

## **The Reluctant Refugee: Contrasting Canada's Refugee and Border Control Policies**

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### **Abstract**

Based on the number of refugees it resettles, the relatively high acceptance rates of its refugee determination process and the range of socio-economic rights it has extended to asylum seekers, the Canadian state is often presented as a generous state of refuge for those fleeing persecutory and oppressive regimes. Recent turns to restrictiveness, embodied in the implementation of a safe third country agreement and the use of security certificates, appear as troubling moves away from this history of refuge. However, the use of visa policies and carrier sanctions, which prevent asylum seekers from accessing Canada's refugee determination system, casts such an interpretation into doubt. Rather than reflecting humanitarian concerns, these prevention policies reflect a greater concern with efficiently and effectively maintaining control of Canada's borders.

How can such contradictory policies be explained? Engaging in the analysis of the discursive practices of media and political elites surrounding the implementation of various restrictive policy measures, this paper argues that contradictory policies emerge as a result of the context in which discursive contestation over these practices takes place. The debate over visa policies and carrier sanctions in Canada have taken place in the context of border control, where cost and efficiency are the primary values at stake; while other values, such as providing refuge, are excluded from consideration. Conversely, attempts to enact restrictive policies such as mandatory detention and refoulement have taken place in the context of refugee policy, where humanitarianism and security values were of primary concern. In this context, cost and efficacy of programs has been absent from consideration, resulting in costly and inefficient refugee policies that have contributed to more recent turns to restrictiveness.

## **Introduction**

It is not particularly difficult to understand how Canada has been perceived as being amongst the most generous and hospitable states of refuge in the world. It has a long history of welcoming refugees and asylum seekers: from Mennonites in the 1800's to refugees from Indo-China in the 1970's and 80's to the Iraqi refugees today. Canada routinely resettles the most refugees per year (on a per capita basis) and has the highest rates of acceptance for asylum seekers, consistently hovering between forty and fifty per cent, when other states are averaging between five and fifteen per cent. It also has the international accolades to support this construction, with the people of Canada awarded the Nansen Medal for their protection of refugees, the only people to have been given such an honour.

Upon closer inspection, this may be more a testament to the poor level of competition rather than Canada's policies per se, but from a comparative perspective, a strong case can be made that Canada remains the pre-eminent state of refuge in a world where commitment to offering refuge to refugees and asylum seekers appears to be on the wane. France, Germany and the U.S. are among a number of states that restrict the right of asylum seekers to get paid employment during the processing of their refugee claims (Gibney and Hansen, 2003:8). Australia avoids this dilemma entirely by detaining asylum seekers for the duration of the refugee determination process. With regard to employment rights, Canada is an exception to the rule, permitting asylum seekers the right to work after a medical examination.

In many states, asylum seekers are denied welfare benefits, or are eligible for severely circumscribed benefits. In the U.S. asylum seekers must rely on family and charity, in the UK and Germany asylum seekers receive in-kind benefits rather than cash payments. Again, Canada is an exception, offering financial assistance, the right to education and basic health benefits to asylum seekers. On most indicators of responsiveness to refugees and asylum seekers, Canada is among the world's leaders.

Consequently, recent turns toward restrictiveness in Canada, evidenced by the implementation of a safe third country agreement with the United States and the use of security certificates, are presented as moving away from Canada's historical role as a state of refuge. These two policy measures, and the restrictive turn in general, have been viewed as a consequence of post 9/11 concerns about immigration and security (Daniels et al, 2001; Dobrowolsky, 2007). While there is little doubt that the events of 9/11 and American concerns over the security implications of Canada's generous refugee policies were influential in the implementation of more restrictive measures, Canada's reluctance to offer protection to asylum seekers and refugees is not entirely externally driven nor is it a recent manifestation. Canadian efforts to implement a safe third country agreement with the United States dates back to the late 1980's while security certificates were first introduced in 1978.

The general perception of Canada as a generous and humanitarian state for refugees obscures the ways in which the Canadian state has actively attempted to minimize its obligations to refugees and asylum seekers. The Canadian state delayed implementing the 1951 Refugee Convention and the 1967 Protocol until 1978 because of concerns that it would undermine its ability to control who entered the state. Even

Canada's refugee acceptance policies in the 1970's and 80's demonstrate a greater concern with Cold War politics than providing refuge to those in need (Whitaker, 1991:22).

