immigrants have long resided in the United States. These immigrants have had different experiences than their heterosexual counter-parts and still do today. Because the United States limits personal sponsorship to family unification immigration law, one pressing area of research that analyzes this intersection involves the restrictive definition of "family" in immigration policy on family reunification.

Although research on queer immigration policy is finally being pioneered, little of it takes a comparative approach towards queer immigration (Luibheid and Cantu, 2005). This paper seeks to contribute towards filling that gap. Utilizing country comparisons, this analysis will delve into two countries that have affirming policies towards bi-national queers (this term refers to same-sex couples where one is a citizen of a said country while their spouse is from another country seeking legal residence) and contrast it with United States' neglect on the issue.

In some countries queer immigration benefits came prior to expanding marriage. Thus, there has to be some other cause for why countries allow queer immigration benefits. Looking at the genealogical timeline of immigration law that concerns sexuality in these countries and comparing them to the United States could show a diverging point that explains why the United States has a different policy. This paper finds that the United States' exceptional Cold War paranoia, combined with an influential court ruling defined the "homosexual immigrant" as a threat to national security. Legislative actions that expressed this fear through exclusionary measures continued unabated as mainstream Lesbian, Gay, Bisexual, and

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Transgender (LGBT) groups utilized advocacy tactics that prioritized the “citizen queer” over the “immigrant queer.” The compared countries do not have these historical experiences.

This question is especially salient to ask now. Within days of this writing, the Department of Homeland Security issued a written announcement determining that same-sex partners could be included within family status when individually evaluating their deportation cases (Tiven, 2012). Although this appears to be a complete reversal in policy, some supporters of queer immigration rights are hesitant in their hopefulness. This policy prevents immediate deportation but does not seem to allow permanent residency or work benefits. Essentially, these immigrants seem to be in legal limbo until further reform is enacted. Also, the statement suspends deportation for immigrants already here, but does not seem to provide a policy towards those who have not yet migrated (U.S. Department of Homeland Security, 2012). An additional cause for caution is that the announcement comes right before the 2012 election. As new presidents have been known to change previous presidents’ immigration policies, this one is particularly vulnerable to reversal because it is not formal law. Comparing other countries that have achieved full residency benefits with the United States’ sluggish incremental move toward reform may offer insight if this new announcement foreshadows comprehensive reform, or is an insignificant attempt to change the status quo.

This paper will briefly review the current approach towards bi-national queer couples in the United States and other countries. Then, it will reflect on the United States’ discriminatory history of immigration policy when it comes to the “homosexual alien.” Canada and Australia’s policies will then be contrasted comparatively with the United States in hopes of finding a historical departure in the United States’ immigration law. Using possible causes found from this historical comparison, this study will attempt to find if any of these factors still affect immigration law in the United States, and if

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Homeland Security's recent statement is something to celebrate or view pessimistically.

Current Status of Bi-National Same-Sex Couples

Only marriage between heterosexual bi-national couples in the United States can provide sponsorship benefits for two unrelated individuals. These benefits consist of qualifying to gain permanent resident status to legally live and gain employment in the United States (Carragher, 2009). Excluded from this, bi-national same-sex couples either have to maintain a constant long-distance relationship or split up. Formal legislation that would comprehensively provide reform has been stalled. Since 2000, a bill to provide these benefits is perpetually shelved. First known as the Permanent Partners Immigration Act, the bill is now referred to as the Uniting American Families Act (UAFIA) (Farber, 2010). The likelihood of the bill passing is quite slim; it has miniscule support and seen as a potential political powder keg (Vedantam, 2010). The bill combines advocating social taboos with expanding immigration. Each issue is difficult to do on its own; advancing the combination of both will be all but impossible in the near term.

Moreover, many in Congress and the public perceive this bill as irrelevant and diverting attention away from other pressing problems. Same-sex bi-national couples just do not seem to be that large of an issue. Because of this perception it is important to review the data that is available on U.S. same-sex bi-national couples to counter this apathetic attitude. The 2000 census data places the number of bi-national same-sex couples at 35,820. (Gates, 2005). Nevertheless, the actual amount is probably somewhat higher. There are structural incentives for couples to not record themselves. Most likely many couples did not respond due to either lack of awareness, or the fear of reporting their partner's immigration status if their residency had expired or was undocumented. It has also been noted that some of these couples marry heterosexuals in order to stay in the

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country (Luibheid and Cantu, 2005). Moreover, this marriage fraud could even occur in the states that allow civil unions. Immigration being a federal issue, civil unions do not cover immigration benefits. Therefore, the reasons for not reporting on a census are apparent.

