

Refuge

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CAN AID SWITCH GEARS TO RESPOND TO SUDDEN FORCED DISPLACEMENT?

THE CASE OF HAUT-UÉLÉ, DRC

Katharine Derderian and Liesbeth Schockaert

A “GREAT” LARGE FAMILY:

UNDERSTANDINGS OF MULTICULTURALISM AMONG NEWCOMERS TO CANADA

Christopher J. Fries and Paul Gingrich

REFUGEE “IN-BETWEENNESS”: A PROACTIVE EXISTENCE

Lalai Manjikian

FEELING THE PINCH: KENYA, AL-SHABAAB, AND EAST AFRICA’S REFUGEE CRISIS

Avery Burns

ENVIRONMENTAL MIGRANTS

AND CANADA’S REFUGEE POLICY

Sheila Murray

INVESTIGATING INTEGRATION: THE GEOGRAPHIES OF THE WUSC
STUDENT REFUGEE PROGRAM AT THE UNIVERSITY OF BRITISH COLUMBIA

Robyn Plasterer

DEBATE: REFORMING THE CANADIAN REFUGEE DETERMINATION SYSTEM

Martin Collacott vs Ronald Poulton

Refuge

CANADA'S PERIODICAL ON REFUGEES
LA REVUE CANADIENNE SUR LES RÉFUGIÉS

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Founded in 1981, *Refuge* is an interdisciplinary journal published by the Centre for Refugee Studies, York University. The journal aims to provide a forum for discussion and critical reflection on refugee and forced migration issues.

Refuge invites contributions from researchers, practitioners, and policy makers with national, international, or comparative perspectives. Special, thematic issues address the broad scope of the journal's mandate, featuring articles and reports, shorter commentaries, and book reviews. With the exception of formally solicited work, all submissions to *Refuge* are subject to double-blinded peer review. Articles are accepted in either English or French.

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Contents

INTRODUCTORY EDITORIAL REMARKS	<i>Michael Barutciski</i>	3
FEATURE ARTICLES		
Feeling the Pinch: Kenya, Al-Shabaab, and East Africa's Refugee Crisis	<i>Avery Burns</i>	5
Can Aid Switch Gears to Respond to Sudden Forced Displacement? The Case of Haut-Uélé, DRC	<i>Katharine Derderian and Liesbeth Schockaert</i>	16
Re-theorizing Human Rights through the Refugee: On the Interrelation between Democracy and Global Justice	<i>Kiran Banerjee</i>	24
A "Great" Large Family: Understandings of Multiculturalism among Newcomers to Canada	<i>Christopher J. Fries and Paul Gingrich</i>	36
Refugee "In-betweenness": A Proactive Existence	<i>Lalai Manjikian</i>	50
Investigating Integration: The Geographies of the WUSC Student Refugee Program at the University of British Columbia	<i>Robyn Plasterer</i>	59
It Takes a Village: Perspectives from a Multidisciplinary Team Addressing the Needs of HIV+ Refugees in Canada	<i>Heather Mah and Nicole Ives</i>	75
Environmental Migrants and Canada's Refugee Policy	<i>Sheila Murray</i>	89
Ministerial Influence at the Canadian Immigration and Refugee Board: The Case for Institutional Bias	<i>Jacqueline Bonisteel</i>	103
DEBATE		
Reforming the Canadian Refugee Determination System	<i>Martin Collacott</i>	110
Wonderous Strange: A Reply to the Myth of the Evil Refugee	<i>Ronald Poulton</i>	119
Collacott Response to Poulton Critique	<i>Martin Collacott</i>	123
INDEX OF BACK ISSUES		125

Introductory Editorial Remarks

MICHAEL BARUTCISKI

Chères/Chers Collègues,
 Editorial change is always an awkward time in terms of making sure various aspects of the transition occur smoothly. In this case it is particularly challenging because of the work and investment put into the journal by my predecessor. Before accepting the position of editor-in-chief, I looked carefully into the evolution of the journal in which I had first published a piece almost two decades ago. It was quickly clear to me that Professor Sharryn Aiken had done a wonderful job in moving the journal far along the path from a periodical with relatively short articles to a world-class academic journal.

According to the information I was able to gather as I pondered the decision to accept the position, the dedication and energy demonstrated by my predecessor is truly extraordinary. She took this journal from a difficult phase in which it was emerging from a format somewhat similar to a newsletter and turned it clearly into an academic journal that is attracting a large number of submissions of remarkable quality from around the world. The journal is now engaging in both conceptual and practical debates on a variety of topics, as should be the case for a globally minded publication in this field. At the same time, the Canadian base is undeniable, whether it is in the content that focuses explicitly on Canadian problems or in the implicit approach that drives many of the articles. And through this modern Canadian outlook the journal reaches out to perspectives presented by diverse authors from different continents, as well as contributions that would appear at first glance to have no connection to Canada. Indeed, *Refuge* has become over the last few years much more than “Canada’s periodical on refugees.”

Many thanks go out to Sharryn Aiken for being part of this journal, for having helped it in difficult times, for having transformed it, and for being part of the community of engaged scholars who are trying to make a difference in our imperfect world. I look forward to her continued participation on the editorial advisory board.

The intention of the new editorial team is to continue the evolution of the journal and to consolidate its position in local and international discussions. To the extent possible, we should all be trying to encourage these discussions

to not shy away from debates in which provocative and controversial views are presented. While it is difficult to imagine work in this field that is not in some way attempting to be policy-relevant, we should consider the possibility that “policy-irrelevant” work can often be surprisingly useful for both practitioners and academics who are exploring new ways to deal with old problems. After all, it is probably safe to assume that such a journal should strive ultimately to contribute with innovative reflections and lively debates on problems in our field, regardless of whether one defines it as “refugee studies” or as “forced migration studies,” two distinct categorizations that can potentially have highly different meanings and implications. While other printed and online sources will provide readers with basic information and awareness on key issues in the field, we can provide at the very least a heuristic function accompanied by promises to impact the way we think about population displacement.

We consequently need to debate all views, popular and unpopular. Despite the fact that various analysts will present different interpretations of refugee situations around the world, few would deny the difficulties and global inequalities that characterize forced migration in the early stages of the twenty-first century. More locally, the Canadian government has tried to implement various legislative changes in order to improve what it perceives as serious problems, and these attempts have been met by strong criticisms from refugee advocates. From a starting point that assumes we all want to help refugees, we need to hear each other out even though our views may differ on how to achieve this general objective.

Donc, soyons prêts à écouter les autres points de vue (y compris en français, avec la tradition intellectuelle distincte que cela puisse impliquer) et préparons nous à débattre.

The general call for papers made for this issue has produced a wide variety of articles that reflect the lively debates, as well as diverse methodologies and conceptual frameworks, that make up our interdisciplinary field.

The issue opens with two practical problems relating to population displacement in Africa that pose complicated questions for both academics and policy makers. Derderian and Schockaert apply their field experience in order to encourage us to think about the shift from long-term

development assistance to emergency humanitarian aid in the context of the unstable eastern regions of the Democratic Republic of Congo. Further east, problems concerning the border between Kenya and Somalia are analyzed by Burns, who explores the connection between refugees and national/regional security. The opening studies focusing on problems related to border regions in Africa are followed by a more conceptual piece by Banerjee that explores refugeehood in the context of principles related to our notions of justice and democracy.

The next articles in the issue deal generally with questions of integration. Fries and Gingrich propose an empirical study on aspects of multiculturalism policy that has potential implications for integration efforts and the way we rethink Canada's multiculturalism policy in light of recent challenges. Manjikian follows with an empirically based analysis in order to propose new conceptual ways of thinking about how refugee claimants can be proactive, particularly in terms of civic engagement at the local level, while waiting for their status to be clarified. Whereas the symbolic impact of the student refugee program administered by the World University Service of Canada has been considerable, few studies have focused on this innovative idea that has existed across Canadian campuses for decades. Plasterer contributes in filling this void by examining aspects of the program run by students from the University of British Columbia. The integration sub-theme is capped with an empirical study authored by Mah and Ives that explores the needs of HIV+ refugees from a multidisciplinary perspective with various implications on practice and theory.

The last series of articles in this issue engages directly with what might be considered macro-level policy challenges currently being debated in Canada but with implications

and lessons beyond the country's borders. Murray explores Canada's response to climate change while providing an overview of how it fits within more general refugee policy. Bonisteel analyzes a concern raised recently by a number of advocates who claim that the current Immigration Minister has made statements which undermine the integrity of Canada's refugee determination procedure. With her proposal to have the problem raised before the courts, the country's adversarial legal system suggests that analysts inclined to defend the governmental position may want to take up Murray's challenge by exploring counter-arguments within the pages of upcoming *Refuge* issues.

To lead the final set of contributions to issue 27(1), Collacott proposes a policy-oriented commentary on reform of the Canadian system that goes against the flow of most academic analyses in the field. The topic lends itself well to a formal debate: Poulton provides us with a response from an advocate's viewpoint, immediately followed by Collacott's rebuttal. As suggested by the Collacott and Poulton exchange, the divide is large between the various actors concerned about the evolution of Canada's refugee policy. The problems raised are clearly of relevance around the world, and we can only hope that open discussions within the Canadian context contribute to our collective attempts to understand these difficult questions which affect refugees worldwide.

Please note that due to publication delays, some articles included in this spring 2010 issue have been updated as of April 25, 2011.

Bonne lecture. Le débat est ouvert ...