One policy in particular clearly demonstrates the effort on the part of the Canadian state to minimize the number (and type) of people who have access to its protection: visas. Implemented in 1978, visas were implemented as a way of controlling immigration into Canada and are used to target states producing refugee flows. In Canadian law, certain states may be exempted from the visa requirements, in practice those exempted are primarily Western states (Hashemi, 1993:7). Reimposition of visa requirements for states previously exempted has occurred on a number of occasions, and is almost always in response to an increase in the number of asylum seekers emanating from that state: Haiti in the late 1970's; Chile in 1980; Guatemala in 1984; the Czech republic in 1997; Hungary in 2001; Zimbabwe in 2001, and Costa Rica in 2004 (Matas and Simon, 1989).

In all cases, visas were imposed in response to an increase in the number of asylum seekers from these states. In a number of cases, the visa requirement clearly targeted genuine refugees or people in desperate need of refuge. For instance, in the case of Guatemala, the success rate of asylum seekers prior to the visa requirement being imposed was over 70% (Matas and Simon, 1989:75). Amnesty International even complained that Canada was using its visa requirements on countries where abuse was limited (*ibid.*). In 2007, as spokesperson for Citizenship and Immigration Canada stated that the third of nine rules relating to visa exemptions for European states was that "if a visa exempt country makes up two per cent of Canada's total refugee claims in the

current calendar year, a visa re-imposition would be considered (Berthiume, 2007). No mention was made of the success rates of the claimants, merely the number. Clearly one end to which the visa requirement system is directed is to stop the flow of asylum seekers to Canada.

How do we reconcile these two images of Canada? Policies such as visa requirements, carrier sanctions, and safe third country all seem inconsistent with more generous provisions such as high acceptance rates of asylum seekers, generous social-welfare rights for asylum seekers, and generous resettlement policies. One possible explanation is that certain aspects of the asylum and refugee regime are easier to manage and control than others (Jennings, 2006). Thus, areas in which Canada appears to be a world leader in offering refuge may reflect areas in which the executive has little control over the refugee determination process. Judicial interference and activist immigration lobbies help explain why some policies persist despite efforts of the state to restrict unwanted immigration (Freeman 1992, 1995; Joppke, 1998). In the Canadian case, a number of commentators have noted how the Singh decision has prevented a series of policy measures that may have resulted in lower acceptance rates and fewer social-welfare provisions (Smith, 1986; Campbell, 2000).

While there is undoubtedly some veracity to such explanations, they do not tell the whole story. They fail to explain why the executive and legislative powers have not overcome these obstacles to the extent they have in other states. Canada is not the only state with independent judiciaries and activist immigration lobbies. Furthermore, such explanations do not explain why so few groups have targeted visa requirements or carrier sanctions as a violation of Canada's humanitarian approach to asylum seekers and

refugees. Though Amnesty International has commented on Canada's use of visa requirements, the issue has not sustained attention like the safe third country agreement or security certificates have.

I argue that to understand how the contradictory approach to offering refuge to asylum seekers that has emerged in Canada requires an assessment of the discursive practices that sustain various practices. Discursive contestation over these policies occurs in distinct contexts. The debate over visa policy has attempted to balance concerns over the threat posed by foreign nationals with the need to maintain relatively open borders to certain states. In this context the primary value is utilitarian, maximize the economic benefits of open borders while minimizing the threat posed by asylum seekers and other foreign nationals. The provision of refuge to those in need is excluded from consideration. Conversely, contestation over detention has been framed in terms of balancing security concerns with the rights of refugees. In this context, the competing values of humanitarianism and state security are paramount, while cost and efficacy of policies is excluded from consideration.

The formulation and implementation of border control policy in distinct realms helps explain Canada's seemingly inconsistent and hypocritical approach to providing refuge. The focus on discursive domains does not supplant existing theories concerning the formation of border control policy, rather it helps us understand how the mechanisms identified in such theories are maintained and reproduced through ongoing practices. In the following section I examine the use of visa requirements in Canada, and explore how policies that explicitly target refugee populations have been rendered as natural and acceptable form of border control.

## **Visas Requirements, State Sovereignty and Economic Prosperity**

Though the use of visas to limit migration existed prior to 1976, the Immigration Act of 1976 introduced a universal visa requirement, under which all visitors to Canada were required to obtain a visa prior to their arrival at a Canadian port of entry. Visa requirements have been a feature of Canadian border control since then and has been maintained in the Immigration and Refugee Protection Act of 2001. It is however, universal in name only. Since its inception, the Canadian state has exempted certain countries from the visa requirement, allowing citizens of those states to arrive at a Canadian port of entry without a visa. According to the government of Canada, exemptions are granted to countries that pose minimal health, safety and security risks to Canadians, as well as minimal threats to the integrity of our immigration and refugee programs (CIC, 2007). As evidenced by the Canadian government's claim, the use of visas are framed in terms of security and represent a measure that is necessary for the security of the state and its citizens.