Is the number of these couples a factor in implementing queer sponsorship? The United States could just have a relatively low amount, making it a low political priority compared to other countries. Relying simply on comparative census data is difficult. Most countries do not explicitly record the number of bi-national same-sex couples. For example, in Australia and Canada, there is only data on the total number of same-sex couples, 33,714 and 45,345, respectively (Australian Bureau of Statistics, 2012; Statistics Canada, 2007). Additionally, reliability is questionable as what counts as “long-term couples” may be different across different countries. Population disparities and mismatched years countries recorded their census’ make it even more difficult to validly compare. Nevertheless, because the United States has such a large number of bi-national same-sex couples it can reasonably be determined there is probably not an overwhelmingly larger amount of these couples in Canada or Australia that caused different policy choices.

Comparison Methodology

There are more insightful methods for country comparisons than simply a numerical comparison. Approximately 20 countries allow benefits for bi-national same-sex couples when one of them is a citizen. These countries include, Norway, Sweden, Iceland, the United Kingdom, Canada, Belgium, Israel, South Africa, Brazil, the Netherlands, Spain, France, Denmark, Finland, New Zealand, Portugal, Germany, Switzerland, Australia, and Ireland (Farber, 2010; GLEN, 2011). The path towards implementing immigration equality has been classified into three main theoretical routes. One way is via the passing of same-sex marriage, which in the process grants all

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other partnership rights previously reserved for heterosexual relationships. This paper could find no country that achieved immigration equality this way. A second route is to create a new immigration sponsorship category that is broad enough to include same-sex couples, or implement a new visa category specifically for bi-national couple. This policy avenue encompasses the majority of the countries allowing immigration equality. Australia, France, Israel, Belgium, Germany, Canada, the United Kingdom, Finland, New Zealand, Sweden, and South Africa each went this direction. Only Norway, Iceland, Denmark, and Switzerland enacted immigration equality the third way, a broader civil unions package that provided additional rights, which included partnership sponsorship (Wilets, 2008; Williams, 2007).

Since US' immigration policy only allows spouse sponsorship to occur through marriages, the first policy option, allowing same-sex marriage is what most find the most intuitive policy option. Indeed, this seems to be one major source of congressional opposition to UAFA. Take the testimony of a Senator Sessions – a republican from Alabama – on his opinion of UAFA:

“I think for the first time ever, this legislation would create a Federal recognition of same-sex marriage which is not the current law. It would reverse current law. In 1996, Congress overwhelmingly passed the Defense of Marriage Act 85–14. President Clinton signed it into law. It included a provision which expressly defined the word “marriage” as “only a legal union between one man and one woman as husband and wife.” (U.S. Senate Hearing 111-560, 2009, 3)

Here, Sessions explicitly equates same-sex sponsorship with effectually causing same-sex marriage. To him, if UAFA passed gay marriage would also get passed. Obviously, as evidenced above, this is incorrect. Every country that has allowed queer partnership sponsorship saw marriage and immigration rights as dividable pieces of legislation. It is also not always the case that passing queer spouse

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sponsorship places countries on an immediate path for same-sex marriage or de jure expansive civil unions. Australia, Israel, Portugal, France, Germany, Switzerland and Brazil are all indicative of this (Wilets, 2008).

Because the status quo is not fruitful in offering explanations for policy differences, it is likely the answer lies in the past. Historically comparing the United States' immigration policies towards sexuality with that of the 20 or so countries provides an explanation for the U.S.' defiance. Obviously because of space this paper cannot compare all 20 or so countries with the United States. However, in choosing which countries to compare some are more appealing than others. Ideally, their legislative histories on queer immigration should be as similar to the United States' in a hope that this reduces incomparable factors.

Brazil is one such example displaying how certain aspects are incomparable. Brazil's long history of draconian laws criminalizing homosexuality may make it first appear like a fruitful country for comparison. However, this is not the case. Brazil underwent a major constitutional change in the 1980s that allowed LGBT groups to inject LGBT affirming policies in the law. The broader regime change is what gave these groups the political space to do so (Marsiaj, 2006). South Africa and Israel are additional examples of this type of change stemming from a regime alteration. The radical difference in broader societal and political histories makes it difficult to use when gaining insight on the current policy of the United States.