MICHAEL BARUTCISKI
RÉDACTEUR-EN-CHEF

Feeling the Pinch: Kenya, Al-Shabaab, and East Africa's Refugee Crisis

AVERY BURNS

Abstract

Kenya currently hosts over four hundred thousand refugees. In the last two decades it has turned towards a policy of containment in an attempt to confine refugees to its two rural camps, Kakuma and Dadaab. Kenya's tolerance for the ongoing refugee problem which peaked in the 1990s due to major conflicts in the region is waning and concurrently issues of national security are growing. The Somali armed faction, Al-Shabaab, has been reportedly infiltrating Kenya's Somali refugee community. Recently, there have been reports that the government of Kenya has been covertly recruiting Somali refugees to return to Somalia to fight against Al-Shabaab. The use of refugees by Kenya to counter the threat of Al-Shabaab demonstrates a new perception of outside threats and suggests that Kenya is now willing to sacrifice ideals of humanitarianism to secure its border with Somalia. The border remains officially closed but thousands of refugees fleeing the violence in Somalia continue to pour into Kenya.

To understand why Kenya is taking such a hardened stance towards refugee populations, it is important to comprehend Kenya's strategic importance in East Africa. Secondly, in the complex relationship between internal factors and international pressures, one can discern the friction between adhering to the human rights of refugees whilst remaining a global player in the war on terror. A comparison of Kenya's past treatment of refugees to its present position suggests that the nation's most significant priority is national security, and not remaining a haven for humanitarianism.

Résumé

Le Kenya accueille actuellement plus de quatre cent mille réfugiés. Au cours des deux dernières décennies, il s'est tourné vers une politique d'endiguement dans une tentative de circonscrire les réfugiés à ses deux camps en milieu rural, Kakuma et Dadaab. La tolérance du Kenya envers le problème persistant des réfugiés, problème qui a culminé dans les années 1990 en raison de conflits majeurs dans la région, diminue au moment même où des questions de sécurité nationale prennent de l'ampleur. Les factions armées somaliennes, les Shebab, infiltreraient la communauté des réfugiés somaliens au Kenya. On rapporte récemment que le gouvernement du Kenya aurait recruté secrètement des réfugiés somaliens en vue de retourner en Somalie pour lutter contre les Shebab. L'utilisation de réfugiés par le Kenya pour contrer la menace des Shebab témoigne d'une nouvelle perception des menaces extérieures et suggère que le Kenya est maintenant prêt à sacrifier les idéaux de l'humanitarisme pour sécuriser sa frontière avec la Somalie. La frontière reste officiellement fermée, mais des milliers de réfugiés fuyant la violence en Somalie continuent d'affluer vers le Kenya.

Pour comprendre pourquoi le Kenya endure sa position envers les populations réfugiées, il est important de comprendre l'importance stratégique du Kenya en Afrique de l'Est. En outre, dans la relation complexe entre facteurs internes et pressions internationales, on discerne une friction entre le respect des droits humains des réfugiés et le rôle d'acteur mondial dans la guerre contre le terrorisme. Une comparaison du traitement récent des réfugiés au Kenya à la situation actuelle suggère que la sécurité nationale est la plus importante priorité de la nation.

With the situation in Somalia deteriorating by the minute, time is of the essence. No one is feeling the pinch as much as Kenya. No one is feeling the pinch as much as Kenya. An influx of refugees and insecurity, indeed, Kenya is bearing the burden of the failed state in its neighbourhood. But Kenya's inaction could be coming to an end.¹

Kenya is dealing with several major concurrent crises: a humanitarian crisis, a political crisis, and a national security crisis. These crises reflect aspects of a national dilemma as Kenya struggles to deal with a continuous influx of refugees, major domestic political turmoil, and overt threats to its national security stemming from the Somali armed faction, Al-Shabaab. Prior to the refugee crisis beginning in the 1990s, Kenya had a *laissez-faire* attitude towards refugee hosting because the size of the influx was much more manageable and refugees were not deemed a major threat to national security.² However, in the early 1990s Kenya's neighbours, mainly Sudan and Somalia, dissolved into conflict, causing hundreds of thousands of refugees to seek asylum in Kenya. The influx overwhelmed Kenya's capacity to manage the populations, and the government pushed for a policy of containing refugees in two camps, Dadaab and Kakuma. Dadaab is composed of three camps, Dagahale, Ifo and Hagadera. Dadaab is the name of the refugee site and collectively refers to all camps. At present, Dadaab is the world's largest refugee camp and is dangerously over capacity.³ Kenya continues to host refugees, albeit reluctantly, as it wishes to remain in good standing with the international community. However, its commitment to East Africa's refugee crisis is being sidelined by its own domestic strife and threats to its national security stemming from Somalia. Kenya is still reeling from the aftermath of its election violence in 2008 and is on edge as the threat from Somalia was made all the more concrete when Al-Shabaab bombed Kampala, Uganda, in July 2010.⁴ Consequently, Kenya's tolerance for the ongoing refugee problem which peaked in the 1990s due to major conflicts in the region is waning and concurrently issues of national security are growing.

Kenya holds a strategic geopolitical position and its humanitarian, political, and security issues are of great regional and international concern. Much of East Africa's stability depends on Kenya's stability as it is the economic epicentre for the region, and Nairobi is home to regional headquarters for embassies, non-governmental organizations (NGOs), and the United Nations. Furthermore, Kenya is of major strategic interest in the global campaign against terrorism. In 1998 a truck loaded with explosives drove into the US embassy in downtown Nairobi, killing 214 people, most of them Kenyan nationals. This was followed by a bombing of an Israeli-owned hotel in Mombasa in 2002.

These bombings were both attributed to Al-Qaeda and elevated Kenya into the international arena for the war on terror.⁵ It is in this context of the threat of externally based terrorism that Kenya has grown wary of armed factions, like Al-Shabaab, infiltrating refugee populations residing in the country. Al-Shabaab is an organization that has been in operation since 2006 and although its primary efforts have been to overthrow the Somali government it has also threatened to attack Kenya in hopes of annexing Kenya's North Eastern Province (NEP) into Somalia.⁶ Already having been a victim of terrorism, Kenya is taking the Al-Shabaab threat quite seriously.

Kenya has every right to take the Al-Shabaab threat seriously. Al-Shabaab has been infiltrating the Somali population in Kenya to recruit more fighters and gain additional support. Recently, it has been reported by Human Rights Watch and other news agencies that Kenya is retaliating by infiltrating the Somali community itself to recruit refugees to return to Somalia to fight alongside the opponents of Al-Shabaab, the Transitional Federal Government (TFG). These refugees are vulnerable and disaffected and therefore susceptible to both alleged recruitment processes. The alleged use of refugees by Kenya to counter the threat of Al-Shabaab may demonstrate a new perception of outside threats and suggests that Kenya is now willing to sacrifice ideals of humanitarianism to secure its border with Somalia. The border remains officially closed but thousands of refugees fleeing the violence in Somalia continue to pour into Kenya. These refugees are desperate for security, but Kenya is quite aware that where refugees manage to cross the border, Al-Shabaab fighters may follow.

To fully understand why Kenya is willing to take drastic measures against Al-Shabaab and use refugees as pawns in the conflict, it is important to understand Kenya's past relationship with hosting refugees and the impact of its present policies on the ongoing crisis which began in the 1990s. Secondly, Kenya is of great strategic importance to the stability of the region. Thus, it is pertinent to comprehend the core issues and key players of Kenya's domestic, regional, and international influence, which cause friction in how it deals with refugee influxes. By using refugees as proxies in conflict both Kenya and Al-Shabaab are demonstrating the strategic convenience of such vulnerable populations. Finally, Kenya's present stance on refugees illustrates that Kenya is in a position where it would rather assert its national security than honour humanitarianism because it is convinced it can no longer do both. Kenya is important to the stability and prosperity of East Africa and hence is feeling immense pressure from the international community not only to challenge the threat posed by Al-Shabaab but also to confront its major internal issues.

Kenya is facing a serious dilemma and perceives that it cannot address its humanitarian crisis and its national security crisis simultaneously. Hence, if the allegations are true that Kenya is recruiting refugees to return to Somalia and fight Al-Shabaab, then Kenya is clearly prioritizing national security over the human rights of refugees seeking asylum within its borders.

Kenya's Relations with Refugees and the Refugee Crisis of the 1990s

The government of Kenya held a mostly *laissez-faire* attitude towards the refugee population prior to the refugee crisis of the 1990s and the major domestic and external security threats that it faces today. A refugee is defined as someone who is forced to flee their home due to environmental concerns, persecution, and protracted conflict.⁷ Generally, the term "refugee" is applied to a person who crosses international borders, while refugees who remain within the borders of their state are commonly referred to as "internally displaced persons" (IDPs.) The refugee problem was not as severe as it is today. In the 1970s and 1980s Kenya hosted a manageable number of 15,000 refugees, mostly from Uganda, who were allowed to self-settle and provided cheap labour.⁸ Prior to the 1990s, the government of Kenya was in charge of refugee status determination (RSD). RSD consists of a series of interviews conducted to determine whether the person qualifies for refugee status and assistance. However, the government of Kenya ceded control to the UNHCR in the early 1990s with the onset of conflict in Somalia and Sudan. There were too many refugees entering at once, which overwhelmed the government of Kenya's capacity to register refugees and maintain control over the situation. In 1992 alone, Kenya's refugee population increased from 130,000 to 400,000 people.⁹ Kenya's attitude towards refugees gradually shifted from indifference to great concern as it faced a major humanitarian crisis. The cross-border refugee crisis revealed to Kenya that it was incapable of assimilating and properly aiding the incoming populations. It also reminded Kenya that its borders were insecure, and that the conflict that the refugees were fleeing could potentially spill over the borders.¹⁰ Kenya was desperate for resources to deal with the influx of people during that period, and confining the refugees to camps seemed the only feasible way of providing humanitarian assistance while at the same time controlling the populations. Kenya has attempted to reassert its control over the problem of refugees, but since the 1990s, NGOs and the UNHCR remain the implementers of policy and Kenya the advisor. However, the UNHCR is still obliged to implement policies advised by Kenya, for example, ensuring that refugees are contained in Kenya's two camps.

