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Federalism in Immigration The Cases of Canada and Australia



by Elliott Raia



**Texas Public Policy
Foundation**

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Federalism in Immigration

The Cases of Canada and Australia

by Elliott Raia

Executive Summary

For decades both Australia and Canada have largely focused their immigration policy on providing permanent resident visas to economic migrants with desirable skills to the nations' workforce. Consequently, both have utilized skilled-labor point systems and state-based programs to facilitate visa allocation.

Through the two countries' systems, the federal governments share immigration authority with their respective governments of states, territories, and provinces—often illustrating the concept of federalism that is largely associated with the United States form of government. In both cases, the federal governments maintain control over vetting immigrants, operating several federal immigration programs and ultimately granting permanent resident status. Yet, the sharing of immigration powers has also allowed states, territories, and provinces to create specialized programs tailored to the labor required in their local economies.

Conversely, for decades, the United States has operated an immigration system that has centralized authority in the federal government while focusing primarily on family visas. As America debates immigration broadly, understanding how other advanced nations have addressed immigration can provide helpful schemes for potential solutions. Undoubtedly, implementing the style of immigration that Canada and Australia use in America would be met with significant legal, cultural, and economic challenges. But maintaining some immigration authority at a state level is not unheard of in the U.S., as much of the country's early immigration history shows states working with limited legal oversight from the federal government.

Introduction

Prior to the late 1800s, U.S. states played a crucial role in the American immigration system due to a lack of federal law ([Bolick, 6](#)). While the Congress had the constitutional authority to determine naturalization ([MPI](#))—and did so beginning in 1790 ([Library of Congress 2019a](#))—there was little in terms of any immigration process or system. Prospective immigrants did not need to worry about numerical limitations, as there were none; they needed no ties to America, no job guarantees, and did not even need a visa. Rather, the rapidly expanding United States was starved for labor, and immigration was largely unrestricted. As such, state governments often created their own immigration practices to facilitate the movement of labor to their borders ([Library of Congress 2019b](#)). For example, some states would create incentives to attract immigrant labor through land and job guarantees.

However, in the late 1800s, state legislators began to introduce legislation to encumber the immigration of certain migrants. Namely, California aimed to reduce the immigration of certain Chinese migrants into its state. Consequently, the federal government effectively took the reins of dictating immigration policy

Key Points

- The Australian and Canadian immigration systems are highly reliant on a skill-based immigration system. As such, the countries are able to define and reach national economic goals for foreign labor.
- The Australian and Canadian systems have active state, territory, or provincial programs that take advantage of local labor knowledge to employ immigrant labor more efficiently.
- American immigration was not always exclusively handled by the federal government. The pre-Reconstruction era saw states wielding influence in attracting and admitting immigrants.
- By applying state-based approaches, similar to the ones used by Canada and Australia, the United States can take advantage of economic benefits and re-enshrine the principles of federalism.

and has largely held control ever since. Whereas the states and territories tended to view immigration from a lens of economic necessity, the federal government has consistently favored family reunification over skilled labor as seen in **Figure 1**.

As modern America continues to grapple with balancing the economic need for foreign labor and protecting its borders and the American worker, it is worth considering how other advanced economies, like Australia and Canada, have tackled the problem. For decades, the federal governments of America’s neighbor to the north and the land down under have looked to accomplish their short- and long-term economic goals through a rigorous immigration system that is centered on a merit-based point system. To accomplish such a feat, state and territorial governments in Australia and provincial governments in Canada have been empowered to create their own immigration systems within the broader federal structure. In doing so, the states, territories, and provinces advantageously apply their localized knowledge in deciding what level of immigration is best for their areas. All the while, both countries recognized that part of attracting the best talents means accepting family units.

Undoubtedly, Australia and Canada have substantially smaller populations, smaller immigration endeavors, and fewer individual states than the United States. Nevertheless, their decentralization of immigration authority may provide a path forward for U.S. immigration through the use of American federalism.

Through their applications of federalism in immigration, Australia and Canada have capitalized on the localized

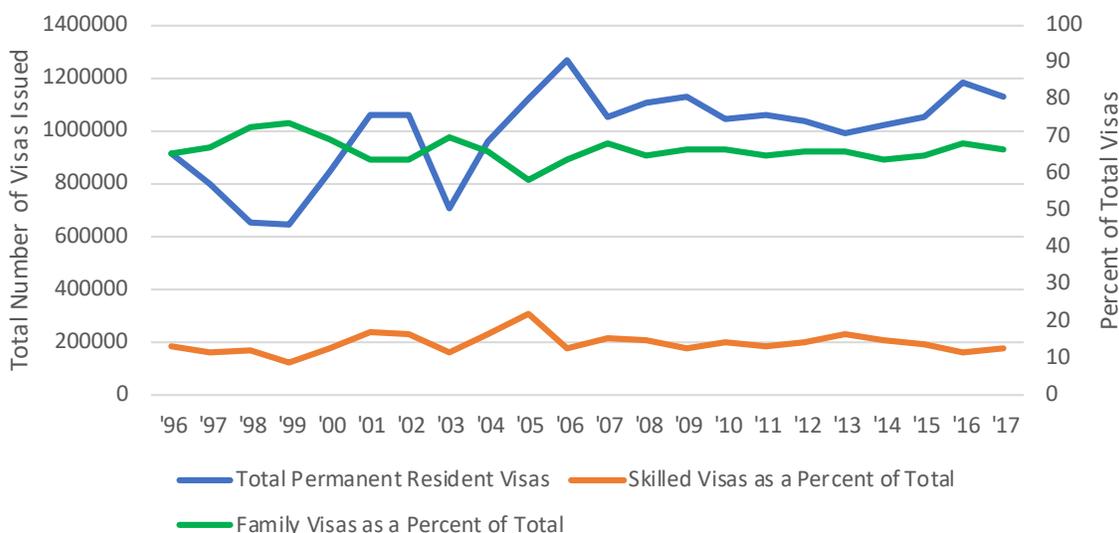
labor knowledge of their state, provincial, and territorial governments. The expansion of state-based visas and the meaningful number of migrants accessing such programs are indicative of the growing popularity of such decentralized immigration strategies. Additionally, the pairing of decentralized programs paired with merit-based point systems, have ensured that immigration in both countries continues to serve the economic and cultural interests of their citizens. Because the state-based and merit-based systems primarily target those looking to establish permanent resident status, this report focuses only on immigrant visas. Non-immigrant visas, which encompass temporary residency and temporary work visas, will only be discussed where they are viewed as an avenue to a obtaining permanent resident visa.