Scarce foundational research on queer immigration policy makes many other countries difficult to compare. This paper will only use Canada and Australia for comparison. Both have similar immigration policies towards homosexuality but diverge from the United States' at historical time periods that can be isolated and analyzed more in-depth than other countries. Moreover, all three had historically similar attitudes towards homosexuality. All three criminalized sodomy and classified homosexuality as a mental illness,

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which is relevant because these approaches were then applied to immigration law.

Comparative Historical Immigration Policy

1965 – Divergence

United States' immigration policy is historically typified with blatant discrimination. The barring of Asians and Eastern Europeans is one such example that is quite well known (Luibheid and Cantu, 2005). When the Immigration Act of 1965 passed, a policy that eased many of these racial exclusions, (Hidalgo and Bankston, 2010) many thought this marked a new era of non-discriminatory immigration policy. Nevertheless, as racial exclusion decreased, overt exclusion based on sexuality increased. The 1965 Act explicitly stated that immigrants who were "sexual deviates" were barred from the country, requiring the Immigration and Naturalization Service (INS) to deport them (Poznanski, 1984). Although the Act was not the first discriminatory policy against homosexual immigrants, it was the first to explicitly name homosexuality as a reason for deportation. Additionally, the Act is significant because during it was during this time that the United States' restrictions became different than Canada's and Australia's. To find out why the United State deviated here, the full history of immigration policies on homosexuality needs to be examined.

Immigration Law: Overview from 1900 – 1965

At the start of the 20th century these countries had similar restrictive policies towards homosexuality. One of the earliest recorded Acts that discriminated on the basis of sexuality was the Immigration Act of 1917 in the United States. Many historians have difficulty categorizing the bill's exact relationship with sexual discrimination because the language of the bill did not explicitly include a reference to homosexuality, instead using the language "constitutional psychopathic inferiority." At this time in the mental

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health profession, homosexual behavior was included as a negative psychological condition (Hidalgo and Bankston, 2010.) This conflation is significant because it categorized homosexuality according to medical terms. The Act used medical advice as the sole reference point.

A similar reliance on medical jargon occurred in Australian and Canadian immigration law. As early as 1901 Australia used mental illness as qualification for immigrant deportation or exclusion (Bashford and Howard, 2004). As in the United States, homosexuality was considered a mental illness in Australia. Similarly, in 1902 Canada passed immigration acts that discriminated based on mental illness (Chadha, 2008). By 1910 the phrase “moral turpitude” was used to block homosexuals from Canada (Girard, 1987).

It is worth noting that at this point sexuality was not that salient in each exclusion policy. Homosexuality did not yet represent a significant societal taboo. Furthermore, being “homosexual” was not yet a definitive identity in these countries. Homosexuality was considered a behavioral problem rather than a separate identity (Canaday, 2003). Confusion over the definition of homosexuality made it an almost insignificant border restriction. Nevertheless, these laws were noteworthy in finding justification for exclusion based on psychiatry. With medical justification it created the legal preparation that would eventually allow mass discrimination based on sexuality.

In the United States, the McCarren-Walter Act of 1952 pushed this discrimination further. The initial draft of this bill incorporated explicit mention of homosexuality to be barred entry. However, congress changed the language to “psychopathic personality” after consulting with the Public Health Service. Similarly, in this same year Canada passed the Immigration Act of 1952 that also refused entry to homosexual immigrants. Like the McCarren-Walter Act, the bill used the term “constitutional psychopathic personality” to refer to homosexuals and only explicitly used the word homosexuality to clarify as definitional reference for psychopathic personality (Girard, 1987). Medical terminology was

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preferred to the actual word “homosexual.” For this reason in the 1950s governmental health services was the point of reference for homosexuality on immigration issues. The United States, Canada, and Australia all deferred to the mental health profession in framing immigration law.

The Cold War – Securitizing Homosexuality

As McCarthyism was sweeping through United States’ politics another fear came to grip the nation. In the late 1940s/early 1950s Senator Wherry from Nebraska was extremely persistent in fanning paranoia that the mental illness of homosexuality had penetrated the state department (Isaack, 2003). Homosexuality was to be purged; thousands lost their jobs in the threat of their perceived sexuality. This goal was quickly reflected in the law. President Eisenhower implemented Executive Order 10450 that gave the government legal power to fire civil servants they identified or suspected as homosexual (Girard, 1987). This was one of the major reasons for including implicit mention to homosexuality in the McCarran-Walter Act.