In this construction, the security of the host state's citizens is prioritized, while the security of the citizens of the state who are subject to the visa restrictions is excluded from consideration. Indeed, citizens of these states are positioned only as potential threats, either by bringing in disease, criminality, terrorist connections or simply by undermining the sovereignty of the state, understood in terms of the state's ability to control its borders (Koslowski, 2000; Collinson, 1996).

In general, the construction of foreign nationals as a potential threat renders border control an acceptable and appropriate, indeed necessary duty on the part of the state. It does not however, render any and all border control measures acceptable,

appropriate or necessary. First, not all foreign nationals are portrayed as threatening. Larger patterns of amity and enmity influence which states' citizens are perceived as potentially threatening, thus policies which do not discriminate between 'friendly' and 'enemy' foreigners are uncommon. This is evident in the use of visa exemptions. As Neumayer notes, bestowing visa free status on another nation is a welcoming act, consistent with a relationship broadly understood as friendly (Neumayer, 2006:77).

Secondly, security and safety is not the only value that influences the formation of border control policies, there are economic considerations as well. The financial cost of institutionalizing a border control policy may be prohibitively high. In the case of border control, the cost of monitoring and tracking visa holders once in the state has been perceived as too high. Additionally, the economic cost of border control policy must take into account its effect on the transnational movement of certain goods, services and people. Thus, border control policy is reflective of the security and economic values of the host state.

The implementation of the universal visa requirement in 1978, with the use of selective exemptions, demonstrates how these values have coalesced into a policy that clearly identifies the security threats and minimizes the cost to the state and does not interfere with cross border economic activity. Parliamentary discussion focused on the security implications of two types of threatening foreign nationals who would be dealt with through the visa system: 'overstayers' and unauthorized arrivals. According to Jake Epp, who was on the Joint Special Committee on Immigration Policy during the formation of the visa requirement in 1978, visas were needed to prevent the arrival of the visitors who intended to work illegally in Canada and to keep track of those who stayed

longer than permitted and simply entered the “mainstream of Canadian life”, of which there was an unknown, but presumed large and problematic number (Epp, 1977).

Security however, was the not the only consideration in resolving these problems. The visa system was seen as an effective and inexpensive system that represented a balance between facilitating entry and providing security. Some members of the government had proposed a tighter system of entry and exit cards as a means to properly and effectively control “illegal migration movements”, but this system was rejected because of the high costs associated with such a system (Macdonald, 1976).

Though the security concerns that initially animated the decision to employ visa requirement concerned illegal workers and overstayers, it did not take long for asylum seekers to be included in the list of foreign nationals that represented a source of insecurity. Within two years of implementing the visa requirement, the Canadian government withdrew the visa exemption for Haiti in response to an increase in refugee claimants (Matas and Simon, 1989:75). Since then, the use of visa requirements in response to refugee flows has become explicit policy. At the current time, the Canadian government reconsiders the exemption status of a state if its citizens make up two per cent of Canada’s total refugee claims in a year (Berthiaume, 2007). There is no mention of whether the claims are found to be unfounded or considered an abuse of Canada’s refugee determination system – the imposition of a visa requirement is justified on the grounds of the number of claims alone.

In most cases, the re-imposition of visas have been very effective in preventing access to asylum seekers. After the withdrawal of the visa exemption, claimants from Costa Rica decreased from 1,335 in 2003 to less than 55 in 2005; Zimbabwe from 2,195

in 2001 to 92 in 2002; Hungary from 2,961 in 2001 to 252 in 2002; the Czech Republic from 9,333 in 1997 to 43 in 1998 (CIC Facts and Figures, 2006). Clearly, the removal of visa exemptions is designed to identify and prevent refugee claims.

Security however, has not been the only factor taken into consideration in the use of visa requirements, part of the consideration is cost. It is much cheaper for the state to process refugee claims overseas, where there is no complex process involving multiple avenues of appeal or obligation to feed and house them during the processing of the claim, than to have them go through the refugee determination process in the state, where the time and costs are much higher. Additionally, the states on whom visa requirements have been imposed and exempted clearly reflects patterns of amity and enmity as well as trade and tourist considerations. Examining the 20 states who at one time have produced more than 2% of refugee claims in any given year since 1997 reveals that only three of those states have subsequently been granted visa exemptions. Two of the states to be granted exemptions are the Czech Republic and Hungary, both as part of the process of an ongoing review for new members of the European Union. The third, Mexico, has been exempt throughout this time period, despite the fact that they have contributed over 2% of Canada's refugee claimants every year. These cases indicate the importance of economic ties (within NAFTA and between Canada and the EU). Neumayer has demonstrated a similar pattern in visa waivers that trade, tourism and civilizational/cultural affiliation are influential factors in the establishment of visa waivers (Neumayer, 2006:76-77).