Federalism and Immigration

At the core of the ongoing “American Experiment” is the principle of federalism—a system of shared sovereignty in which powers not delegated to the federal government “are reserved to the States respectively, or the people.” The success of federalism has hinged on the inherent checks and balances against tyranny that come with a dispersion of power. Federalism maintains that Alaskans, for example, should have the ability to address their common and particular needs differently than Hawaiians and, as such, should generally not be governed under the same laws from Washington, D.C., except where specifically called for under the Constitution.

The federal government has an important role to play in immigration. Embedded within America’s federalism framework, the federal government is required to protect

Figure 1. Comparing skilled and family visa allotments in the United States



Source: [Department of Homeland Security](#)

international borders ([United States Constitution, Art. IV, § 4](#)), broadly handle foreign affairs ([United States Constitution, Art. 1](#)), and grant citizenship ([United States Constitution, Art. 1, Sec. 8](#)). Foreign nationals entering the United States certainly fall in those categories. Immigrants—properly vetted and recorded—hold great potential for the

country, but unfettered entry poses concerns with respect to the rule of law, security, and the economy. In applying the principles of federalism, as seen in Australia and Canada, federal and state governments can share the responsibility of managing the immigration process.

CANADA

At 3.8 million square miles, Canada is roughly the same geographic size as the United States. While comparable in land mass, however, Canada maintains a population of only 37 million—the same as California.

Canada is a constitutional monarchy that utilizes a parliamentary democracy. Since Canada is a Commonwealth realm, Queen Elizabeth II is the head of state, represented in Canada by an appointed governor general. Its prime minister is the head of the government.

While both the U.S. and Canada are federations, Canada's Constitution is geared toward maintaining more power in the central government. For example, whereas the U.S. Constitution defines powers for the federal government and reserves unlisted powers to the states, the Canadian Constitution does the opposite.

Despite its more centralized approach, Canada has implemented an immigration system that disperses power and defers nearly one quarter of its annual permanent resident visas to provincial discretion. Central to the whole immigration system however is a points-based system that quantifies and subsequently ranks prospective migrants to favor those who are categorized as skilled labor.

Defining Skilled Labor

Because Canada's immigration system is so reliant on skilled labor and prioritizes those laborers' families, understanding how categories of desirable skills are distinguished is crucial. The distinction between "skilled" and "semi-skilled" or "unskilled" labor is less of a judgment on the degree of difficulty of a given profession and more related to the economic importance of the various professions. Categorizing industries into various levels of skill allows the Canadian government to guide the direction of the country's future economic goals. The most sought-after categories of labor reflect the Canadian government's long-run desires while short-run needs are prioritized lower.

Canada maintains one skilled occupation list containing 347 occupations for most of its economic class visas. Many of these jobs encompass STEM workers, managers, supervisors, government officials, healthcare workers, and financial

workers among others. However, there are also some traditionally blue-collar jobs on the list such as specific workers in the logging, drilling, mechanical, and fishing industries ([Government of Canada 2018a](#)).

To differentiate the occupations, Canada groups the jobs into "skill type" and "skill level." The categories are:

- Skill Type 0: Management Jobs;
- Skill Level A: Professional jobs that usually require a university degree;
- Skill Level B: Technical jobs and trades that usually require a college degree or apprenticeship;
- Skill Level C: Jobs that typically require a high school degree or job-specific training;
- Skill Level D: Manual labor jobs that give on-the-job training.

Central to Canada's immigration system is a points-based system that quantifies and ranks prospective migrants to favor those who are categorized as skilled labor.

Permanent Resident Visa Breakdown

Like with other skill-based immigration systems, those who do not fall within the definition of skilled labor will have little chance to initially gain a permanent resident visa into Canada. In some circumstances, unskilled workers can gain permanent resident status through the state-centered Provincial Nominee Program if the province maintains a "stream" (a program that targets a certain group) that includes additional occupations, which will be discussed later.

With a broad labor list that includes many occupations not traditionally thought of as skilled labor, Canada also places a premium on work experience. As a result, many younger

workers may have difficulty immigrating permanently without first working under temporary work visas.

Express Entry

Implemented in 2015, Express Entry is the system Canada uses to house the bulk of economic-class permanent resident visa applications. The system mainly serves the federal immigrant work visa program—described in detail below—and centers on a point system. Interested applicants begin their process by answering questions which are used to assess eligibility across the visa programs and then subsequently create an individualized score with a maximum of 1,200. If the applicant meets the base requirements for the various internal programs, they will be placed in the program pool. From there, the government sends out invitations to apply for a permanent resident visa to the highest scorers typically every two weeks.

Factors included in the point system are ([Government of Canada 2017a](#)):

- Age;
- Education level;
- Canadian education;
- Language—For Canada, more points can be gained for showing high levels of reading, writing, speaking, and listening in both English and French;
- Canadian work experience;
- Foreign work experience;
- Relevant job offers or provincial nomination;
- Family ties to Canada;
- Spouse/partner factors—this includes a partner’s language ability, skills, and education.

Federal Skilled Worker Program (FSW)

The bulk of Express Entry immigrants come through the FSW ([Government of Canada 2018b](#)). FSW targets individuals with high levels of education and experience. To check eligibility, FSW uses a separate point system on a scale of 0 to 100 that measures language skills, education, work experience, age, employment offers, and “adaptability” ([Government of Canada 2018c](#)). In an attempt to quantify the ability to make a smooth entry into Canadian society, adaptability measures past interactions in Canada or with Canadians. This includes past studies, work, and family in Canada, and an assessment of those three metrics for an individual’s spouse/partner. If an individual can score a 67 or higher, they can move on to the previously described Express Entry point system for pool ranking. A score lower than 67 will mean that the individual will not qualify for FSW and will either need to qualify for a different program or improve their score to move on to the Express Entry pool.

Minimum requirements for the FSW point system include:

- A job that is rated as 0, A, or B on the skilled labor list;
- At least one-year equivalent work experience within the past 10 years in an occupation that is on the approved job list for 0, A, or B labor;
- High proficiency in English and/or French in writing, reading, listening, and speaking;
- At least a Canadian high school diploma/secondary education or the equivalent in the migrant’s country;
- Evidence of enough funds for the applicant to be self-supporting and to support the applicant’s family without government assistance;
- Plans to live outside of Quebec as the province has its own skilled worker program;
- General admissibility under health and criminality codes.

Qualifications exceeding the base requirements will receive more points and raise the individual’s competitiveness to receive an invitation in the applicant pool. Applicants are not required to have an active job offer but will receive extra points on their profile if they do.