To a lesser extent, comparable paranoia swept through Canada and Australia. In Canada, the Immigration act was passed precisely because of this fear (Girard, 1987). Additionally, in Australia employment restrictions barring homosexuality in federal work was contemplated. William Graham, a senior lecturer in Australian studies at the University of Melbourne, documents these restrictions for homosexuals in federal work:

“The cabinet decided that practising homosexuals ought not be employed where they might have access to highly classified information and heads of departments were requested to watch....and to advise ASIO [Australian Security Intelligence Organization] of their presence..” (Graham, 1997)

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Moreover, there was a dramatic increase in the number of criminal convictions for homosexuality in Australia. Graham articulates that in the 1950s Australian convictions for “unnatural offences” (homosexual behavior) nearly tripled. Plainly, in all three countries homosexuality was considered a threat.

One of the explanations for these hasty restrictions was oddly connected to the paranoia of losing ground in the Cold War. Minority marginalization was considered a potential avenue for political dissent, specifically communist ideology. Homosexuality especially was seen in this light; the organizers of the most prominent gay rights group in the 1950s were suspected or self-identified as communist (Stein, 2010). Adding to this threat, a homosexual had something to hide and to many government officials this was seen as something that could be used by Soviets for blackmail to get nuclear and other governmental secrets (Girard, 1987). Even though homosexuality was something that the government did not really know much about but they feared the worst. They feared it was some kind of social contagion. Officials literally feared that it could spread to more parts of the population, similar to communist ideology. Margot Canaday, a gender studies professor at Princeton explains this well:

“...homosexuals were, like communists, not only unnatural but dangerously subversive. According to this view, both communists and homosexuals could easily blend into the mainstream, where they corrupted the bodies and minds of the young and launched a full scale attack on American political and social institutions including gender and familial arrangements.” (Canaday, 2003, 355)

Additionally, the following passage from the 1950 *Employment of Homosexuals and Other Sex Perverts in Government* congressional document explains how this anxiety manifested in practice through the federal government:

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“Most of the authorities agree and our investigation has shown that the presence of a sex pervert in a Government agency tends to have a corrosive influence upon his fellow employees....Government officials have the responsibility of keeping this type of corrosive influence out of the agencies under their control. It is particularly important that the thousands of young men and women who are brought into Federal jobs not be subjected to that type of influence while in the service of the Government. One homosexual can pollute a Government office.” (U.S. Senate, 1950).

Immigration law became a reflection of this fear. Barring gay immigrants was a way to bar the threat of homosexuality from spreading.

There was a distinct difference in the magnitude and kind of threat that homosexuality represented for these countries. For the United States, national security in the Cold War was far more critical than for Australia or Canada. It was the United States and the Soviets that were locked in ideological battle and proxy aggression. For Canada and Australia, the Cold War was simply not as pressing. They were Western allies, not the Soviet's primary enemy. Therefore, homosexuality became seen as a national security threat in the United States much stronger than in either Australia or in Canada.

Immigration law on homosexuality also reflected this difference. For Canada, while homosexuality was seen with social disgust, it did not represent the kind of socio-political contagion that Margot Canaday described. Most of the restrictive policies on homosexuality, in both the federal government and immigration policies, had been strongly suggested by the United States for Canada to implement. The national security fear of homosexuality was imported from the United States. There was no organic domestic element to the governmental homophobia in Canada. Because of this, Canada barely enforced the restriction on homosexuals (Girard, 1987). Additionally, after the 1950s Australia saw homosexuality as more of a social threat than a security threat. For them the threat of

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homosexuality became less about intelligence leaks and more about corrupting the benevolent public norms of family life (Graham, 1997). The absence of this perceived political threat combined with Australia's desire for more immigrants, led to the non-enforcement of restrictive policies. On a similar note, both Canada and Australia did not experience the red scare McCarthyism that the United States did. These two countries had no foundation of wide spread fear of soviet espionage and ideological takeover that the United States. Therefore, the threat of homosexuals negatively altering the government from the inside had no precedent. The threat was not considered credible.