Surprisingly, the use of visas to prevent the arrival of asylum seekers has garnered very little attention. While organizations such as Amnesty International and the UNHCR

have at times expressed concern over Canada's visa policies (Matas and Simon, 1989), among the political elite and media in Canada, the use of visas for this reason has been largely uncontested. In 1984, the Canadian government removed the visa exemption for Guatemala in response to an increase in refugee claimants from a regime that was clearly persecutory. The previous year, the success rate of Guatemalan refugee claimants in Canada exceeded 70 per cent and in early 1984, the Canadian government joined the United Nations in condemning Guatemala for abuses taking place there. In other words, it was clear that the Canadian government recognized that refugee claimants from Guatemala had 'genuine' claims. Yet, removal of the visa exemption garnered no significant coverage in the mainstream media.<sup>1</sup> In Parliament, the visa issue was a very minor matter. Only one member of Parliament questioned the government's decision to impose the visa on Guatemala. Dan Heap, a member of the New Democratic Party, and an outspoken proponent for refugees questioned government members on four separate occasions. Despite Heap's efforts, the decision to impose a visa requirement on Guatemala did not become a major issue in the House of Commons and never moved beyond one member's concern over the issue.

The advantage of having at least one Canadian MP question the government over the visa policy means it had to provide some public explanation. To the extent that the government defended its decision, the visa requirement was justified on the grounds that "the government cannot keep pace with the volume of claims" (Ethier, March 16, 1984); and that the visa exemption was replaced by "more generous provision we have put in place" within Guatemala (Roberts, April 12, 1984) – though few details of what this

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<sup>1</sup> The Globe and Mail, Canada's largest daily national newspaper, did not address one story to the decision to withdraw Guatemala's visa exemption.

meant were provided. In subsequent questioning, it appears the more generous provisions were expedited visa processing and the eventual inclusion of Guatemalans in the special designated classes of refugees. In essence, the special provisions prevented Guatemalan asylum seekers from reaching and making claims in Canada, and forcing them to make their claims at the Canadian embassy in Guatemala.

Implemented as a matter of regulatory change, rather than legislative change, the decision to remove Guatemala's visa exemption met with minimal resistance or debate amongst the governing elite and with limited public exposure via media coverage. The policy was justified by the government as necessary to ensure the maintenance of the existing system. Abuse of the system was not the motivating factor, rather it was implemented in response to a perceived inability to keep up with the pace of claims.

A similar form of debate characterized the re-imposition of visa requirements on the Czech Republic in 1997, due to an increase in the number of Roma refugee claims. Between January 1 and October 1, around 1300 Czech nationals made refugee claims in Canada. The issue was not once discussed in the House of Commons and the government's reasons for imposing the visa requirement were not officially justified. The decision was announced by the Immigration Minister's office, and the media presented the decision as one based on the "surge of refugee claims by hundreds of Czech Gypsies"(Appleby, 1997).

Again, there was no indication that the visa waiver had been revoked due to unfounded claims or abuse of the system, rather it was imposed simply because of the increase in the number of claims. The *Globe and Mail* devoted five stories to the issue of the visa requirement and Czech asylum seekers. Though the media reports referred to the

rather small number of Czech claimants as a tide, flood, wave, and inundation; there were no indications that the claims were seen as illegitimate or unfounded. In fact, two of the stories outlined in detail the type of persecution and discrimination the Roma or Gypsies faced in the Czech Republic.

As in the Guatemalan visa case (and Zimbabwe in 2001 and Costa Rica in 2004), there was very little attention to the withdrawal of waiver exemptions by the media or the political opposition. Justification offered for the measures did not even cite abuse of the refugee determination system. It was sufficient that the number of claims had increased.

The absence of the need to provide explicit legitimization for the visa requirement and the widespread use of such policies to control access to the state reflects the general acceptance of the right of states to control entry (Neumayer, 2006). In this respect, the use of visas does not violate any international norms on controlling entry to the state. Indeed as Sassen notes, there is international law that grants non-citizens the right to enter a foreign state (Sassen, 1996). The only rights that have been enshrined are the right of exit and entry to one's own country (Neumayer, 2006:72).