Canadian Experience Class (CEC)

CEC ([Government of Canada 2019a](#)) represents the second largest stream for immigrants in the Express Entry system. CEC was designed for individuals who already have Canadian work experience. In some instances, CEC can be an important stream for individuals in occupations that are on the skilled labor list but are traditionally thought of as blue collar because the required English proficiency level for some jobs is lower.

Minimum requirements for the Canadian Experience Class include:

- Work experience in a 0, A, or B on the skilled labor list;
- High proficiency in English and/or French in writing, reading, listening, and speaking for 0 or A jobs, moderate proficiency for B jobs;
- At least one year (or part time equivalent) of legal skilled work experience in Canada within the three years before applying;
- Plans to live outside of Quebec as the province has its own skilled worker program;
- General admissibility under health and criminality codes.

CEC has no education requirement, making it more attainable for those who may not be eligible for other programs due to lack of a college degree. However, as with the other

programs, after eligibility is established for CEC, the applicant's profile will go into the Express Entry pool so additional education can help improve their rank in the pool.

The CEC also offers an important pathway to permanent resident status for individuals willing to work their way through the process. For example, semi-skilled workers can gain some temporary visas through employers who have a Labour Market Impact Assessment (LMIA) confirmation letter which allows them to hire foreign labor for jobs that have a domestic labor shortage ([Government of Canada 2019b](#)). Additionally, unskilled workers can gain temporary employment visas through employers who have an LMIA exemption through the International Mobility Program (IMP) contained in NAFTA ([Government of Canada 2017b](#)). Because the hiring process is contained within the provisions of NAFTA, it only applies to businesses and workers in the United States, Canada, and Mexico. The IMP takes into account “the broader economic, cultural or other competitive advantages for Canada” to determine which employers can access LMIA exemptions ([Government of Canada 2019c](#)). Both the LMIA confirmation letter and the IMP present the opportunity for unskilled workers to gain experience that can potentially be used later in the Canadian Experience Class program.

Federal Skilled Trades Program (FST)

The final program within Express Entry, FST, further lowers some of the language requirements that would prevent foreign trade labor (Skill Level B) from qualifying for a skilled permanent resident visa ([Government of Canada 2019d](#)). To balance out the lowered requirement though, FST only accepts certain occupations within the Skill Type B. This allows Canada to better address employment holes in the traditionally blue-collar sector of the economy.

Minimum requirements for the Federal Skilled Trades Program include:

- Work experience in the specified jobs within Skill Level B—currently, these tend to include trades in construction, maintenance, some manufacturing, butchering, baking, cooking, and technical natural resource jobs;
- Moderate proficiency in English and/or French in speaking and listening. Below moderate proficiency in English and/or French in reading and writing;
- At least two years of full-time (or full-time equivalent) experience in the skilled trade in the five years before applying;
- Evidence of enough funds for the applicant to be self-supporting and to support the applicant's family without government assistance;

- Plans to live outside of Quebec, as the province has its own skilled worker program;
- General admissibility under health and criminality codes.

Much like the Skilled Worker Program, FST does not require a job offer to apply, which is why it requires proof of support funds. Like the CEC, FST has no education requirement, but applicants benefit from any degrees to help their Express Entry pool ranking.

Individuals interested in the FST, may, in many cases, end up going through the Provincial Nominee Program as the Canadian government typically relies on the provinces to assess trade qualifications in the absence of educational proof.

Provincial and Territorial Involvement in Immigration

Leading up to the 1970s the Canadian federal government largely controlled the immigration system. However, in the wake of the 1960s, the Quiet Revolution ([Durocher and Millette](#)), and Canada's increasing economic globalization, Quebec began to exhibit a desire to control who was entering its province ([Statistics Canada](#)). Distinctively, the Quebec government sought not only to ensure that incoming immigrants would directly contribute to its economy, but it also wanted to ensure that Quebec's culture—notably French roots—was maintained into the future.

Following Quebec's negotiations with the federal government to establish more control over immigration in the province, other provinces began to want more autonomy over choosing those coming to their cities and towns as well.

Among other results of the movement toward more provincial control are two immigration programs—the nationwide (minus Quebec) Provincial Nominee Program and the Quebec-Selected Skilled Worker Program—that help provinces attract specific workers. Both programs operate within the broader federally controlled immigration system.

Quebec maintains more immigration authority than the other Canadian provinces. Immigrants participating in one of the federal worker programs and without a provincial sponsorship are able to migrate to any province but Quebec. With minor exceptions for refugee and family visas, the province retains a near complete control over which immigrants come into their borders. The only powers maintained by the Canadian federal government over immigration within Quebec regard health, criminality, and constitutional granting of permanent resident status ([Government of Canada 2019e](#)).

However, Quebec continues to challenge the Canadian government for even those few powers. In June 2019, the province voted to institute a new “values-based” immigration system to ensure that immigrants could be better assessed for a positive economic and cultural fit ([Bill 9](#)). In doing so, the provincial government canceled thousands of backlogged immigration applications. The approved bill also asserted Quebec’s authority in granting—or rejecting—permanent resident status.

Quebec-Selected Skilled Worker Program (QSSW)

The exclusive power to select the immigrants that it allows into the province of Quebec is conditionally reserved to the provincial government of Quebec ([Government of Canada 2019e](#)). As highlighted above, applicants in the Express Entry federal programs must ensure that they plan to reside outside of Quebec when they immigrate. While this gives the local government substantial power, the federal government still maintains the right to set the overall number of immigrants that can come into the country (though Quebec has some control over the number coming to their province). Additionally, the federal government maintains the charge of screening immigrants’ criminal and health backgrounds.

To help decide an applicant’s competitiveness, the QSSW implements its own point system. Like the Express Entry point system, QSSW measures ([Government of Quebec](#)):

- Education/training level;
- Skilled work experience in an occupation listed as Skill Level C or higher;
- Age;
- English and French proficiency;
- Reason for staying in Quebec (study vs. work);
- Spouse/partner education, training, age, and language proficiency;
- Validated job offers based on location in Quebec;
- Children, if any, and their ages;
- Proof of funds for three months of self-sufficiency based on family size.

Like other point systems, QSSW favors high education levels, high work experience, prime working ages, and spouses/partners with similarly high qualifications. Because Quebec aims to maintain what it views as its culture, QSSW also places a heavier weight on French language skills than English. Additionally, it rewards individuals who have job offers outside of the two main metropolitan areas of Montreal and Quebec City with more points.