In the beginning of the 1990s the majority of refugees arriving in Kenya did not automatically settle in camps. Many were able to self-settle until government action in the 1990s forced them to relocate to Kenya's camps, including Dadaab, Kakuma, and coastal camps near Mombasa. The refugees in the coastal camps thrived in comparison to those placed in Kakuma and Dadaab. They and the many refugees that self-settled relied on small businesses, such as selling electronics and clothing, which did not pay taxes. Powerful domestic economic segments of Mombasa and the coastal region prompted the government to close the coastal camps and eventually implement a policy of forced resettlement to Kakuma and Dadaab.¹¹ These camps have been operational since 1991 and 1992, since the onset of the war in Somalia and the emergence of the crisis in Sudan. Kakuma refugee camp is in the Turkana district of northwest Kenya, and Dadaab is in the NEP of Kenya near Somalia. Both of these regions are among the poorest in Kenya and prone to ethnic, economic, and political strife. The Organization for African Unity (OAU) Refugee Convention requires that refugee camps should be established at a "reasonable distance" from sending nations. Kakuma is only 125 kilometres from the Sudanese border and Dadaab is only 100 kilometres from Somalia.¹²

Despite adhering to OAU guidelines, these distances still allow refugee communities to be heavily influenced by the events taking place in their countries of origin. Consequently, as a result of where these camps are geographically situated, their security situation is best described by this statement by an Ethiopian refugee: "In both places, Kakuma and Dadaab there are soldiers and security agents. They may kill me; those camps are so close to the border. So many times soldiers cross over to search for their opponents."¹³ The proximity of the camps to the sending countries clearly is an invitation for conflict to trickle over the borders. Refugee camps, in general, can be microcosms for social and political instability, and with forced migration flows gravitating towards Kenya, measures were finally put in place in an attempt to deal with the horrendous local security situation that had arisen in both camps. The populations that occupy these camps are victims, and sometimes perpetrators, of violence. According to a police officer in Dadaab, these refugees "have been brought up without justice and under the rule of the gun."¹⁴ Throughout the 1990s, as the security situation worsened, former Kenyan army officers began to serve as security officers in the camps. They were brought in to support NGO staff with major issues of security, and to develop a coordinated relationship between local government, regional police, and the military.¹⁵ Police forces in both camps have been, and still are, disproportionately

too small to deal effectively with growing issues of security. Additionally, most of the police posted to the camps are sent there forcibly and often treat the posting as a form of punishment.¹⁶ Even if they could be made to take their jobs seriously, the security problems of both Kakuma and Dadaab would remain complex and overwhelming.

Kakuma is situated in a remote desert, a region often afflicted with famines, droughts, and general insecurity. The population in 2008 was estimated at roughly 50,000 people.¹⁷ This camp was created initially to deal with Sudanese refugees, but it quickly became a camp for over nine nationalities, including Rwandan, Burundian, Congolese, Ethiopian, and Somali. Along with inter-group friction between these various nationalities, political insecurity in Kakuma is also attributed to the relationship between the local Kenyan Turkana tribe and the refugee populations. The region has little to no economy and the Turkana are threatened by the refugees' presence. This has resulted in clashes, banditry, and cattle rustling by the Turkana against the camp and its refugees.¹⁸ The conflict between different ethnicities, tribes, and political affiliations within the camp can be attributed to refugee adjustment in Kakuma, which depends on the political, religious, or ethnic affiliations that bind them to the conflict that they have fled. The primary example of political conflict in Kakuma is that of the Sudan People's Liberation Army (SPLA), an armed faction from Sudan. The SPLA not only recruited combatants from the Sudanese refugee communities within the camp itself, but also taxed and controlled the population to a varying degree.¹⁹ The infiltration of Kakuma by the SPLA is the most significant form of infiltration that Kakuma has faced mostly because of the immense effect it had on dominating the Sudanese population at the time.

The camp has also faced infiltration from Ethiopian government forces that were there to "deal with" former Ethiopian officers.²⁰ The government of Kenya has remained fairly unresponsive to the security issues that plague Kakuma.²¹ Occasionally the Kenyan military has intervened in clashes with the Turkana, but apart from that there has not been a dramatic response on its part concerning the insecurity in the region. With the Sudanese population largely repatriated back to Sudan, the noticeable problem of infiltration by armed factions in Kakuma has subsided, at least to the extent that it is no longer a perceived threat. However, the border with Sudan and Kenya remains insecure. Recent news reports suggest that the conflict with the SPLA is not over and that the group has set up bases on Kenya's side of the border. This coincides with ethnic insecurity from both sides of the border which has continuously made the establishment of a secure border extremely difficult. In February 2010, for example, several Kenyan

soldiers escorting a border control task force were killed by Sudanese armed factions.²² Unfortunately, these kinds of circumstances remain true for all of Kenya's borders to the north. The infiltration in Kakuma did concern the government of Kenya but it did not provoke a major reaction because the SPLA was not deemed a direct threat to Kenya's national security, unlike the present issue with Al-Shabaab. Unlike Kakuma, infiltration in Kenya's other camp, Dadaab, has sparked not only reaction but also reprisal.

Dadaab has remained almost completely ethnically homogenous and at present is over its original combined capacity of 90,000 persons. Today, the three camps house over 260,000 refugees, most of whom are Somali, making it the largest refugee centre in the world.²³ The refugees are mostly unemployed and two-thirds of the population is younger than thirty-five years old.²⁴ Despite Kenya having closed the border to Somalia in 2007, over 50,000 new refugees arrived in Dadaab in the first nine months of 2009.²⁵ Dadaab, like Kakuma, has had major security issues since it first became an established camp. Apart from general insecurities related to crime, political insecurities that afflict the camp range from ethnic tension to religious extremism. When Ethiopia ousted the Union of Islamic Courts (UIC) from south-central Somalia in 2006, Kenya, threatened by the idea of UIC sympathizers fleeing into the country, officially closed the border and also began forcefully deporting asylum seekers.²⁶ Closing the border and forceful returns marked a new chapter in Kenya's gradual shift in refugee policy. Despite the UNHCR's condemnation of Kenya's actions, the border remains closed. However, it remains extremely insecure and border security forces are fraught with corruption, and thus the technical closure of the border has done little to prevent refugees from entering the country.²⁷

Despite being more powerful and stable than most of its neighbours, Kenya has not been economically, socially, and politically powerful enough to provide dedicated support to asylum seekers. Kenya, too, has its own population of IDPs resulting from the election violence and has had difficulty addressing their needs and finding durable solutions. Furthermore, Kenya suffers from its own internal problems such as famine, drought, and violence. Kenya may not be the most ideal haven for asylum but its geographic position makes it one of the most accessible countries for its neighbours' refugees to seek safety. International bodies, NGOs, and the United Nations pressure Kenya to welcome the refugees pouring over its borders, but there is concern about what implications these populations will have on Kenya's sovereignty and security. When huge numbers of refugees arrive in a host state, the state is often perceived to be or is actually threatened economically, environmentally, and

culturally.²⁸ Refugees require assistance which may financially burden the host state, and their settlements can negatively affect the surrounding environment. For example, the reliance of refugees on firewood for shelter can cause deforestation.²⁹ These issues have caused Kenya great caution in the past and remain pertinent issues of the present. As wary as Kenya is of refugees and the problems that come with them, it has been unable to remain in full control of the crisis.

An assessment of Kenya's response to the refugee crisis from the early 1990s onwards strongly suggests that Kenya has become less tolerant of refugees seeking asylum within its boundaries. Kenya's poor political economy has made it incapable of, or unwilling to, adequately address the humanitarian concerns of the refugees crossing its many borders. This is further complicated by Kenya's serious security concerns about the state of affairs in Somalia. Consequently, Dr. Peter Kagwanja of the African Policy Institute asserts that Kenya's caution towards refugees is founded on several factors. These factors include the lack of fertile land for refugee populations, caution towards ethnic Somalis who fought in the 1960s for the annexation of the NEP of Kenya, and popular apprehension that refugees foster the spread of fire-arms and cause higher levels of crime.³⁰ These fears have remained consistent from the 1960s. However, the experience of the 1990s and the real threat from Al-Shabaab have reignited these fears and caused the Kenyan government to allegedly take action. Thus Kenya, like many other states that host thousands of refugees, has implemented policies that are unfavourable in the eyes of humanitarian agencies. These policies, targeting refugee populations, are the result of the host government deeming members of certain refugee populations as potential threats to national security.

Kenya asserts that if it is to play host to refugees, they must remain under surveillance and in controlled environments: camps.³¹ Since the beginning of the crisis in the early 1990s, Kenya has pushed for refugees to remain in camps, but it was not until after the Al-Qaeda bombing of the US embassy in 1998 and the bombings in Mombasa in 2002 that the Kenyan government actively pursued this policy. The repression of refugee movement following these events consisted mostly of mass arrests of refugees in Nairobi. The Department of Immigration justified these acts by stating that it was an assertion of Kenya's Refugee Act and national security. Despite this public statement, there was no Kenya Refugee Act at the time. Throughout the 1990s and the period following the Al-Qaeda bombings, there was in fact a draft bill, but it was never passed by Parliament. On top of alluding to a nonexistent act, a senior immigration official noted in an interview with Guglielmo Verdirame of the London School of Economics and Political Science in 1999,

"Refugees in Kenya misbehave because they do not want to go to the camps. If someone comes to my home and I tell him where he has to sit, he has to obey, otherwise he leaves!"³² By looking at Kenya's gradual repression of refugees throughout the 1990s and following the bombings in 1998 and 2002, there are echoes of the present situation concerning Kenya's fear of refugees and the problems that come with them. Prior to the terrorist attacks, most of the restrictions only applied to refugees living in large urban centres such as Nairobi or Mombasa. Kenyan president Daniel arap Moi in 1997 issued a statement that sparked mass arrests of refugees and forced encampment:

President Moi yesterday said foreign spies and criminals masquerading as refugees had invaded Nairobi. President Moi revealed that some of these criminals were engaged in incitement at the behest of local collaborators. Emphasizing that the government will not allow foreigners to abuse the peace and stability in the country, President Moi said many of them were engaged in business as a cover-up for their evil activities.³³

Perceiving refugees as potential threats is not a new perspective of the Kenyan government, as clearly demonstrated by the above statement. Closing the border to Somalia has done little to stem the flow of refugees. If anything, it has worsened the ongoing humanitarian crisis because it promotes bribery and corruption among border officials. It has also led to Kenyan police forcing refugees back into Somalia, an act that violates international law.³⁴

The UNHCR, international governments, and NGOs have pleaded with the Kenyan government to provide more land for the Dadaab refugee camps. The severe overcrowding in Dadaab is a humanitarian crisis. There are not enough latrines or sufficient potable water due to severe issues of overcrowding.³⁵ The human suffering that goes on in these camps is intolerable. However, particularly from the stance of Kenyans and the Kenyan government, so are the conditions in which many Kenyans in the NEP have to live in. These substandard conditions are due to a lack of available fertile land and the drought that afflicted the region in 2009. At the end of March 2010, Kenya agreed to provide more land for Dadaab's Ifo camp to accommodate 80,000 more refugees.³⁶ This is a major contribution from Kenya. However, the fact that aid agencies and international governments have been pleading with Kenya for years to provide land reveals Kenya's hesitations in playing host to fleeing Somalis. It seems Kenya has provided this land only because of extreme international pressure and it has been argued that the land is far from the amount needed.