One prominent case revealing this difference in risk severity is the defection of two agents of the National Security Agency in 1960. At least one of the defectors was considered a "sexual deviant" after internal investigations were conducted to explain the defections. The defectors were perceived to hold essential national secrets that could be used by the Soviets to gain an advantage (Barrett, 2009). The impact this defection had cannot be overemphasized. In a 1963 debriefing, the incident was self-described by the NSA as "beyond any doubt, no other event has had, or is likely to have in the future, a greater impact on the Agency's Security Program." (Seattle Weekly, 2007). Not only did it have an impact on government officials, but the defection was also causally linked to homosexuality by a wide variety of newspapers at the time, affecting public opinion (The Washington Post, 1960; The Christian Science Monitor, 1960; The New York Times, 1961). Follow up investigations caused a resurgence of ousting for officials that showed signs of "sexual deviations" (The New York Times, 1961). Australia and Canada never had defection cases like this that served to inflate the homosexuality from a social taboo to a national security threat.

The United States' 1965 Act made this even more apparent. Around this same time Canada amended the previous 1952 act to allow homosexuals (Girard, 1987). Similarly, the Australian fear of homosexuality in the 1950s fell dramatically and more acceptance

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towards homosexuality emerged. Helping extend this sentiment into immigration law, other exclusionary policies, such as the White Australia Policy were eased in Australia, due to the desire for population growth (Moore, 2001).

Boutilier v. INS

Meanwhile, another difference between the countries' policies occurred. In 1967 the Supreme Court case – *Boutilier V. INS* – reframed queer immigration for the United States in ways Australia and Canada never experienced. Boutilier was a Canadian immigrant trying to naturalize in America. INS officers found that he had been convicted of criminal homosexual acts (Stein, 2010). He was tried for “psychopathic personality,” a violation of the 1952 law. (the 1965 law did not apply to him because he was arrested prior).

Newly formed gay groups at the time, such as the Mattachine society and Homophile movements, attempted to help his legal defense. Notably, these groups deployed a strategy that would frame how mainstream gay political groups would approach the issue of gay immigration for decades. Gay groups at this time argued that they should have equal rights because they are tax-paying citizens. They did not claim that the freedom of any sexual expression was a human right, or that homosexuality should be removed from exclusion criteria. This justification for rights showed explicitly in these groups' defense of Boutilier. The defense in Boutilier's case argued only at the unlawfulness of the procedure in the INS' claim (Stein, 2010).

Additionally, there is some evidence to indicate that these newly formed gay groups perceived the case as way to re-represent the issue of homosexuality to the American public. In *Boutilier v. INS*, gay defense groups wanted to appear as respectable citizens that aligned themselves with the law. This contributed to creating a distinction between a “gay alien,” and a “gay citizen.” In their defense they wanted to present a “politics of respectability,” coming across as mainstream good Americans that did not rock the political or social boat. They were not going to argue “pro-gay” but instead argue that

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Boutilier was as close to a heterosexual citizen as possible and therefore he should not be deported. Marc Stein, professor of history and sexuality claims,

“None of the procedural arguments challenged the INS’s authority to deport homosexual aliens if proper procedures were followed. All of the arguments that emphasized the minimal nature of Boutilier’s homosexual conduct suggested that homosexuality was undesirable. Their intentions were to help Boutilier; they used arguments that were consistent with recommended legal practice, and they may well have done the best they could, but Boutilier’s defenders contributed to the conservatism of the Court’s ruling...it reinforced social values and risked winning a favorable ruling only for the most respectable gay aliens” (Stein, 2010, 66-67)

Subsequently, the Supreme Court’s ruling against Boutilier confirmed for gay groups to not take up the fight for gay immigration. It was too much of an uphill battle, expand immigration, and fight against the distinct image that queers held in immigrant law. Gays groups continue to use this “politics of respectability” today in fighting for equal rights. Mainstream LGBT lobbying groups seek to assimilate with the rest of the population. They want the same rights as every other citizen, they want to fight in the military or marry whomever they please. Tellingly, their lobbying tactics usually go nowhere near immigration law. The lack of public awareness or LGBT campaigning about UAFAs likely stems from this strategy of assimilation; focus on citizens before focusing on non-citizens.