While the QSSW appears to place a heavy emphasis on maintaining the province’s culture, it maintains a separate occupation list to focus on its economic goals. The Quebec Immigration High Demand Occupation List ([Immigration.ca](#)) is updated periodically to communicate the immediate and future needs of the province. Importantly, the Quebec government notes that having experience in one of the listed occupations provides the best path in the QSSW for those who are not highly skilled in French. As of April 2019, most of the high-demand occupations involved STEM fields and specialized manufacturing.

However, individuals who immigrate to Canada through a different program can move to Quebec without immigration restrictions after they officially receive their permanent resident status.

Provincial Nominee Program (PNP)

After witnessing Quebec’s ability to gain some control over immigration, the other Canadian provinces looked for their own control within the national immigration system to guide their regional, economic goals. Through the PNP ([Government of Canada 2018d](#)), each province can create its own streams to target certain groups of immigrants like students or businesspeople. Provinces typically have numerous streams to capture the complexity of their local economies.

All Canadian provinces, except two, include an Express Entry stream which operates under the same principles explained in the Express Entry section. Applicants who successfully go through a province’s Express Entry stream gain an extra 600 points in their profile to significantly increase their chances of receiving an invitation to apply for a skilled permanent resident visa. Alternatively, PNP can allow unskilled migrants to largely bypass the competitive, point-based process to immigrate to provinces that need semi-skilled and trade labor. Whereas many of the previously mentioned visas require skilled labor rated at a level of C or above, many provinces accept level D occupations with the stipulation that applicants must meet the minimum Express Entry requirements. This authority to bypass a national mandate reflects Canada’s exercise of federalism—similar to the autonomy reserved to Quebec mentioned previously—with regard to immigration policy.

Streams are tailored to each province’s needs and allow them to manage their economies in a less centralized manner. For example, Alberta—known for its raw materials economy—has three streams. One is the Express Entry, which gives individual businesses access to high-skilled migrant labor. The other two are more general entry specifically tailored toward farmers and workers in raw material

industries. On the other hand, Ontario, which is a more service-oriented economy, maintains streams that target international students as well as experienced, high-skilled business workers.

Miscellaneous Permanent Resident Work Visas

Start-Up Visa Program

To attract new businesses and work opportunities for Canadians, Canada retains a simple start-up program ([Government of Canada 2018e](#)). To apply, an individual, in addition to passing health and criminal checks, must have a qualifying business idea that has a letter of support from a Canadian investor organization, meet language requirements, and prove he or she has the funds to support one's family.

Caregiver Program

In response to a shortage in caregivers, the Canadian government temporarily opened four dedicated permanent resident visa streams scheduled to end in late 2019 ([Government of Canada 2019f](#)). They aimed to attract those with experience in childcare, medical care, and live-in care.

The temporary nature of the caregiver program highlights Canada's immigration system's ability to react to a specific labor shortage with a sunset program.

Family Reunification

Canada allows for the sponsorship of various family visas provided that the sponsor is at least 18 and is either a Canadian citizen, registered under the Canadian Indian Act, or a permanent resident ([Government of Canada 2019g](#)). Additionally, sponsors must be able to prove they can support their relatives with basic needs through income guidelines as well as ensure none of the family members will require social assistance. With those requirements met, permanent resident immigrants can sponsor not only immediate family, but extended family as well, given they meet various circumstantial requirements that take into account blood and legal relation among other factors ([Government of Canada 2019h](#)). Importantly, sponsored relatives gain full work rights, which means family members of a skilled work visa holder can work in Canada when they may not have been able to qualify for a work visa independently.

Figure 2. Canadian non-refugee immigration breakdown, 2018

Visa Category	Visa Subcategory	Number of Migrants	Percent of Total Immigration
Worker Program	Atlantic Immigration Pilot Program	1,410	0.52%
	Canadian Experience Class	27,625	10.13%
	Federal Skilled Trade Program	870	0.31%
	Federal Skilled Worker Program	71,235	26.12%
	Caregiver	17,810	6.52%
Worker Total		118,950	43.60%
Business Visas	Self-Employed Visa	525	0.19%
	Start-up Business Visa	240	0.08%
	Entrepreneur Visa	145	0.04%
	Investor Visa	4,035	1.47%
	Misc. Business Visas	1,120	0.40%
Business Total		6,065	2.18%
Provincial Nominee Program Total		62,430	23.00%
Family	Sponsored Children	3,795	1.38%
	Sponsored Extended Family	435	0.16%
	Sponsored Parent or Grandparent	18,020	6.61%
	Sponsored Spouse or Partner	62,190	22.80%
	Misc. Family Visas	750	0.27%
Family Visa Total		85,190	31.22%
Grand Total		272,635	100%

Source: [Government of Canada—Monthly IRCC Updates](#)

AUSTRALIA

Australia is about the size of the contiguous United States at roughly three million square miles. However, the country has a population of only 25 million—slightly smaller than that of Texas. Importantly, Australia is densely populated with nearly 50 percent of the population living in just five of the coastal cities and 68 percent living in the greater areas of the state and territory capital cities.

The centralization has created a category for the less-populated areas of the country known as “regional Australia.” Regional is defined as areas outside of the Australian Capital Territory, Sydney, New Castle, the Central Coast, Wollongong, Brisbane, the Gold Coast, Melbourne, and Perth. As will be discussed further, the distinction between regional Australia and other parts of the country has important immigration implications.

Like Canada, Australia is a constitutional monarchy and a Commonwealth realm with Queen Elizabeth II as the head of state. In addition, Australia is a representative democracy and maintains a federal system with federal, state/territory, and local governments.