As previously mentioned, before Kenya was flooded with refugees in the early 1990s, refugees enjoyed a substantial

amount of freedom, particularly freedom of movement. Many refugees settled in Nairobi. Consequently, despite the policy that refugees must remain in the camps, many, particularly Ethiopians and Somalis, live illegally in Nairobi.³⁷ Their neighbourhoods are well known and are frequently subjected to police raids. These refugees are often arrested for a lack in documentation. Kenyan Vice President of Home Affairs, Moody Awori, made a statement in 2004, pleading for all refugees in Nairobi to return to the camps:

I am asking all refugees to report to the camps and those that will be found to be in the city and other urban places without authorization will be treated like any other illegal aliens ... The government will soon mount a crackdown on these illegal aliens with a view to flushing them out.³⁸

Since 2004, the government has been unable to flush the refugees out of Nairobi, particularly in the Somali suburb of Eastleigh. However, the police in Nairobi make their presence known with mass arrests. These sweeps often coincide with major events such as the bombing of the US embassy in 1998 and more recently after continuous threats espoused by armed factions like Al-Shabaab.³⁹ Al-Shabaab has directly threatened Kenya which has alarmed not only Kenya itself but also the international community who deem that much of East Africa's stability rests on Kenya's stability and security.

Kenya's Strategic Importance: Core Issues and Key Players

There is a saying, "When Kenya sneezes, East Africa catches a cold."⁴⁰ Kenya is the epicentre for East African economic, political, and humanitarian discourse. It is a major player regionally and internationally because, until recently, it has been one of the most prosperous and politically stable countries in East Africa. To understand the present decision to opt for national security over humanitarianism, it is important to understand Kenya's major domestic issues, which cause it to be more wary of refugees, as a result of heightened vulnerability to external attack. The international and regional community is pressuring Kenya to address these issues so that it can remain a valuable player in international discourse and a recipient of donor money. Some of these major domestic issues came to the fore in December 2007 during Kenya's federal elections. Accusations that the election was rigged provoked national civil unrest with waves of ethnic and gang-related violence.⁴¹ The election violence left nearly one thousand people dead and thousands of people displaced. It reminded the international community that Kenya, despite being stable in comparison to its troubled neighbours, is not the rock of East Africa that it was thought

to be. It revealed Kenya's troubling ethnic issues and political corruption but also demonstrated how much the whole of East Africa relies on its stability.

Despite being considered a developing country, Kenya has a fairly developed infrastructure compared to its neighbours, who depend on Kenya's roads and harbours for shipping. Kenya borders five countries: Tanzania, Uganda, Sudan, Ethiopia, and Somalia. Some of these countries are highly dependent on the Northern Corridor, which is a vital road network that connects Kenya's neighbours to its busy harbour in Mombasa. During the election violence, this road was blocked and many countries were hard-pressed to receive vital shipments of fuel and essential goods.⁴² East African businesses also rely on Kenya because it is home to East and Central Africa's most significant stock exchange, the Nairobi Stock Exchange.⁴³ Kenya's election violence hurt the entire region economically. Some countries were so desperate for Kenya to stabilize that even the president of Rwanda, Paul Kagame, was ready to call for a military intervention in Nairobi.⁴⁴ Not only were Kenya's neighbours anxious for the violence to end, but so was the international community. Many international organizations and governments have their regional headquarters based in Nairobi. The majority of international governments' and NGOs' economic, political, and humanitarian programs for the region are headquartered in Nairobi. Many of these programs stalled as Kenya went up in flames.

Fortunately a military intervention was not necessary and the violence ceased after two months.⁴⁵ At present, Kenya remains politically unstable; it has failed to address the fundamental issues of ethnic tension and political corruption. The international community continues to pressure the government to resolve these issues so that it can continue with its missions and programs. The government of Kenya has been actively trying to convince international players and its neighbours that it is legitimately trying to address its major internal issues and prevent a reoccurrence of the violence witnessed in 2007. However, continuing corruption and false promises leave many Kenyans with little to no faith in their government. For example,

President Mwai Kibaki of Kenya faced a moment of public embarrassment on 12 December 2009 when he was unable to complete his independence-day speech because of heckling from the crowd. But this was far from an opposition-organized ruckus. Some weeks earlier, his political competitor (and the prime minister) Raila Odinga could hardly speak to a gathering of his supporters who countered his slogan of *chungwa!* ('orange', denoting his party) with shouts of *unga!* (maize-flour, i.e. 'we are hungry').⁴⁶

To add to its difficulties, Kenya suffered from a severe drought that led to famine in September 2009. Millions of Kenyans were forced to rely on emergency food aid from the World Food Program (WFP) to confront severe food shortages.⁴⁷ In context with the refugee crisis, it is difficult for Kenyans to want to help their neighbours when they seem unable to help themselves.

Furthermore, the government has also failed to address ethnic tension and severe issues of crime. These issues are compounded by the fact that Kenyans are frustrated with the government's additional failure to address the security issues stemming from the conflict in Somalia. Despite excessive military spending, the government has done little to convince its citizens that they are safe from the conflicts outside its borders. These issues are exacerbated by pressure from the international community for Kenya to address all the issues that are related to the election violence and at the same time welcome thousands of refugees coming from the Democratic Republic of Congo, Ethiopia, Sudan, and Somalia. Confronted with so many fundamental security issues, the government of Kenya evidently by its present actions deems that it must confront its greatest perceived threat, Al-Shabaab, before it can restore order within its own boundaries.

Somalia and the Al-Shabaab Problem

Al-Shabaab is a militant Islamic group that has fought against the Somali transitional government since 2006. The size of the organization is unknown, but estimates range from 6,000 to 7,000 fighters.⁴⁸ Al-Shabaab has relied on guerilla tactics that include suicide bombings and assassinations. By February 2009, the group had ousted other rival armed factions and controlled most of southern Somalia. Although Al-Shabaab began as a militant group focused on domestic politics within Somalia, after open threats by Al-Shabaab against Ethiopia and now Kenya, the group has made a gradual shift from Somali national politics to East African regional politics. This shift is related to the region's support for the TFG in Mogadishu. Ethiopia's militant ousting of the Union of Islamic Courts (UIC), a group of Somali Islamists, from government in 2006 sparked threats from Al-Shabaab against Ethiopia.⁴⁹ Al-Shabaab has openly threatened Kenya in the last year, at least in part because Kenya has attempted to combat piracy, which demonstrates Kenya's new activism against external threat. Kenya has also actively attempted to secure its border against armed factions. The International Crisis Group (ICG) states, "Al-Shabaab's threat to strike Kenya, which could reasonably be dismissed as bravado, may become real. Al-Shabaab has honed its terror tactics and skills in recent years and is now by far the deadliest guerilla movement operating in the

Horn."⁵⁰ The danger to Kenya from Al-Shabaab is no longer a perceived threat sparking precaution but a real menace. The group wants to expand its territory and now threatens the security of Kenya's NEP.

Kenya's ethnic Somali and Muslim populations mostly live in the NEP and along the southeastern coast. Although Kenyan citizens, these populations are politically and economically marginalized, making these regions prosperous recruiting grounds for groups like Al-Shabaab and Al-Qaeda. It is well known that Kenya has been used by Al-Qaeda in the past as a point of transit.⁵¹ Therefore, because Kenya has a large Muslim population that is vulnerable to recruitment and a history with terrorism, it is fair to assume that Kenya is taking the Al-Shabaab threat seriously. In the last year open threats from Al-Shabaab against Kenyan sovereignty have been increasing. For example, a song was released by the organization in January 2010 cautioning Kenya of its presence: "We have arrived at the border, we will enter Kenya, and Inshallah we will get to Nairobi ... when we get there, we will fight, we will kill, because we have weapons, enough weapons."⁵² The affirmations made by refugees and NGO workers in Dadaab, one of Kenya's refugee camps, assure the Kenyan government that Al-Shabaab has not only arrived at the border, but has infiltrated the country and is spreading within. In an interview with a Dutch news agency one Somali refugee stated, "Al-Shabaab operates here in Kenya. I expect terrorists will strike here."⁵³ Other refugees go as far as to state that Al-Shabaab fighters come across the border not only to recruit and strengthen the organization, but also to rest from the fighting and seek treatment in Kenya's hospitals.⁵⁴

Many refugees who have been interviewed on the subject acknowledge that Al-Shabaab's purpose in Kenya is to gain support in Somalia by radicalizing disaffected refugees and Kenyan Muslims to further alienate the TFG from its neighbours.⁵⁵ Consequently, if the TFG falls, it is highly predictable that the horrors that go on in Somalia will spill over into Kenya, a country that is already unstable and politically fragile. This fragility is compounded by the significantly high numbers of Somali refugees living within Kenya's borders. In interviews with journalists many Somali refugees state that they do not support Al-Shabaab, as they do not believe in its use of violence as a means to implement Sharia law in Somalia. However, the group has been successful in recruiting young men and boys to return to Somalia to fight. Ahmed Hussen, president of the Canadian Somali Congress, noted that joining Al-Shabaab is a "one way ticket ... you don't come back."⁵⁶ Despite this known fact, most of these recruits are enticed to join in order to earn some income. These youths are disaffected and therefore ideologically vulnerable to the messages delivered by the recruiters to

persuade refugees to fight in Somalia. Al-Shabaab's infiltration of Kenya's refugee community demonstrates the strategic use of refugees in war and reiterates that Kenya's borders are hugely insecure and vulnerable to attacks. If Al-Shabaab topples the TFG in Mogadishu, Kenya's territorial integrity could face severe consequences.