Furthermore, the right of states to control entry is part of a dominant discourse pertaining to the very meaning of state sovereignty (Koslowski, 2000; Collinson, 1996). Thus, exemptions to the visa requirement are granted by individual states, and are not obligatory or subject to the norms of reciprocity that often govern the relationship between states in the international system (Keohane, 1986). Even though Neumayer finds that there is an element of reciprocity in the waiving of visa requirements between states, there are enough counterexamples to show that it is not a highly influential factor. Indeed as Neumayer shows, waiving visa requirements is more likely reflective of wealth, level

of armed conflict, tourism, and shared political/civilizational characteristics than of reciprocity (Neumayer, 2006: 78-80). Indeed, this is borne out by the Canadian government's own regulations, which state that visa policy is based on country by country assessment which evaluates socio-economic indicators, immigration issues, travel documents, safety and security issues, border management, human rights and bilateral relations (CIC, 2007).

Visa requirements have become one of the most ubiquitous and efficient forms of controlling international migration and in limiting the number of people who gain access to the protection of states. In many states, including Canada, limiting access to refugee claimants is an explicit purpose of visa policies. While other policies, such as detention, have been justified by claims regarding the abuse of the refugee determination process, no such justification has been offered for visas. In the case of Guatemala, visas were implemented in an instance where 'abuse' was known to be very low. I argue that this is the result of a dominant discourse in which foreigners are identified as threats, the state has a sovereign right to control entry, and economic considerations figure prominently. As a result, international obligations to refugees have been completely excluded from the debate over these policies. This is not the case with all forms of border control policy. As the next section demonstrates, the debate over detention policies has taken place in a different discursive domain.

### **Detention**

Canada's policy on the detention of asylum seekers also reflects the dominant construction of foreign nationals as a potential security threat. According to Canadian law, asylum seekers and failed refugee claimants may be detained if they pose a threat to

the public, if they are a flight risk or if their identity cannot be established. As in the case of visa requirements, the state assesses the level of threat, though the assessment is based on the statistical categorization of all persons from a particular state. Thus, if refugee claimants from a particular state compose more than 2% of Canada's total refugee claimant population (and economic factors do not dictate otherwise), visas may be required from all citizens of that state. The decision to detain, on the other hand, is (normally) based on individual assessment. While the methods and type of assessment for visa and detention differ, they both reflect the general construction of foreign nationals as potentially threatening.

The shared basis of foreign nationals as a security threat has not produced similar implementation; the use of visas and detention exhibit important differences. I argue that this has emerged because the issue of detention has been framed in terms of both state security and the rights of asylum seekers. This is evident in the process to determine the appropriateness of detention. The security considerations are balanced with the near universally accepted idea that asylum seekers should only be detained for a limited and justified period of time (CIC, 2007b). In order to ensure that the asylum seekers rights are safeguarded, there are to be ongoing reviews of individual decisions by an independent tribunal (CIC, 2007b). In most cases, the initial decision to detain an asylum seeker or refugee is administrative and done by a frontline immigration officer or an immigration bureaucrat (Pratt, 2005:4). In keeping with the rights discourse, all decisions to detain asylum seekers are reviewed within forty-eight hours by a senior immigration official. If detention is extended, it is reviewed after seven days, after which reviews by the Immigration Division of the Immigration and Refugee Board take place at thirty-day

intervals (Pratt, 2005:32). Consequently, fewer than one third of refugee claimants are detained and the average length of detention for those who are is between 14-15 days (CIC, 2004).

The detention of individual asylum seekers remains an exceptional measure in Canada, though it draws remarkably little attention. In that respect, it is like the decision over the withdrawal of visa exemptions from a particular state, neither generate public contestation nor require extensive public argumentation to justify.<sup>2</sup> Yet, unlike visa policy, the policy of detaining asylum seekers in general has produced a fair amount of public contestation, particularly during high profile arrivals and in instances of policy change, as occurred with the implementation of IRPA in 2001. By examining such instances, it is possible to identify the discursive practices that shape, and are shaped by, the Canadian policy on detention.

Two incidents provide insight into the domain of discourse in which the contestation over detention has taken place. The first occurred in response to the arrival of four boats carrying 599 Chinese asylum seekers off the west coast of Canada in 1999. In keeping with standard policy, the first boat arrivals were released into the community once their identities were established and they were confirmed to not be a security risk. However, this policy response changed with the arrival of subsequent ships. In these cases, all of the asylum seekers were detained and the average length of detention for these asylum seekers 212 days, fourteen times longer than other asylum seekers that were detained (Mountz, 2003). The conditions of detention were extraordinary as well. The initial detention facilities set up for the asylum seekers consisted of barbed wire, attack

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<sup>2</sup> Detention related to security certificates have proven to be controversial and publicly contested, but this is a distinct phenomenon from 'normal' detention of asylum seekers.

dogs and floodlights, and ultimately cost tens of millions of dollars (Beatty, 1999). Later, most of the boat arrivals were transferred to detention facilities in Prince George, a remote area of northern British Columbia that was a long way from refugee advocates and the lawyers for the asylum seekers (Mountz, 2003). The treatment of the 1999 boat arrivals was unusual in many respects, demonstrated by their lengthy incarceration and the fact that they were brought into refugee hearings amid tight security and in handcuffs, including minors who had made the journey (Lunman, 1999).