In contrast, when Canada legalized same-sex sponsorship in 2002 it was mainly because an effective LGBT lobbyist for the issue (LaViolette, 2004). Additionally, congruent tactics was used in Australia when it was allowed in 1991 (Yue, 2008). Both countries had the full weight of their countries’ political gay groups behind the propositions for same-sex sponsorship.

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Divorcing Psychiatry from Immigration Law

INS vs. Boutilier also set a future precedent that changed the justification behind immigration law on homosexuality. While in 1967 Australia and Canada continued to frame homosexuality in social terms defined by psychiatry, *INS v. Boutilier* morphed immigrant homosexuality into a national security-legal issue. The judges deciding *Boutilier* ruled that they would not rely on psychiatric advice in deciding what was “psychopathic personality.” As a legal reference “psychopathic personality” had become its own separate term of art (Canaday, 2003). One of the judges in the minority opinion on *Boutilier* sums it up well:

“We cruelly mutilate the Act when we hold otherwise. For we make the word of the bureaucrat supreme, when it was the expertise of the doctors and psychiatrists on which Congress wanted the administrative action to be dependent.” (*Boutilier v. INS*, 1967, 135)

This distinct separation of legal from medical allowed psychiatry’s opinion on homosexuality to evolve but the legal opinion to mostly stay stagnant. Restriction based on homosexuality was part of the United States’ immigration policy all the way until 1990. (Cantu & Luibheid, 2005). Nevertheless, this stagnancy of viewing homosexuality as a legal term is still reflected in the law’s approach to same-sex relationships.

Immigration Equality for Canada and Australia

Both Canada and Australia allowed for same-sex immigration sponsorship in the 1980s/early 1990s. The avenue both choose to do so exposes the kind of policies that can pass without the factors that affected the United States. Canada allowed same-sex sponsorship in 1991. Even though there was no legal statute allowing immigration equality, Canada let it happen discretely through “compassionate and

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humanitarian considerations.” Tellingly, it was not relevant whether or not the foreign born immigrant was facing persecution from their home country. Just being in a bi-national queer relation was acceptable for visa qualification. Then, in 2002 Canada officially made sponsorship for same-sex couples legal (LaViolette, 2004). Australia had a similar path to these immigration benefits. In 1985, Australia allowed same-sex sponsorship also discretely through “strong compassionate or humanitarian grounds.” It was not until 1991 that gay spouse sponsorship became unambiguously protected through law in the 1991 Migration Amendment Bill (Yue, 2008).

These parallel paths of Canada and Australia towards same-sex immigration benefits reveals how the reaction towards bi-national couples can evolve when there is not an explicit legal identity for gay aliens. Unlike in the United States, there were no court cases in Canada or Australia where the law divorced by expert psychological opinion on homosexuality after the psychological world decriminalized homosexuality. Thus, progressive public norms in both countries could help soften immigration laws. For both Canada and Australia to allow bi-national gay couples to migrate under the table through “humanitarian/compassion” concerns is particularly telling that each were expressing public attitudes in overriding the laws.

Additionally, the two other factors that afflicted the United States were noticeably absent in Canada and Australia. While American gay rights groups were silent about homophobia in immigration law, Canada and Australia’s gay rights groups adamantly pushed for same-sex sponsorship (Yue, 2008; LaViolette, 2004). While in the United States there was a significant distinction between gay citizens and gay aliens, there did not seem to be one Canada and Australia. Additionally, neither had as great a security threat facing them in the late 80s and early 90s. Neither had as large of a stake or resolve in the Cold War and against the threat of spreading communism. Since the United States still remains discriminatory, it is

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important to see where these three factors manifest in shaping immigration law today.

Residual Factors

The creation of a separate legal identity for gay immigrants is probably the least impactful factor on current immigration law. Because in the 1990s the United States eliminated its restriction on homosexual immigrants there is now no longer this distinct identity. However, because this restriction stayed on the books for so long, and was such a difficult restriction to challenge while it was law, it may have contributed to placing the United States immigration policy on a path dependence that is adverse towards further expansive immigration policies.