In the context where Kenya has been a victim of terrorism before and is under immense pressure from international actors like the UK and the US to tackle terrorist cells infiltrating the country, one can begin to piece together the present situation of Kenya's reaction to refugees. Kenya's response of repressing refugee populations outside of the camps and closing the border is not supported by the humanitarian agencies but it is a clear response to a perceived crisis and threat to national security. What is not predictable is the allegation that the Kenyan government has launched a program that recruits Somali refugees in Dadaab to return to Somalia and fight against Al-Shabaab. Testaments from refugees and reports issued by Human Rights Watch and news agencies insist that Kenyan government officials have been sending recruiters into the camp to recruit men to fight in Somalia. The recruits are told that they will be fighting with the UN and the US alongside the TFG against Al-Shabaab and they are promised financial compensation of four hundred to six hundred dollars. One refugee, Daud (age eighteen), interviewed by Human Rights Watch, said that these recruiters play not only on the refugees' fears of Al-Shabaab but also on their hopes of contributing to the rebuilding of their country. Daud said he was approached and was impressed by the thought of earning such a substantial amount of money. He was driven in a shuttle bus and dumped in a desert outside of Mombasa with other recruits. They were later picked up by Kenyan military and National Youth Service vehicles and led to a training centre. In the interview with Human Rights Watch, Daud said that on the way to the training centre their phones were confiscated and it was revealed to them that they would not be making the amount of money promised. He and a few other recruits then jumped out of the truck and escaped.⁵⁷ Government officials have denied these accusations. However, local officials and officials in Somalia confirmed that these accusations are based on fact. TFG General Yusuf Dhumal in a press conference in Mogadishu stated that Somalia and Kenya have entered into an agreement to recruit soldiers from the NEP of Kenya and that these recruits were being trained outside of Mombasa.⁵⁸ Despite that, he did not explain that this recruitment was targeting refugees, likely because this would be tantamount to confessing to violating human rights.

If these accusations are true, then Kenya is in violation of international human rights and may also suffer the

consequences of encouraging a response from Al-Shabaab. By infiltrating Dadaab to recruit Somali refugees to fight in Somalia in response to the Al-Shabaab presence in Kenya, the government of Kenya is violating international law that states that refugee camps are meant to be purely impartial humanitarian spaces. Another violation of human rights is the allegations that some of the refugees who have been recruited have been under fifteen years old and thus are child soldiers.⁵⁹ This drive compromises refugees' rights to seek asylum in a neutral territory. Furthermore, as a UN official stated to Human Rights Watch, "Recruiting Somali refugees and sending them back to Somalia to fight Al-Shabaab is an open invitation for reprisal."⁶⁰ Likewise, an Al-Shabaab administrator in Dholey, a border town in Somalia, Sheikh Mahammed Arab, issued a report that the Kenyan military has been building up along the border substantially. He stated, "We have the information about heavy military movement along the border between Somalia and Kenya. We don't know the meaning of this but we are warning of repercussions for any aggression."⁶¹ By relying on overt and covert aggression against Al-Shabaab in these ways, Kenya could be worsening the security situation instead of aiding it. Furthermore, its reported neglect of refugees' rights to asylum may sacrifice its humanitarian integrity in the face of international players.

Dr. Francis Deng, UN Special Advisor for the Prevention of Genocide and Mass Atrocities, writes of the idea of "sovereignty as responsibility" to assert that a nation's territorial integrity may be temporarily violated in order to create shelters for refugees. The responsibility of the state, which is to protect the human rights of all people within its boundaries, is rewarded through international recognition and, in the case of Kenya, humanitarian aid. This model also asserts that a state's credibility is based on its adherence to human rights.⁶² The complexities of this scenario apply to Kenya. Kenya is a huge recipient of international aid and is the hub for the United Nations' regional headquarters for East Africa. Therefore, to continue receiving these benefits (for example, remaining a recipient of donor money and playing host to a large diplomatic community that stimulates its economy), Kenya has to actively engage itself in the humanitarian problems in the region. Sacrificing humanitarian integrity may seem the only realistic option for Kenya. It is not only burdened by the failed states in its neighbourhood, but it has realized that it, too, may become a failed state.

The refugee problem raised further concern following the election violence in Kenya. This produced a situation in which Kenya found itself having to deal with its own displaced persons and not just those from its neighbours. Politically vulnerable, the Kenyan government has also had to deal with external political pressure. The threat from

Al-Shabaab to Kenya's political and territorial integrity is not a threat that Kenya can choose to ignore. Kenya's large marginalized Muslim and refugee populations make it vulnerable. By recruiting Somali refugees in Kenya, Al-Shabaab intensified the potential threat of refugees to Kenya's security as a nation-state. Like Al-Shabaab, Kenya has realized the strategic value of using refugees for their own ends. Although it originally deemed refugees a nuisance, the government of Kenya has been able to counter Al-Shabaab's strength in the Somali refugee communities by infiltrating these communities itself. By using refugees as pawns in the war against Al-Shabaab, the Kenyan government may alienate humanitarian organizations and donor nations. As previously mentioned, it could also invite reprisals from Al-Shabaab. These seem to be the risks that the government of Kenya is willing to take. Weighing the alternative of waging an overt invasion in to Somalia to tackle the Al-Shabaab threat, Kenya may also deem that being reprimanded by the international community is another risk it is willing to accept. This has led Kenya to renegotiate its stance on guarding refugee rights. Therefore, relying on refugees for a covert intervention in Somalia allows Kenya to spare its forces and at the same time confront the threat to its territorial integrity with deniability. For the Kenyan government, it may appear to be win-win situation: send the refugees back to Somalia and give them the means to take matters into their own hands, and at the same time counter the threats from Al-Shabaab. Moreover, if these allegations of Kenya recruiting within the refugee populations remain just that, allegations, then the government of Kenya can remain in good light to the international community and donors.

However, the complexity of the situation demonstrates that Kenya is a vulnerable state that is suffering from severe internal disorders; it has an enormous refugee population that continues to grow day by day; and it is being threatened by an armed faction which is fully capable of playing on the refugee crisis for the advancement of their strategy. Kenya has to address all of these issues, which may affect its security or its integrity as an international player. The biggest priority is to address its internal problems, which were revealed in the election violence of 2007. However, it is unable to fully focus on these internal problems with Al-Shabaab at its door and following the refugees as they pour in. These problems are compounded by the refugee crisis because Kenya lacks the resources to fully address the needs of these people and is continuously pressured by the international community to do something. In any case, as demonstrated, Kenya can barely feed and care for its own citizens let alone thousands of refugees who may or may not be enemies of the state.

The massive refugee crisis that began in the early 1990s has yet to end. Kenya has become intolerant of so many people pouring across its borders and seeking its assistance. It attempted to solve its problem by forcing refugees to settle in camps at the peripheries of the country; however, these refugee camps became fertile recruitment grounds for the SPLA and Al-Shabaab. Since the SPLA issue was not taken seriously, Kenya deemed the camp a UNHCR problem. Throughout the 1990s as evidence mounted that refugees were easily circumventing camp policy to live in Nairobi, and especially following the terrorist bombings of the US embassy in Nairobi and the hotel bombings in Mombasa, Kenya took a harder line on handling refugees. Once Al-Shabaab began infiltrating the country from within and threatening to attack, the government of Kenya lost its remaining tolerance for any humanitarian affairs that compromised its security. Kenya's fragility as a state and its internal strife, coupled with the threat posed by Al-Shabaab, are demonstrating that Kenya is no longer willing or able to treat its refugee crisis as a problem requiring a humanitarian solution.

As Jeff Crisp notes, quoting a UNHCR official who aptly describes the problems of Kenya's refugee camps, "You cannot create an island of security in a sea of insecurity."⁶³ This statement is true of the refugee camps but also of Kenya as a whole. Kenya once upon a time was seen as an island of security but times have changed. Kenya's neighbours have failed to solve their problems in the last twenty years, and if they did, new ones quickly arose. Creating an island of Kenya in this sea of insecurity is a mighty feat because Kenya is fraught with insecurity from within and from without, and is confronting an unending refugee crisis of epic proportions.

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Can Aid Switch Gears to Respond to Sudden Forced Displacement? The Case of Haut-Uélé, DRC

KATHARINE DERDERIAN AND LIESBETH SCHOCKAERT

Abstract:

How does the aid system respond when insecurity and sudden forced displacement occur in what has long been considered a stable, development context? Can longer-term aid interventions adapt when challenged to “shift gears” to address acute needs resulting from forced displacement? Based on observations from Médecins Sans Frontières projects in Haut-Uélé in northeastern DRC in 2008–2009, this article examines assistance to displaced populations and the residents hosting them in LRA-affected areas—above all, the stakes and dilemmas involved in responding to such a sudden-onset emergency in what international donors and the national government considered an area in development.

Initially, a much-needed response to violence and displacement failed to materialize, with little permanent humanitarian presence on the ground, while development approaches failed to adapt and meet emergency needs. Short-term contingency support was provided through development NGOs, but with limited scope and maintaining cost-recovery schemes for health toward an impoverished population facing an increasingly precarious situation. A long-term development approach was simply unable to respond to the sudden population increase and a fragile health situation.