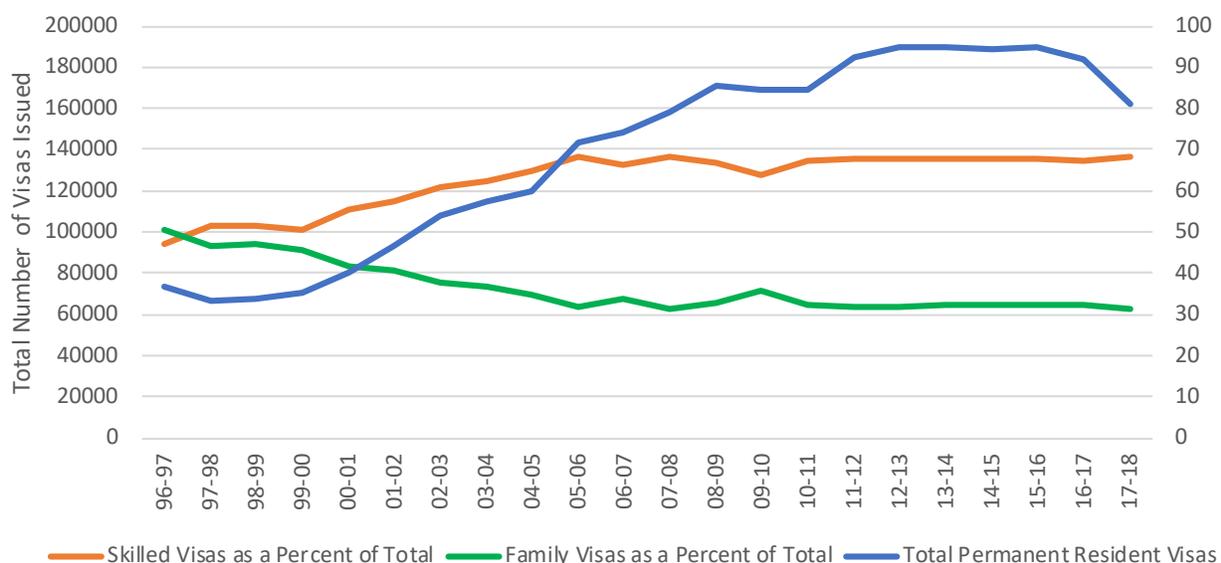
Since the late 1950s the Australian immigration system has been almost entirely reliant on a merit-based immigration system to fill its annual maximum 190,000 permanent resident visas and, as such, heavily rewards skilled labor while not leaving many options for unskilled labor to remain in the country permanently ([Australian Federal Register of Legislation](#)).

As trade has become a larger part of Australia’s economy ([O’Brien](#)), the country’s immigration has increased as well (**Figure 3**). Skilled labor has received an increasing percentage of total permanent resident visas while the percentage for family visas has declined. In recent years, as Australia has begun to tighten its immigration—reducing total permanent resident visas to 160,000 beginning in the 2019-2020 cycle—skilled labor visas continued to represent between 65 and 70 percent of the total. Moving forward with the total reduction of visas, the government looks to maintain its ratio of skilled labor visas with plans to make 67.5 percent of the 160,000 visas reserved for skilled labor—roughly 108,000 visas ([Department of Home Affairs 2019a](#)).

Australia heavily rewards skilled labor while not leaving many options for unskilled labor to remain in the country permanently.

Most work visas require a sponsor whether it be the national government, state/territory governments, or a business ([Department of Home Affairs 2019b](#)). Most unskilled—sometimes referred to as semi-skilled—immigration into Australia comes through seasonal agriculture work visas. Until the recent, limited introduction of the Designated Area Migration Agreements

Figure 3. Comparing skilled and family visa allotments in Australia



Source: [Australian Government: Department of Home Affairs](#)

(DAMA), unskilled labor typically had no pathway to permanent resident visas. In fact, under the full list of work permits issued by the Australian Department of Home Affairs, no unskilled labor visas appear, as those individuals typically go through a regional application and therefore fall under state sponsorship.

Defining Skilled Labor in Australia

Like Canada, defining the difference between “skilled” and “semi-skilled” or “unskilled” reflects Australia’s long- and short-term economic goals. In managing the various economic goals, Australia, in partnership with New Zealand, created the Australian and New Zealand Standard Classification of Occupations (ANZSCO) system that codifies occupations through agreed upon regional standards. Within the system, Australia then created three lists to determine an occupation “skill level”:

Medium and Long-Term Strategic Skills List (MLTSSL)—This list ([Coleman 2019a](#)) contains 216 occupations and communicates Australia’s highest priorities for immigrant labor. Occupations in this category are not necessarily areas of domestic worker shortage; rather, they signal industries the government would like to grow. Generally, occupations on the MLTSSL require advanced degrees and include jobs mainly in STEM industries as well as healthcare professions and business executives, to name a few categories. However, the MLTSSL contains several occupations in specialized trades crucial to infrastructure like welding, carpentry, plumbing, and electrician work. This list also allows for some athletes.

Short-Term Skilled Occupation List (STSOL)—The STSOL contains roughly the same number of occupations as the MLTSSL but focuses on industries with a current labor shortage in Australia ([Coleman 2019b](#)). In the past, migrants could access special skilled permanent resident visas under the STSOL; however, recent changes to the immigration system have further favored only the highest-skilled labor. As a result, virtually no skilled permanent resident visas are immediately accessible to STSOL migrants and the list has become the focus of temporary skilled labor visas. Jobs on the short-term list include managers across numerous industries, financial workers, designers, teachers, and even some STEM workers, like geologists.

Regional Occupation List—Although roughly the same geographical size as the contiguous United States, Australia’s population of 25 million is concentrated along the coast, with more than 62 percent living in one of four cities ([Australian Bureau of Statistics](#)). A consequence of the concentration is that the regional areas tend to have labor shortages. As such, the Regional Occupation List broadens

the categories of jobs allowed for immigrants for the regional areas ([Coleman 2019a](#)). The list contains over 450 additional jobs and a wide breadth of professions such as agriculture and livestock workers, store managers, various industry technicians, insurance workers, public service professionals, and even sports coaches.

While Australia’s immigration system does favor those who are traditionally viewed as skilled—individuals with college degrees and/or extensive industry experience—it is important to realize that not all skills are treated equally and not all skilled individuals will be viewed as such in the immigration system. Likewise, those in jobs that are not commonly viewed as skilled could find themselves extremely desirable to the Australian government if their industry aligns with the country’s future economic goals.

Sponsored Immigration

Employer Nomination Scheme (ENS)

Much like in the United States, a common and advantageous way to gain permanent resident status in Australia is to have an employer sponsor. Through Australia’s Employer Nomination Scheme (ENS), the country requires a business to prove that it has a position that is on the MLTSSL and that cannot be filled with domestic labor. Additionally, to protect domestic labor markets, the government requires businesses to pay immigrants at least a market salary rate, offer at least a two-year contract, and pay into the Skilling Australians Fund ([Department of Education and Training](#)), which supports training Australians in in-demand industries. Broadly, the ENS is more popular among individuals already in Australia on a temporary visa. In 2018, for example, 84 percent of ENS recipients were already in the country ([Department of Home Affairs 2018a, 10](#)). As with most of Australia’s permanent resident visas, ENS visas allow the holder to “live, work, and study in Australia indefinitely,” apply for Australian citizenship if eligible, and sponsor family members who want to come to Australia as well.