The other two factors remain more prominent. A concern for national security is shown over the fear of marriage fraud. Expanding categories for spouse sponsorship create new categories for immigrants to enter the country fraudulently. Indeed, this is why many in congress oppose the UAFA. Senator Sessions articulates this in the Senate Committee Hearing for the UAFA:

“By creating a new and a legally tenuous, I suggest, definition of “permanent partnership,” we would be expanding the avenue for fraud and abuse for an unlimited number, perhaps, of people who may not even fit into the idea that the drafters have in mind with this legislation.” (U.S. Senate Hearing 111-560, 2009, 3)

Here, Sessions exaggerates the threat permanent partnerships pose to marriage fraud by claiming an “unlimited number.” If the current avenue for fraud already exists, heterosexual sponsorship should be just as susceptible to this deception. Moreover, as previously noted, preventing queer sponsorship is increasing the incentive for fraud as some bi-national couples have entered into fraudulent marriages to stay in the country. The threat queer

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sponsorship poses is augmented when officials link visa fraud to national security. Take the following quotation from a federal agent:

“Marriage and visa fraud potentially threaten the national security of the United States Terrorism is an additional type of threat associated with these crimes....foreign nationals have acquired visas fraudulently to enter the United States with the intent to harm people. Americans who marry strangers from countries known to harbor terrorists make the United States more vulnerable to terrorism, plain and simple ...” (Francoeur, 2007)

It is also important to note that prior to Homeland Security’s decision to suspend deportations, bi-national couples were placed in extreme vulnerability due to the draconian immigration laws enacted in reaction to the September 11th terrorist attacks. These laws criminalized housing or helping an undocumented immigrant. As an indirect effect of these laws, bi-national couples became criminalized (Francoeur, 2007).

National security is still being used as justification to continue restrictive immigration law. Although the fear of homosexuality has certainly decreased, it is still being used as an argument to restrict immigration benefits to only heterosexual couples. During the Cold War, immigration law marginalized homosexuality via its perceived connection to communism; today it is repressed because of possible attachments to vague security threats.

Furthermore, gay right groups are comparatively apathetic towards UAFA. As mentioned above, mainstream groups still frame their advocacy in traditional notions of citizenship. This is expressed quite explicitly in the mission statement of a prominent gay rights group, the Human Rights Campaign:

“HRC envisions an America where lesbian, gay, bisexual and transgender people are ensured equality and embraced as full members of the American family at home, at work and in every

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community.” (HRC.org)

The HRC grounds its struggle in the American identity. The HRC only extends its vision to the immediate “American family,” implicitly excluding non-American (immigrants) from their mission. Although these bi-national relationships directly involve United States’ citizens, it is perceived as less connected to the “American family” as more politicized issues such as repealing Defense of Marriage Act or Don’t Ask, Don’t tell. A partner’s immigration status is far less salient of a right denied than the right to be in the military or the ability to marry. Advocacy phrases like, “second-class citizen” sound much more persuasive when advanced under the push for more conventionally considered rights. This tactic of appeal is similar to the politics of respectability that the first gay rights groups were advancing when they separated between the homosexual citizen and the homosexual alien. Indeed, mainstream groups almost never bring up the issue of bi-national same-sex couples in the United States.

Conclusion

Comparative historical case studies show possible explanations for why the United States sticks to restrictive notions of immigration benefits for spouse sponsorship. The combination of domestic gay rights groups approach to prioritize the “homosexual citizen,” with a legal invention that migrating homosexuality is an identity distinct in the legal sphere from “normal” domestic homosexuality was fatal for gay immigrants in the United States. These deadly paths occurred against the backdrop of securitizing homosexuality as an eminent threat. All of these dimensions contribute to why the United States has been so reluctant to prevent same-sex sponsorship while other countries have permitted it. Although, to a lesser degree these factors may still affect policy, one significant finding garnered from these case studies is a signal of hope. Homeland Security’s recent announcement can be seen on

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similar grounds with Australia and Canada's discrete "humanitarian considerations."

It is difficult to pin down the exact causes of what is preventing the UAFA from passing. This is partly due to the research gap on queer immigration. More investigation is needed to explore the connection between historical homosexual discrimination and restrictive immigration policies. Quantitative data such as explicit census data on bi-national queer couples need to be taken in order to further analyze this issue across countries.

Further comparative research would also be helpful in isolating other influencing factors. In this pursuit it would be beneficial for the countries besides Canada and Australia that allow same-sex spouse sponsorship to be compared with the United States. In addition, more comparative research between Canada and Australia with the United States would help provide supplementary data to add evidence for the proposed variables of this paper. The more historical research that is conducted, the more insight that can be gained about the current approach towards queer immigration and more effective strategies for engaging it.

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