The extraordinary use of detention in this case reveals the dominant discourse regarding the ordinary use of detention. The asylum seekers in this case were regarded as unusual, thus justifying the extraordinary detention measures. The first way in which the asylum seekers were constructed as unusual was that they had arrived by boat. Compared with air travel, far fewer asylum seekers arrive in Canada by boat, yet they generate much greater media attention and public hostility. The last major boat arrival in Canada had occurred in 1987, which generated a similar level of media attention and public hostility. The different perception of air and boat asylum seeker arrivals was highlighted by the arrival of asylum seekers from China by air during the boat episode. In September 1999, 75 Chinese asylum seekers arrived by air; they were however, treated in the 'normal' manner for asylum seekers. The immigration department defended the treatment given to the Chinese asylum seekers who had arrived by air, stating that it was the unusual circumstances surrounding the arrival of the boat people that warranted their detention (Skelton, 1999). The amount of media coverage is one way in which the arrival of boats carrying asylum seekers was unusual. The arrival of asylum seekers by air is rarely, if

ever, reported. Coverage of the boat arrivals was extensive, with the *Globe and Mail* devoting over 23 front-page stories to the issue over the 10 week 'crisis'.

In this intensified media coverage, the dominant construction was that the boat arrivals were illegal immigrants who had paid smugglers to bring them to North America for better economic opportunities, but who were more likely to end up exploited in circumstances akin to 'indentured' servitude or forced into the sex industry in the United States. In the media coverage, the Chinese boat arrivals were consistently depicted as illegal immigrants or when the term 'refugee' was used, modifiers such as 'bogus' 'economic' or 'illegal' accompanied it (see for example: Collacott, 1999; Gibson, 1999; Thompson, 1999). Frequent reports of how much money the asylum seekers had paid smugglers to get to Canada contributed to the portrayal of the asylum seekers as economically motivated. The Canadian news media reported that illegal migrants paid between \$25,000 and \$40,000 to be smuggled to North America (Lee and MacQuenn, 1999). The journey of the asylum seekers was depicted as 'climbing Golden Mountain', a reference to the migration of Chinese workers to the California gold rush, rather than as fleeing refugees (Armstrong and Mickleburgh, 1999).

The portrayal of the asylum seekers as illegal migrants who had paid smugglers to bring them to Canada fit with the overall theme that they and the smugglers were abusing Canada's refugee determination process. Most of the news articles portrayed the asylum seekers as using the refugee determination system to gain freedom to move on to the United States to find work. Prior to the asylum seekers actually requesting refugee status, newspapers across Canada cynically 'predicted' that the asylum seekers would seek refugee status, reminding readers that the process would 'take years to process' and that

during that time they would either be free to move about Canada and have access to Canada's social safety net or that they were likely move on to the United States to find work (Lee, 1999). The continued assertion that the asylum seekers would abandon their refugee claims and disappear was one of the most prominent themes that emerged in the Canadian media's coverage of the event (Mickleburgh, 1999).

Once the asylum seekers made refugee claims, the media reported that the asylum seekers were 'being evasive' and 'uncooperative' during their initial hearings and that their answers were very similar and that they 'had been coached in what to say' (Beatty, 1999). Further undermining their claims to be refugees was the widely reported RCMP seizure of makeshift weapons from the asylum seekers' detention facilities, followed only days later by hunger strikes and protests over the quality of food they were receiving (Skelton and Beatty, 1999).

Immigration officials portrayed the asylum seekers as posing a risk and asserted that they needed to keep the asylum seekers in detention because they were 'not satisfied with their identity', 'that they might be a danger to the public' and that they were 'unlikely to show up for their next hearing' (Moore, 1999:6). It was reported that immigration officials were unclear who among the asylum seekers were migrants and who were smugglers. This was supported by the reports that immigration officials had found makeshift weapons among the asylum seekers, and that certain of the asylum seekers appeared to be intimidating other asylum seekers. It was also reported that some of the asylum seekers had attempted to intimidate the immigration officials (Mountz, 2003).