Within the ENS, applicants have three “streams” in which they can gain access to a skilled permanent resident visa:

Direct Entry (DE)

DE ([Department of Home Affairs 2019c](#)) is a popular choice for individuals who are already in Australia and are seeking permanent resident status because candidates can hold a student, visitor, or bridging¹ visa while applying. However, applicants can also live outside of Australia and need not have already started their job with the sponsoring employer. The DE visa stream is

1 “A bridging visa is a temporary visa we might grant you in certain circumstances. Bridging visas let you stay in Australia lawfully while your immigration status is resolved. The type of bridging visa we might grant you depends on your circumstances” ([Department of Home Affairs 2019p](#)).

also a relatively quick process with 90 percent of applicants being processed within 13 months of applying.

To qualify for a DE visa, applicants must have a two-year work contract in a job that is on the MLTSSL. Within their industry, they must also ensure that they have any required licensing and, in most cases, will have to undergo a “skills assessment” to prove they can competently execute the job for which they are sponsored. In addition to these key requirements, applicants must also:

- be under the age of 45 (except in rare circumstances);
- have three years of relevant work experience;
- meet health and character requirements;
- have a competent level of English;
- sign the Australian values statement;
- pay back any and all debt owed to the Australian government;
- have not had a previous visa canceled or application refused.

Temporary Residence Transition (TRT)

TRT ([Department of Home Affairs 2019d](#)) represents another pathway for non-residents to obtain permanent resident status. The TRT program maintains the same requirements as the DE—including the requirement to have a position on the MLTSSL—with two important exceptions.

First, the applicant must hold a Temporary Work Skilled Visa² ([Department of Home Affairs 2018b](#)) or a Temporary Skill Shortage Visa ([Department of Home Affairs 2019e](#)) to work for the eligible company sponsoring the TRT. To this end, the employer must have sponsored the applicant on the temporary visa for at least three of the four prior years—this acts as a substitute for the three years of relevant work experience that the DE requires.

Additionally, as an advantage of transitioning from temporary status to permanent resident status, most applicants will not have to go through the skills assessment that many of the other sponsored visas require.

The TRT offers a viable opportunity for young professionals who may have the willingness to immigrate to Australia but lack work experience. Through TRT, these individuals can work their way to a permanent resident visa. Because the TRT generally requires applicants

to hold a workforce shortage temporary visa, the Australian economy uniquely benefits from the TRT by targeting MLTSSL occupations that also have an immediate domestic need.

TRT also boasts a relatively quick processing time, mirroring the DE values.

Labour Agreement Stream (LAS)

While rarer, the LAS ([Department of Home Affairs 2019f](#)) accounts for exceptional circumstances in the labor market. To apply through the LAS, an individual must meet the same requirements as those required for the DE (with exemptions surrounding the MLTSSL), but the employer must be under a labor agreement with the Australian government.

Labor agreements are typically five years in length and have varying degrees of depth—company specific, designated area, project specific, talent specific, or industry specific. Labor agreements act to loosen some of the MLTSSL requirements so that Australian companies can quickly account for labor market shortages.

One of the labor agreement types gaining increasing attention is the Designated Area Migration Agreement (DAMA). DAMAs are agreements between the Australian federal government and a state, territory, or local government. They offer one of the few pathways for traditionally semi-skilled workers to obtain permanent resident status in Australia. The agreements are an employer-sponsored response to regional pressures brought on by domestic labor shortages in lower-skilled occupations that the broader immigration system passes over. DAMA is a relatively new framework, and since 2015, there has only been one agreement active with the Northern Territory. However, as of January 2019, the Northern Territory’s agreement has been renewed. As of March 2019, the Australian government also agreed to establish DAMAs in the Kalgoorlie-Boulder region of Western Australia, Regional South Australia, Adelaide City, and the Great South Coast of Victoria ([Department of Home Affairs 2019g](#)).

Effectively, DAMA expands the list of eligible occupations for a visa and lowers the skill, language, and income requirements. Applicants go through an amended visa application with their qualifying, sponsoring business.

Because DAMA is still in its start-up days however, most active labor agreements are at an industry level and include among others, dairy, fishing, meat, fine dining restaurants and ministers of religion. Because

2 This visa was repealed in 2017; however, it is still honored to meet the multi-year work requirement of the TRT ([Department of Home Affairs 2018b](#)).

there are so few LAS visas granted, there is little on processing times.

Regional Sponsored Migration Scheme (RSMS)

Under employer-sponsored migration, the RSMS ([Department of Home Affairs 2019h](#)) offers Direct Entry and Temporary Residence Transition, which have the same general requirements as those streams under the Employer Nomination Scheme. However, there is an important exception which applies to the eligible occupations under the visas. Whereas ENS employers must sponsor individuals only for occupations on the MLTSSL, those under the two RSMS programs may sponsor individuals from either the MLTSSL or the Regional Occupation List. By expanding the eligibility, the RSMS allows for the Australian immigration system to maintain its high skill preferences while still accounting for jobs necessary in more rural areas.

General Skilled Migration (GSM)

In the absence of an employer sponsor, Australia offers three main pathways to a skilled permanent resident visa. However, because employer sponsors act as a natural, market-based filter for in-demand workers, the GSM program employs barriers to ensure that the migrants entering the country support the country's best interest. Because the government must go through more vetting for GSM migrants, the GSM visa process is longer and, subsequently, tends to be more popular among applicants abroad who can work in their home country while they wait; in 2018, 62 percent of applicants were outside of Australia ([Department of Home Affairs 2018a, 13](#)). Even with the longer wait times, GSM accounts for a larger percentage of total skilled permanent resident visas issued in a year than the other skilled migration programs—more than 60 percent of total skilled visas and nearly double the number issued under employer-sponsored visas ([Department of Home Affairs 2018a, 3](#)).

SkillSelect

Through GSM, the most efficient market-based labor signals are removed since employers are not directly interacting with foreign labor to fill their employment needs. The SkillSelect ([Department of Home Affairs 2019i](#)) system attempts to compensate for the employer-employee disconnect by containing a point system score that can communicate a prospective migrant's cohesiveness with the Australian culture and economy to the government.

More broadly, because GSM visas require a formal invitation from the government to apply, SkillSelect is the tool migrants use to submit an "expression of interest" (EOI) which lets the government know that they would like to immigrate. An individual's updateable EOI remains active within SkillSelect for two years during which the

government has no obligation to extend an invitation to apply for a visa.