Résumé

Comment réagit le système d'aide lorsque l'insécurité et le déplacement forcé soudain se manifestent dans un contexte qui a longtemps été considéré comme stable et propice au développement? L'intervention humanitaire à long terme peut-elle s'adapter quand il lui faut « changer de vitesse » pour répondre aux besoins aigus résultant des déplacements forcés? S'appuyant sur l'étude de projets de Médecins Sans Frontières dans le Haut-Uélé, dans le nord-est de la RDC en 2008–2009, cet article examine l'aide aux populations déplacées et aux résidents qui les accueillent en zones touchées par l'Armée de résistance du Seigneur (LRA), plus particulièrement les enjeux et dilemmes liés à la réaction envers une situation d'urgence apparue soudainement dans une zone que les donateurs internationaux et le gouvernement national considéraient comme une zone de développement.

Au départ, une réponse fort nécessaire à la violence et au déplacement ne s'est pas concrétisée, avec une faible présence humanitaire permanente sur le terrain, alors que les approches de développement n'ont su s'adapter et répondre aux besoins d'urgence. Des ONG de développement ont apporté un soutien d'urgence à court terme mais de portée limitée et le maintien d'un système de recouvrement des coûts pour les régimes de santé à l'intention d'une population appauvrie confronté à une situation de plus en plus précaire. Une approche de développement à long terme était tout simplement incapable de répondre à l'augmentation soudaine de la population et une situation de santé précaire.

Wherever they occur, forced displacement and the urgent needs that result call for an immediate response. But how does the aid system respond when insecurity and forced displacement occur in what has long since been considered a stable, “development” context? Can longer-term aid interventions adapt when challenged to “shift gears” to address acute needs resulting from sudden, forced displacement?

Much has been debated about how to define humanitarian and development approaches and how to transition between or link up emergency relief and development aid in response to crises.¹ Ideas of linking humanitarian and development paradigms and practices are based on several fundamental assumptions, including: the possibility for aid to treat the root causes of conflict or violence and/or to reinforce security; the nature of emergency as a temporary and transitory state; the desire to avoid “doing harm”² and/or creating aid dependency;³ and the ability to join up humanitarian, development, political, military, and/or other objectives without diminishing the effectiveness and impact of each. Most of these assumptions have been sorely tested in recent years in an increasing number of protracted crises and fragile post-conflict settings—often highlighting the necessity of distinction between coexisting humanitarian and development approaches and challenging the idea of a linear continuum between relief and development.⁴

Indeed, the two approaches are divergent in their scope and aspirations. As a rule, humanitarian aid aims to meet urgent needs resulting from events that represent a rupture from normalcy, such as wars, violence, natural catastrophes, epidemics, and structural crises. Humanitarian aid adopts an immediate, politically unconditioned approach that facilitates the safe provision of assistance to those in need; it aspires to gain acceptance and security for its activities by maintaining strict principles of impartiality and neutrality.⁵ By contrast, development approaches privilege ongoing, sustainable advances toward ending poverty and achieving human security. While humanitarian aid focuses on the immediate needs of populations, development aid rather emphasizes support to systems in the longer term. This means that development can align itself with wider political objectives, including peace-building, state-building, and/or reinforcement of human rights and governance. In practice, the two paradigms of humanitarianism and development are often hardly absolutely distinct, with field-level situations often ending up between emergency and development poles, with both paradigms coexisting—depending on varying security, political, and economic conditions, as well as the functioning of basic services. At present, the tensions between the two approaches are thrown into even greater relief in an era when aid aspires to transition smoothly from crisis response to state-building,

often in volatile post-conflict settings.⁶ Accepting any reversal of development gains and the resurgence of emergency needs defies the conventional logic of a linear transition from humanitarian to development response.

In health and humanitarian assistance, several key issues around humanitarian and development approaches recur regularly in practice.⁷ How to reconcile the two approaches and/or manage transition between the two approaches—from humanitarian to development, but also development to emergency, if need be? What is the real practicability and effectiveness of linking humanitarian and development and/or adopting “early recovery” approaches? How to ensure an immediate response to urgent needs despite the often political demands for sustainability of longer term projects? In areas where humanitarian and development projects coexist, how to ensure respect of the operationally indispensable humanitarian principles that guarantee security and access—while in exactly the same context, development aid may legitimately align with state structures or adopt political objectives?

Sudden forced displacement adds another challenge to these already classic discussions. Concerns about sustainability suddenly come into tension with an urgent need for immediate assistance to cover the most basic needs of moving populations. Aid is challenged to “switch gears” from development to an emergency response—this has been exactly the case in Haut-Uélé in northeastern DRC in 2008–2009.

The remote and sparsely populated regions of Haut-Uélé and Bas-Uélé in Orientale Province have long been one of the most marginalized, if peaceful, areas in DRC, suffering from extremely fragile infrastructure and inadequate, often non-existent basic services—with no permanent international aid presence on the ground. Starting in September 2008, civilians in the Uéléés were caught up in attacks by the Ugandan rebel group the Lord’s Resistance Army (LRA), as well as in clashes between the LRA and the Congolese army and other regional armies.⁸ As the situation deteriorated, civilians also found themselves facing increasing banditry. Thousands of displaced people fled to seek shelter and greater security in towns like Dungu, Doruma, Niangara, and Faradje that grew into ever more populous enclaves, with outlying villages and fields empty and often insecure.

With LRA presence throughout the larger region, violence and armed confrontations gradually expanded, impacting not only Haut-Uélé and Bas-Uélé in northeastern DRC, but also neighbouring areas of southern Sudan⁹ and eastern Central African Republic. Both internal displacement and refugee flows became widespread in an otherwise sparsely populated region. As of October 2010, the UN estimated 2,000 people had been killed, over 2,600 abducted,

and over 400,000 displaced in these three countries. Some 268,000 people remain displaced in northeastern DRC, over 120,000 in Western Equatoria in southern Sudan, and 30,000 in southeastern Central African Republic.¹⁰ From January to mid-March 2011, the UN reports 35 people killed, 104 abducted, and over 17,000 displaced in LRA-affected areas of Orientale Province. Since 2008, 20,000 Congolese have sought refugee in southern Sudan, while 3,500 have fled to Central African Republic.¹¹ By contrast to some refugees who have been housed in camps (e.g. Makpandu and Ezo in southern Sudan),¹² most internally displaced find themselves seeking shelter with local populations and sharing already scarce resources in order to survive.

Since January 2009, Médecins Sans Frontières (MSF) has intervened in response to the violence and displacement in the Uélés and currently runs medical humanitarian projects in Dingila, Doruma, Dungu, Duru, and Niangara. In these locations, MSF projects offer primary and secondary health care free of charge, with a strong mobile outreach component wherever access allows (e.g. mobile clinics to the outlying areas of Nambia and Tapili from Niangara), or evacuations of wounded from Bangadi to Dungu by plane. Drawing on assessments in the region, interviews with international and Congolese health care providers and ongoing work within MSF projects in the field, this article examines assistance to displaced populations and the residents hosting them in LRA-affected areas in northeastern DRC. The case of Haut-Uélé provides insight into some of the key stakes and dilemmas involved in responding to such a sudden-onset emergency in what international donors and the national government considered an area in development to date.

The sudden violence, displacement, and urgent need in the Uélés challenged ongoing development in the region to adapt and “shift gears”—to respond to immediate, often life-saving needs; to negotiate between ongoing development programming and emergency response; to build on years of lessons learned about assisting mixed populations of newly displaced and residents facing shared vulnerability; to suspend conditioning of aid or concerns of sustainability to provide timely and unconditional humanitarian assistance during a period which could last for the medium or even longer term. Considering a case of “shifting gears” as in Haut Uélé is paramount for aid practitioners and policy-makers facing ever more crises where humanitarian and development strategies coexist—and yet also aiming to meet the ambition to provide timely, effective, and meaningful aid for those in need.

At the onset of displacement in the Uélés, sparse development funding was provided to this isolated and fragile region in the form of drug kits and financial incentives for

medical staff in selected health structures. This support was already only partial, and provided without direct supervision. In some places, drug kits contained no first-line malaria medication in an endemic region, yet did contain heart medication requiring diagnostic tests not available in local health centres. Staff incentives were not complemented by any funding for maintenance of health structures themselves. In a cost recovery scheme, patients had long paid for the very basic health care accessible only at the few functional facilities in the region.

Faced with an emergency displacement situation, year-long development schemes already in these *zones de santé* found themselves struggling to keep up with more acute needs and spikes in consultations. In already fragile outlying health structures, staff responded to the insecurity by fleeing and/or reducing services even on the periphery of larger towns. One health centre outside a large town ended night service, in-patient care, and deliveries in December 2008 in order to avoid staff and patient presence inside the structure and their resulting exposure to possible violence.

With the arrival of the LRA, the unexpected influx of IDPs confronted an already sparse landscape of development NGOs in the region. At the same time, due to insecurity and inaccessibility of the area, few other humanitarian organizations responded in the immediate aftermath. Absolutely no UN humanitarian funding was allotted for the emergency in Haut-Uélé until mid-year 2009.¹³ Even with increased attention to the Uélés, as of late 2009, there was a striking absence of NGOs permanently in the field outside the regional hub of Dungu.¹⁴ While both humanitarian and development donors did recognize the emergency in late 2008, development actors expressed concern to MSF that an emergency intervention could “destabilize” ongoing development efforts. With an eye to the longer term development in course, donors responded with short-term contingency programs of three to six months, often specifically targeting IDPs with free health care.

Yet in the situation of shared vulnerability for both IDPs and residents hosting them, local health care staff were faced with the dilemma of imposing fees on some patients while offering others free care.¹⁵ Various national and international actors registered vastly different numbers of IDPs, causing difficulty in assessing needs and identifying IDPs, who in fact shared the same fragile living conditions as the host population. Short-term contingency plans caused practical confusion between free medications for IDPs under the emergency response, and for-charge medications under the prior long-term scheme. In the end, the overwhelming influx of new, displaced patients led to key medications being out of stock and to an overall decline in ability to care for people in this precarious time.