The main opposition at the time, the Reform Party, contributed to the construction of the asylum seekers as a threat as well. Upon the arrival of the first boat, Reform MP John Reynolds referred to the asylum seekers as ‘criminals’ and called for them to be sent back immediately (Mountz, 2003). This assertion was supported by a couple of news articles and editorials in which Chinese authorities were quoted as saying that the asylum seekers were likely criminals. Reform Immigration critic Leon Benoit argued that illegal migration was fuelling an increase in crime, increasing the risk of communicable diseases and posing a risk to the economy due to a potential U.S. response (McInnes, 1999). To prevent these dangers from becoming reality, Benoit urged the Liberal government to recall Parliament to enact emergency legislation to deal with the issue. Preston Manning, the leader of the Reform Party and leader of the Opposition, urged the government to recall Parliament to use the notwithstanding clause in order to overrule the rights of all asylum seekers to a hearing, a right that had been established by the courts as a result of the *Singh* decision. To counter the threat Canada faced from asylum seekers, Manning argued that all asylum seekers should be jailed throughout the process, have no avenue for appeals and face speedy deportation (Thompson, 1999). The Reform Party’s stance was consistent with their view of the asylum seekers as ‘threatening to the safety, health and economic stability of Canada’ (MacInnis, 1999).

Yet, the Reform Party’s calls largely went unheeded. The only recommendation made by their leader, Preston Manning, that was implemented by the government was that the asylum seekers were detained through the determination process. None of the other standard rights that asylum seekers enjoy were violated: Parliament was not recalled, the notwithstanding not employed and appeals were not denied.

This was due to the portrayal of the asylum seekers as victims, rather than the primary threat. Once security and identity checks did not reveal any unusual circumstances justifying detention, the victimization of the asylum seekers became the prominent concern. The disappearance of as many as 30 asylum seekers from the first boat was used to support the construction that asylum seekers were victims of a people smuggling operations. The disappearance of a large number of asylum seekers was not inconsistent with the number of asylum seekers who regularly abandon their claims, immigration officials admitted that the majority of Chinese refugee claimants abandon their refugee claims, yet those who arrived by air were not subjected to the same detention policies.

The media and the political elites used the disappearance of the asylum seekers to show how this episode demonstrated the threat of Asian gangs who were engaged in people smuggling. It was claimed that the missing asylum seekers had abandoned their refugee claims because they had been kidnapped or forced to move on by the people smugglers. The news media reported that the asylum seekers were being 'stalked and intimidated by local gangs' (Abramson, 1999). The activities of 'snakeheads' were prominent in media coverage and in the discursive practices of politicians and law enforcement officials. This term was used extensively during this crisis to describe the people smugglers who actively recruited and transported people for profit (Mickleburgh, 1999). Unable to pay the fee for being smuggled into North America upfront, the smuggled persons remained indebted to the smugglers, who would then force the smuggled persons to pay off their debt once in North America through indentured servitude, sometimes in the sex industry. The large number of unaccompanied minors

among the boat arrivals was reported as being unusual and perhaps indicative of a human trafficking operation. Thus, detention was justified as a way to prevent the snakeheads from forcing the asylum seekers into exploitative working conditions.

This is evident in the response of Immigration Officials to the arrival of refugee claimants by boat in 2002. A spokesman for Immigration Canada defended the policy of detaining boat arrivals because of “a very organized effort to smuggle human cargo by ship under extremely inhumane conditions...detention is a tool we can use to discourage this” (Mickleburgh, 2001). The RCMP also defended the policy, stating that it “prevents ‘snakeheads’ from making money on their people smuggling schemes” (ibid.). Boat arrivals were equated with human smuggling and trafficking, while air arrivals were not.

This focus on human smuggling and trafficking was carried through to the debate surrounding the implementation of the Immigration and Refugee Protection Act of 2001 and the “Hands Across Borders” report by the Standing Committee on Citizenship and Immigration. Many of the measures contained in IRPA, including expanded powers of detention, were in response to the 1999 boat arrivals, and the dominant discourse surrounding these measures was consistent with that surrounding the detention of the boat arrivals in 1999. The IRPA was introduced as a tough bill designed to crack down on abuse of Canada’s refugee determination system and to prevent human smuggling. The theme outlined by Immigration Minister Caplan was that “by saying ‘no’ more quickly to those who abuse the rules, we can say ‘yes’ more often to those...who Canada will need to grow and prosper” (Caplan, 2001). According to Caplan “Bill C-11 is a tough bill...on criminal abuse of our immigration and refugee protection systems...and contains new penalties for people smugglers and for those caught trafficking in humans. These are

deplorable activities.” (ibid). Thus, the context in which the issue of expanded powers of detention was discussed was one of combating people smuggling.