The EOI selection process, however, is not random due to the government's ability to see what the submitter's occupation and point-system score are. While applicants must meet a minimum score of 65 to qualify for an invitation to apply, they can receive preferable/expedited services for higher scores. Categories in the system include ([Department of Home Affairs 2019j](#)):

- Age;
- English fluency;
- Past skilled employment (number of years);
- Education;
- Australian education (if any);
- Community language qualifications;
- Study in regional Australian area;
- Partner skill qualification³;
- Past professional experience in Australia (must have at least one year of work within the four years before applying).

While it is predictable that the point system favors those in their prime working years and with advanced degrees in high-demand fields, many of the categories signal a focus on a positive culture fit. One can think of this as how a company typically seeks to hire employees who are both professionally competent and amicable in the working environment. In the case of the Australian point system, individuals who have above competent English skills, have past experiences interacting in Australian society, and potentially have a spouse/partner who meets basic qualifications are rewarded.

Skilled Independent Visa (SI)

SI ([Department of Home Affairs 2019k](#)) visas are the most popular GSM pathway to permanent resident status. Like the visas in the ENS, SIs allow unfettered work and study privileges, a pathway to citizenship if eligible, and the ability to sponsor relatives for permanent resident family visas. The requirements that most differentiate SI visas from those under ENS though is the need to go through the SkillSelect process as previously described. This includes scoring at least 65 points in the point system and having an active invitation to apply. While the point system takes age and

³ Subcategorized for partner's age, English ability, and occupational skill. Points are not awarded if the partner is an Australian citizen, permanent resident, or the partner is not on the individual's visa application. To view partner categories, click through the points calculator for the subclass 189 visa ([Department of Home Affairs 2019j](#)).

English ability into account, SI applicants must be under 45 at the time of invitation and meet the minimum English skill standard. Additionally, applicants must be qualified in an occupation on the skilled occupation list, which includes both the MLTSSL and the STSOL—a skills assessment is required as proof of competency.

Like for other visas, individuals must meet the health and character standards, have no outstanding debt with the government, sign the Australian values statement, and not have had any past visas canceled or past applications refused.

Processing times for SIs tend to be quick with 90 percent of applicants hearing back within seven months. However, the additional SkillSelect paperwork, as well as waiting for an invitation that is not guaranteed, can significantly add to the total waiting time.

Skilled Regional Visas (SR)

Like other regional visas, the SR ([Department of Home Affairs 2019l](#)) relaxes some of the general visa requirements for individuals immigrating into rural areas by expanding the qualifying occupation list. However, this visa can only be obtained by individuals who already hold a Regional Provisional Visa and have lived in a regional/low population-growth area for at least two years.

Even with the required provisional visas, SR offers significant relief for those who are not highly competitive in the point system, as this visa bypasses the assessment. For example, even though the provisional visa has the typical 45-year-old age limit, the SR maintains no age limit. Applicants are still required to meet the standard health, character, values, debt, and visa/application cancellation requirements. Processing times tend to be longer than other visas with 90 percent served within 16 months; this is likely less important though as individuals will be on their provisional or bridging visa while they wait.

Although SR visas make up only 2 percent of all GSM visas and 1 percent of all skilled permanent resident visas ([Department of Home Affairs 2018a](#)), they offer a valuable option for lower skilled individuals.

State and Territory Nominated Visas (STN)

STN ([Department of Home Affairs 2019m](#)) visas allow state and territory governments to attract workers who are specifically tailored to the labor needs of their areas. Each of the eight Australian states/territories maintain its own criteria and processes to nominate individuals within the national immigration system. After being nominated, prospective applicants must still meet the same requirements as for the SI visa including filling out the SkillSelect

paperwork, achieving a minimum point score of 65, and being invited to apply for the visa.

Prospective immigrants have typically more chances with an STN visa because, much like company sponsors, states and territories are aware of what holes exist in their local labor market and can therefore take active steps to fill them. Comparably, unsponsored individuals in the SI pathway may have to wait longer or could never be invited to apply for a visa because, even though they are highly skilled, their field may not be experiencing an immediate shortage as seen by the federal government. Alternatively, even if an individual's occupation is part of the nation's long-term strategy, the prospective immigrant may be behind in the pool ranking with no guarantee of a job without entering the country. State nomination, inferior to the direct employer-employee market transaction, is an attempt by the government to ensure that immigrants help support the goals and interests of the Australian people.

Miscellaneous Skilled Permanent Resident Visas

In addition to the previously described visas, which make up 93 percent of skilled visas, Australia maintains two other categories to attract talent.

The first is a “Distinguished Talent visa,” ([Department of Home Affairs 2019n](#)), which is designed for internationally recognized athletes, artists, professors, or professionals.

The second, known as the Business Innovation and Investment program ([Department of Home Affairs 2019o](#)), is designed, as the name suggests, to attract fresh capital into the country. An individual who comes through the business stream is required to first have a provisional business visa for which they have started a new business. Alternatively, the investment stream can be accessed if the migrants first have a provisional investor visa and maintain at least \$1.5 million AUD in investments for four years. Increased investment amounts can qualify an applicant for additional benefits such as reduced time during which investments must be held to qualify for the permanent resident visas.

Family Reunification

Even with the focus on skilled immigration, Australia has maintained a sizable family immigration system. The term “family” mainly applies to migrants' spouse/partner, parents, and children. However, there are family visas that also cover prospective spouses/partners, orphaned relatives, elderly dependent relatives, and “remaining relatives” not explicitly listed. As shown in **Figure 3**, family visas make up roughly 30 percent of all permanent resident visas. As part of the country's commitment to family immigration, most skilled permanent resident visas, in addition to many

refugee and student visas, retain sponsorship privileges for family members or caretakers.

Sponsored family members must apply for separate visas that are then assessed by the Australian government. Importantly, many of the family visas—both temporary and permanent—grant full work rights; yet family visas do not require the same merit-based, point system that work visas do. This means family members of a skilled work visa holder may be able to work in Australia despite the fact that they may not have qualified for a work visa independently.

State/Territory Role in Immigration

Australian local entities play a significant role in the process of extending visa invitations as previously discussed above in the sections on STN as well as DAMA. As **Figure 4**

depicts, state/territory migration schemes accounted for nearly one-third of all skilled visas in the 2017-2018 cycle.

As state-specific programs continue to expand, the Australian federal government increasingly shares its immigration authority. While the states are unable to completely manage Australia's immigration system, granting them limited authority has allowed for more autonomy within local economies.

In highly developed urban centers such as Sydney and Brisbane, state involvement helps ensure a steady flow of highly educated workers. Conversely, for the rural areas like most of the country's interior, immigration autonomy has allowed them to potentially access the basic jobs needed for a town to function and thrive.