Below are two examples of how the challenge of “shifting gears” played out in the Uélés at the time. In one key town, the local population in a territory of some 92,500 residents faced an influx of 25,000 displaced people. Residents and IDPs shared all resources and consequently experienced a general decline in living conditions for all inhabitants together, along with the ongoing insecurity. At the outset of the emergency, the development NGO working in the zone received international funding for some 2.5 months from November 2008 to February 2009, to cover IDP needs with pre-positioned drug kits. These soon ran out, causing problems for personnel to explain to patients the reintroduction of fees for services and medications. The town’s reference hospital offered no more than 850 consultations per month to patients in late 2008–early 2009. Yet, as international contingency support to the hospital ended in February, overall consultations dropped to fewer than 500 per month in March 2009.

In another key town affected by the violence in late December 2008, 93,000 residents saw the displacement of some 22,000 people in the surroundings and an influx of at least 5,000 people into the town by April 2009. The first distribution of food aid took place in early April 2009, but no household items were provided to the displaced nor were any provided to residents, 690 of whose houses had been burned. The small local reference hospital and several health centres had been supported by development aid funding since 2000, providing medical care on a for-fee basis. Emergency funding for this location did not become available until April 2009 and only lasted for six months, covering solely primary health care (without renovation or equipment of structures, e.g. with waste areas) and reimbursing consultation fees to pay staff (but only based on the new patient caseload). This funding provided for free medical care to all patients only in two key towns, based on their being “more affected” by the insecurity, while in other towns in the region, only IDPs received free medical care. In the end, the combination of emergency and development funding covered all medical costs in some cases, but hardly represented a solution to widespread needs.

A related and similarly complex debate arose in the Uélés around the idea of “do no harm,” shared by both humanitarian and development actors. Out of well-founded concerns that aid provided to displaced communities could make them a target for looting or attacks by various armed actors, UN forums at field level discussed criteria for stepping up assistance in mid-2009. Yet preconditions considered for the provision of aid included very political considerations entirely out of place in an emergency context: the attitude of the local authorities toward controlling and benefiting from aid, the discipline and material provision for the national

army, FARDC, and the presence of IDP self-representation and registration. Due to the lack of international humanitarian aid, IDPs regularly travelled into insecure areas to recover food or other resources from their abandoned houses, villages, or fields. In an informal survey done in two IDP sites in a large town in Haut Uélé in July 2009, 32 per cent and 66 per cent in each site said they had gone back to their home communities to try to recover food or other items; by contrast, the overwhelming majority expressed no intention in returning to their homes on a permanent basis. The upshot of this debate was that an ostensible concern for protection and longer-term sustainability of the overall aid intervention effectively minimized an emergency intervention, conditioning assistance on behaviour and governance by civil and military authorities. The risks linked with distributing aid had effectively been transferred to the IDPs themselves, who undertook the dangerous travel back to their abandoned homes to cope when international assistance failed to arrive.

At the same time, ironically, there was an overwhelming absence of (inter)national actors working on protection, in particular working on sexual violence and child protection, key issues often cited in connection with the LRA context. The initially meager physical presence of humanitarians in the field, while providing some (material) support to the population, remained hampered by insecurity and was hardly enough to ensure protection, much less to provide for even basic needs.¹⁶

Today, in the Uélés, widespread insecurity persists, giving IDPs little chance to return to outlying villages and fields. Perceived as safer, towns have attracted ever more displaced people seeking security and evolved ever more into enclaves. As of mid-year 2010, the population had surged in towns like Niangara, which doubled to 40,000 inhabitants due to the influx of displaced people. The situation in Niangara and throughout the Uélés poses the question of how assistance will continue in future—with continued insecurity, the lack of an immediate solution for the displaced, and the precarious situation shared by both residents and IDPs who depend on a handful of emergency aid actors for their most basic needs.

Response to displacement in the Uélés raises several key issues. To what extent is it acceptable to delay or limit emergency response because a region of forced displacement has long been characterized as being in “development”? How long can an emergency response depend solely on ad hoc approaches and contingency plans in the short term, while still holding onto the idea of preserving the sustainability of long-term programs? To what extent can long-term intentions ever legitimately take precedence over short-term, life-saving responses to urgent humanitarian needs? Keeping in

mind the contrast with the few refugee camps established in the region, can “targeting” IDPs in mixed populations ever be acceptable in a humanitarian response to forced displacement, where displaced share the living conditions of host families?

In Haut-Uélé, ad hoc contingency responses were advanced to address a sudden-onset emergency in the interest of maintaining ongoing development work. The upshot of this approach included delays and gaps in assistance as well as inaccessible and often inadequate medical care in an emergency situation. Faced with large-scale violence and displacement with probable longer-term impact, such an approach risks reaching neither humanitarian nor development objectives—neither meeting urgent needs nor assuring access to health care for an entire community facing heightened and shared vulnerability. Forced displacement and violence may reverse desirable development gains, but the broader policy and often political goal of ensuring their sustainability cannot come at the very real cost of neglecting a life-saving response.

For the first year after the arrival of the LRA, aid in the Uélés remained absolutely inadequate in response to the needs of this mixed population of newly displaced and residents facing shared vulnerability and widespread violence. A much-needed, timely humanitarian response to violence and displacement failed to materialize, with an almost absolute lack of permanent humanitarian presence on the ground, as well as political conditioning of urgent emergency assistance on questions of governance and protection. At the same time, development approaches failed to adapt and meet emergency needs. So as not to disturb long-term efforts, short-term contingency support was provided through development NGOs, but with limited scope in time and place and maintaining cost-recovery schemes for health toward an already impoverished population facing an increasingly precarious situation. A development approach focused on the long term was simply unable to respond to the sudden increase in population and to their ever more fragile health situation.

The Uélés are hardly an isolated case of the challenges of responding to displacement in “development” zones of DRC—similar dilemmas have also arisen recently around displacement in Equateur. Drawing on field-based experience, this article aims to feed debates on humanitarian and development paradigms by showing how the concrete and complex dilemmas for practitioners translate into a very real impact on the lives and health of populations. Similar scenarios occur in many other contexts worldwide where sudden-onset emergencies, violence, and displacement are likely to arise alongside extensive “development” work and challenge the paradigm of a linear transition or easy

coexistence of humanitarian and development aid—from Afghanistan to Haiti, southern Sudan, and Ivory Coast. The aid system’s response to emergency needs arising in “development” contexts deserves further study and elaboration to ensure the most relevant and effective assistance possible in response to urgent humanitarian needs. The many barriers to emergency response in “development” settings merit further, concrete analysis as to how they actually play out in the field. These include the frequent absence of implementing actors and/or limited funding instruments in such sudden-onset emergencies; tensions around sustainability—in particular between emergency response and wider support to (health) systems; questions around the degree of aid alignment with states that may be absent, fragile, or belligerents per se; and wider divergences in philosophies of intervention (e.g. cost recovery, “do no harm”)—just to name a few. Cases such as Haut Uélé should provoke further debate about the continually evolving coexistence of humanitarian and development strategies, as well as about divergent assistance to refugees, IDPs, and host population, particularly in open settings¹⁷ where vulnerable populations are frequently forced to share already-scarce resources and services.

While the long-debated tensions between emergency and development approaches will never be fully resolved, the presence of development aid simply cannot and should not justify the failure of a timely and meaningful response to emergency humanitarian needs. Those working on violence and forced migration are challenged to remain vigilant to ensure that longer-term concerns do not hinder the response of “shifting gears” to meet the immediate needs of displaced people.

NOTES

1. For some of the key debates on humanitarianism and development, see Adele Harmer and Joanna Macrae, eds., “Beyond the Continuum: The Changing Role of Aid Policy in Protracted Crises,” HPG Research Report 18 (July 2004), <http://www.odi.org.uk/resources/download/236.pdf>.

For the challenges of transition in health, see Ann Cavan, Petra Vergeer, and Olga Bornemisza, “Post-Conflict Health Sectors: The Myth and Reality of Transitional Funding Gaps,” Health and Fragile States Network with Royal Tropical Institute Antwerp, October 2008, http://www.healthandfragilestates.org/index2.php?option=com_docman&task=doc_view&gid=33&Itemid=38. This study surveys several “post-conflict” contexts including DRC, concluding that during “transition,” health services often contract as humanitarian funding for health is reduced yet inflow of development aid remains slow. The three main determinants of inadequate transitional funding for health

were identified as: inadequate aid instruments, donor policy and priorities, and weak country governance. Even where aid instruments are adapted to transition, they do not always lead to adequate funding for health and suffer from tensions between state-avoidance and state building. For health in particular, there is often very limited tracking of aid flows within the health sector, making it difficult to assess funding gaps and to ensure health services do not contract during the crucial post-conflict period, when populations are still very vulnerable.

Also on negotiating between humanitarian and development approaches to health in DRC, see: Alain Kassa, Michel Van Herp, Mit Philips, and Frederique Ponsar, "Access to Healthcare, Mortality and Violence in Democratic Republic of Congo. Results of Five Epidemiological Surveys: Kilwa, Inongo, Basankusu, Lubutu, Bunkeya," (October 2005), http://www.doctorswithoutborders.org/publications/reports/2005/drc_healthcare_11-2005.pdf.