For the most part, the primary political opposition party supported such a view of the refugee determination system and the issue of detention. The Immigration critic for the Canadian Alliance reiterated the need for the new legislation because “Canadians are angered by policies which have let dangerous criminals and unscrupulous human smugglers who bring in illegal immigrants, jumping the queue and hurting the integrity of our system” (Mark, 2001). Even the New Democratic Party and the Bloc Quebecois, who generally opposed many of the new measures proposed in the bill, agreed that preventing abuse and human trafficking was worthy objective that the bill should address.

Similarly, the Hands Across Borders document, which was a report by the Standing Committee on Citizenship and Immigration, made a number of recommendations regarding the use and length of detention, detention statistics, building more detention centers as well as the detention of children. In the report, the committee supports the use of detention as an effective and legitimate policy measure. In its response to the recommendations of the committee, the government agreed with many of the committee’s findings and reiterated its “commitment to the use of detention as an enforcement tool to ensure the safety, security and integrity of Canada’s immigration and refugee protection systems” (CIC, 2007b)

Again, the issue of detention was clearly framed in terms of human smuggling and refugee rights. The detention of children emerged as a contentious issue and the government stressed that “best interest of the child be a factor in the decision”. However, the “possibility of continued control by organized human smugglers or traffickers who

brought the children to Canada” was cited as a concern that may warrant the detention of children. (CIC, 2007b).

The strong ‘rights’ element of the discourse has shaped the policy on detention in a variety of ways. First, in the ongoing dialogue concerning the use of detention, mandatory detention was never put on the table. All parties to the debate stressed the need to balance the human rights of refugee claimants and the security needs of the state. According to Immigration Minister, a sentiment echoed by all the opposition parties was that “Canadians want a system based on respect for our laws and our traditional openness to newcomers (Caplan, 2001). In IRPA, government speeches and the Hands Across the Borders document, the need to balance public safety and the rights of asylum seekers are continually stressed as the primary factors in the use of detention for asylum seekers.

### **Conclusion**

The idea that the turn to restrictive border policies in Canada is inconsistent with its historical humanitarian identity and largely driven by post 9/11 security concerns ignores Canada’s long history of restricting access to asylum seekers and refugees. Policies such as visa requirements and carrier sanctions were established in Canadian law in 1978 (and used prior to that) and were employed to keep out Haitian and Guatemalan asylum seekers in the late 1970’s and early 1980’s. The use of visas to prevent the arrival of asylum seekers is explicit government policy, yet it has garnered little attention or public contestation. The justification for visas rests on the dominant discourse surrounding state sovereignty, the right to control borders and the security threat posed by foreign nationals. The consequence of visa policy on refugees features rarely in media coverage or political discourse, yet the evidence is clear that it severely circumscribes the

ability of asylum seekers to access the state. To the extent that visa policy has been contested, the primary countervailing consideration is economic – where visas may interfere with Canada’s economic interests.

Detention, like visas, has been employed since long before 2001. Yet, the use of detention is limited in Canada and is considered an extraordinary measure. This stems from the strong connection between detention and the rights of asylum seekers. Though asylum seekers are still constructed as potentially threatening foreign nationals, the use of detention has been weighed against the harm detention causes. In the case of the boat arrivals in 1999 and 2002, lengthy detention was justified as consistent with the effort to combat ‘human smuggling’, to prevent those who have engaged in smuggling from succeeding and to protect the potential victims of smuggling.

The existence of these two discursive domains has resulted in two types of policy with drastically different effects on Canada’s openness to asylum seekers and refugees. There are a host of reasons that such two distinct discourses and sets of policies exist. External border control policies such as visas, carrier sanctions and interception officers, all of which prevent asylum seekers from seeking refuge – do not violate established international norms regarding the sovereign rights of the state nor the rights of citizens to flee their home states. Internal controls such as detention, limited socio-economic, mobility and political rights confront a well-established domain of domestic politics, where the rights of citizens and foreign nationals restrict the range of acceptable border control policies. In many respects, this speaks to the success of international refugee law in permeating states and restricting the types of policies they may implement. At the

same time, it demonstrates the persistence of the state in managing international migration.

At its core, this paper demonstrates the real political effects of the construction of distinct international and domestic political spheres. In the international realm, border control is internationalized and removed from the constraints that operate domestically. In this realm, the interests of state actors are dominant and the effects of such policies on refugees is excluded from consideration.

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