Figure 4. Australian non-refugee immigration breakdown 2017-2018

Visa Category	Visa Subcategory	Number of Migrants	Percent of Total Immigration
Family	Partner	41,577	25.91%
	Parent	7,471	4.66%
	Child	3,212	2.00%
	Other Family	574	0.36%
Family Total		52,834	32.93%
Skilled Labor	Business Innovation/ Investment	7,528	4.69%
	Distinguished Talent	204	0.13%
	Employer Sponsored	34,900	21.75%
	Skilled Independent	37,445	23.33%
	Skilled Regional	5,255	3.27%
	State/Territory Nominated	21,772	13.57%
Skilled Labor Total		107,104	66.74%
Special Eligibility		537	0.33%
Special Eligibility Total		537	0.33%
Grand Total		160,475	100.00%

Source: [Australian Government—Department of Home Affairs, Historical Migration Statistics](#)

ANALYZING THE AUSTRALIAN AND CANADIAN SYSTEMS

By basing their immigration through skilled labor lists, Australia and Canada clearly communicate that they view immigration as a means to primarily benefit their economies. Additionally, through many of their high standards to qualify for permanent resident status, as seen through the previous visa breakdowns, they increase the odds that immigrants are invested in the countries' economies as well. At the same time, the inclusion in both systems of traditionally blue- and white-collar labor creates more broad-reaching labor opportunities that account for the complexity of modern economies that require vast types of labor expertise.

By basing their immigration through skilled labor lists, Australia and Canada clearly communicate that they view immigration as a means to primarily benefit their economies.

However, for all the benefits, skill-based immigration, like the current family-based model in the U.S., is not free of challenges. First and foremost is the challenge of central economic planning, as the governments determine which skills or industries are best for their economies and citizens. To counter this problem, both countries offer employer sponsorship. However, without adequate checks and balances, both systems are open to criticism for allowing immigration fraud and cronyism; this has been particularly true of the Australian system. In some instances, the skill-based system has encouraged some migrants to work with government officials to fake qualifications or leverage loopholes that give unfair advantages to individuals who might otherwise be less qualified than other applicants. Likewise, the system has encouraged crony corporatism in some instances ([McKenzie](#)). While the Australian system maintains checks to prevent companies from simply undercutting domestic labor with cheap, foreign labor, some companies have tended to create fake senior positions. Through the seniority of the listed positions, the companies were able to tap into the foreign labor market while actually filling the position with laborers who would not otherwise qualify for immigration. The punishments for the companies have been notably low with minor fines and temporary visa bans.

The second defining characteristic of the Australian and Canadian system—state participation—provides its own benefits. As previously discussed, given that immigration is clearly a legitimate, constitutional responsibility of government, dispersing the oversight of immigration at the state level allows for more localized benefit and accountability. For example, the ability of rural Australian states to loosen strict immigration rules to allow needed, traditionally blue-collar workers to help develop economically distressed areas. Likewise, state systems like that of Canada's Quebec, highlight increased local accountability and sovereignty that is reminiscent of U.S. states' desire to control their own destinies. In the case of Quebec, the provincial government frequently debates their specific qualifications for immigration as well as negotiates on behalf of their constituents with the federal government on where certain powers should be retained.

Introducing a State-Sponsored Immigration System to the United States

Prior to the late 1800s, American states provided the bulk of immigration infrastructure for the nation, creating their own incentive structures, operating under limited federal government oversight of migrant movement, and accommodating the interests of their citizens through decentralized state governments ([Library of Congress 2019b](#)). Since then, states have all but been eliminated from the immigration conversation, as immigration has been redefined as a solely federal authority ([Chy Lung v. Freeman](#)). Though states can significantly influence the performance of their economies through state tax and regulatory policies, they have little power in overseeing how foreign labor can be utilized within their boundaries.

Much like Australia and Canada, the United States can benefit from a skilled immigration system that relies on the states. Whereas the advanced economies of Australia and Canada maintain immigration systems in which roughly 60 percent or more of all permanent resident visas are skill-based, the U.S. allocates less than 15 percent to that category, while nearly 70 percent go toward family visas ([Department of Homeland Security](#)). Not only would states enjoy the ability to attract workers who would be beneficial to their economies, but competition between states for the best workers could promote better state policy. While the states already compete for domestic workers, there is a need for higher numbers of skilled workers. Additionally, as Americans appear to move at decreasing rates, skilled immigrants could fill the gaps ([Ihrke](#)). By implementing a skilled state-based approach to immigration, states with

similar industries—California, Washington, and Texas in the tech industry for example—will be incentivized to create increasingly competitive business environments to convince the most qualified candidates in a needed field to immigrate to their state. States can also provide a much better check on abuse of the system by corporations than can the federal government. By devolving some immigration authority back to the states, corporations will have less incentive to pressure federal authorities to ensure that their labor needs are specifically met. With immigration power spread across the states instead of condensed within one central authority, more checks on crony corporatism will be created as a natural outgrowth.

In considering the application of a merit-based, state-focused immigration system, state legislatures could play an important role in considering how much responsibility they want to maintain. After regaining the latitude in immigration policy that the Supreme Court has centralized in the federal government, U.S. states could opt for a shared immigration system where the federal government retains broad immigration authority. To this degree, states could select immigrants they had a particular interest in but still be subject to immigrants coming in from federal immigration programs.

Alternatively, U.S. states could argue for a system more in line with Quebec. Under this model, the federal government would decentralize more authority by delegating it to the states. Each state would have few requirements to accept

immigrants on behalf of the federal government and could more closely define what they hope to accomplish.

Conclusion

In deciding how the United States can modernize its immigration system, one pathway is to reinstitute the principles of federalism that are held in the 10th Amendment. Having already instituted systems that allow national governments to share immigration authority with states, Australia and Canada provide valuable examples for American legislators.

By devolving some immigration power, the federal government could allow states to utilize their localized knowledge and more accurately reflect the needs and desires of their citizens within a merit-based system. While Americans have prided themselves of the ability to reunite immigrating families, as Australia and Canada have shown, a state-centered, merit-based immigration system can retain a family unification focus.

Undoubtedly, there would be legal and logistical challenges to implementing state-based immigration schemes in America including checks for incentives toward fraud and crony corporatism. Yet, like Australia and Canada, synergy between state and federal lawmakers can ensure that the legal framework evolves. Through cooperative federalism, the U.S. has the opportunity to securely tap into the immense potential immigrants offer to the national economy and culture while ensuring that American priorities remain at the forefront. ★

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