2. See Mary B. Anderson, "Do No Harm: How Aid Can Support Peace—or War," Boulder, CO: Lynne Rienner, 1999. Anderson's argument is that the provision of aid can either cause harm or can reinforce peace in conflict situations. As aid involves bringing resources such as food, water, and health care into a resource-poor environment, it risks causing harm and reinforcing conflict among contending groups. Anderson argues that aid can be reoriented to avoid unintended harm or support to "dividers" and maximize its positive support to "connectors" to reduce conflict.
3. For a critical look at the "aid dependency" debate for humanitarian aid, see Paul Harvey and Jeremy Lind, "Dependency and Humanitarian Relief: A Critical Analysis," HPG Research Briefing 19 (July 2005), <http://www.odi.org.uk/resources/download/265.pdf>.
4. See Kerry Demusz, "From Relief to Development: Negotiating the Continuum on the Thai-Burmese Border," *Journal of Refugee Studies* 11, no. 3 (1998): 231–44, <http://jrs.oxfordjournals.org/content/11/3/231.abstract>.
5. Humanitarian principles, including independence, impartiality (response solely according to need), and neutrality (not taking sides in conflicts), have practical importance for belligerents or political authorities to accept humanitarian aid and allow access for it to safely reach populations in need. These principles are drawn from international humanitarian law and are reproduced in many codes of conduct, mission statements, or charters and other policy documents of aid actors and donors. For more in-depth discussion of humanitarian principle and its vital links to practice, see e.g.: Nicolas Leader, "The Politics of Principle: The Principles of Humanitarian Action in Practice," HPG Report 2 (March 2000), <http://www.odi.org.uk/resources/download/252.pdf>; and Kate Mackintosh, "The Principles of Humanitarian Action in International Humanitarian Law," HPG Report 5 (March 2000), <http://www.odi.org.uk/resources/download/249.pdf>.
6. For some examples of principles as viewed by practitioners, see the Red Cross/Red Crescent seven fundamental principles, <http://www.ifrc.org/en/who-we-are/vision-and-mission/the-seven-fundamental-principles/>, as well as MSF's charter referring to humanitarian principles, <http://www.msf.org/msf/articles/2011/03/the-medecins-sans-frontieres-charter.cfm>.
7. See for example Victoria Wheeler, Sue Graves, and Michael Wesley, "From Crisis Response to State-building: Services and Stability in Conflict Affected Contexts," HPG Discussion Paper (October 2006), <http://www.odi.org.uk/resources/download/608-full-paper.pdf>; and Margaret E. Kruk, Lynn P. Freedman, Grace A. Anglin, and Ronald J. Waldman, "Rebuilding Health Systems to Improve Health and Promote Statebuilding in Post-conflict Countries: A Theoretical Framework and Research Agenda," *Social Science and Medicine* 70 (2010): 89–97, <http://www.ncbi.nlm.nih.gov/pubmed/19850390>.
8. Some of these issues are addressed in the following: Gorik Ooms, "Health Development vs. Medical Relief: The Illusion versus the Irrelevance of Sustainability," *PLoS Medicine* 3, no. 8 (2006): e345, <http://www.plosmedicine.org/article/info:doi/10.1371/journal.pmed.0030345>; Wim Van Damme, Wim Van Lerberghe, and Marleen Boelaert, "Primary Health Care vs. Emergency Medical Assistance: A Conceptual Framework," *Health Policy and Planning* 17, no. 1 (2002): 49–60, <http://heapol.oxfordjournals.org/cgi/reprint/17/1/49.pdf>; Sarah Bailey, Sara Pavanello, Samir Elhawary, and Sorcha O'Callaghan, "Early Recovery: An Overview of Policy Debates and Operational Challenges," HPG Working Paper (November 2009), <http://www.odi.org.uk/resources/download/4617.pdf>; Jonathan Moore, "The Humanitarian-Development Gap," *International Review of the Red Cross* 833 (1999): 103–07, <http://www.icrc.org/web/eng/siteeng0.nsf/html/57JPT2>.
9. As MSF is an independent and impartial humanitarian organization with field operations, a neutral stance toward all armed actors is paramount to its ability to securely access and assist populations in need. In keeping with our neutrality, MSF neither advances its own analysis of political and military contexts nor endorses any particular analysis conducted by others. For those readers interested in further analysis on the Lord's Resistance Army (LRA) in DRC and the regional and international responses to the LRA presence, see the following documents published by other experts and organizations: Tim Allen and Koen Vlassenroot, eds., *The Lord's Resistance Army: Myth and Reality* (London: Zed Books, 2010); Ronald Atkinson, "From Uganda to the Congo and Beyond: Pursuing the Lord's Resistance Army," International Peace Institute, December 2009, http://www.ipacademy.org/media/pdf/publications/e_pub_uganda_to_congo.pdf; Ledio Cakaj, "Between a Rock and a Hard Place: LRA Attacks and Congolese Army Abuses in Northeastern Congo," Enough, March 2010, <http://www.enoughproject.org/files/>

- publications/LRA_Congo_Activist_Brief.pdf; Ledio Cakaj, "The Lord's Resistance Army of Today," Enough, November 2010, http://www.enoughproject.org/files/publications/lra_today.pdf; Ledio Cakaj, "This Is Our Land Now: Lord's Resistance Army Attacks in Bas-Uélé, Northeastern Congo," Enough, August 2010, <http://www.enoughproject.org/files/publications/thisisourlandnow.pdf>; Jort Hemmer and Nikki Frenken, "The Lord's Resistance Army: In Search for a New Approach," Conflict Research Unit, Clingendael Institute, June 25, 2010, http://www.clingendael.nl/publications/2010/20100629_cru_report_jhemmer.pdf; Human Rights Watch, "The Christmas Massacres: LRA Attacks on Civilians in Northern Congo," February 16, 2009, <http://www.hrw.org/node/80773>; Human Rights Watch, "Trail of Death: LRA Atrocities in Northeastern Congo," March 2010, <http://www.hrw.org/node/89324>; IKV Pax Christi, "How EnLightning Is the Thunder? Study on the Lord's Resistance Army in the Border Region of DR Congo, Sudan and Uganda," February 2009, <http://reliefweb.int/node/304512>; International Crisis Group, "LRA: A Regional Strategy beyond Killing Kony," April 28, 2010, <http://www.crisisgroup.org/~media/Files/africa/horn-of-africa/uganda/157%20LRA%20-%20A%20Regional%20Strategy%20beyond%20Killing%20Kony.ashx>; Mareike Schomerus and Kennedy Tumutegereize, "After Lightning Thunder: Protecting Communities and Building Peace," Conciliation Resources April 2009, http://www.c-r.org/our-work/uganda/documents/After_Operation_Lightning_Thunder_29April09_lores.pdf; Small Arm Survey, "The Lord's Resistance Army," March 2011, <http://www.smallarmssurveysudan.org/pdfs/facts-figures/armed-groups/southern-sudan/HSBA-Armed-Groups-LRA.pdf>; and Steven Spittaels and Filip Hilgert, "Mapping Conflict Motives: Province Orientale (DRC)," March 17, 2010, http://www.ipisresearch.be/maps/Orientale/20100322_MappingOrientale.pdf.
9. In response, MSF medical staff have worked in the region since September 2008 and currently are present in Ezo, Naandi, Yambio, and Makpandu, providing assistance to around 45,000 people living in camps or integrated within host communities. For further information on the MSF response, see http://www.msf.org/msfinternational/invoke.cfm?component=article&objectid=E4A1743C-15C5-F00A-258A328AFE3E3FE4&method=full_html and http://www.msf.org/msfinternational/invoke.cfm?objectid=E9605CD6-15C5-F00A-25CB6EB6B3BAF948&component=toolkit.article&method=full_html.
 10. "UNHCR Seeing New Displacement Caused by Lord's Resistance Army," briefing notes, October 15, 2010, <http://www.unhcr.org/4cb832c29.html>.
 11. UNHCR, "New LRA Attacks against Populated Areas of Northeastern Democratic Republic of the Congo," March 1, 2011, <http://www.unhcr.org/refworld/country,,,COD,,4d6ceecf2,0.html>.
 12. At least since the 1990s, a lively debate has centred around the dilemmas of the relatively expedient provision of aid to refugees and IDPs in camps as opposed to open settings—see e.g. Richard Black, "Putting Refugees in Camps" and Barbara Harrell-Bond, "Camps: Literature Review," in *Forced Migration Review* 2 (1998), <http://law.wustl.edu/Library/cdroms/refugee/data/FMR%5CEnglish%5CFMR02%5Cfmr201.pdf> and <http://www.fmreview.org/FMRpdfs/FMR02/fmr206.pdf> respectively, as well as Jeff Crisp and Karen Jacobsen, "Refugee Camps Reconsidered," *Forced Migration Review* 3 (December 1998), <http://www.fmreview.org/FMRpdfs/FMR03/fmr307.pdf>.
Still, one key point of consensus is the imperative to ensure that assistance provided to refugee or displaced populations should also take into account the needs of resident populations nearby, who often host refugees or IDPs themselves. This lesson learned has translated into standard practices, taking into consideration the needs of both refugee or displaced and resident populations; see e.g. UNHCR's "Handbook for Self-Reliance" (July 20, 2006) <http://www.unhcr.org/44bf40cc2.html> or the Sphere Project, "Humanitarian Charter and Minimum Standards in Disaster Response, http://www.sphereproject.org/component/option,com_docman/task,cat_view/gid,17/Itemid,203/lang,english/.
 13. UN planning only foresaw a humanitarian budget for the region of Haut-Uélé as of the Mid-Year Revision of the Humanitarian Action Plan 2009. See "Révision à Mi-Parcours du Plan d'Action Humanitaire 2009- RDC," page 62, http://www.rdc-humanitaire.net/IMG/pdf/MYR_2009_DRC_HAP_FR_SCREEN.pdf.
 14. MSF, "Violence Expands in Northern DRC- Population in Urgent Need of Assistance," October 14, 2009, http://www.msf.org/msfinternational/invoke.cfm?objectid=517D655B-15C5-F00A-25C6A413A8701F11&component=toolkit.pressrelease&method=full_html.
 15. See IASC Global Health Cluster, "Removing User Fees for Primary Health Care Services during Humanitarian Crises," March 24, 2010, http://www.who.int/hac/global_health_cluster/about/policy_strategy/EN_final_position_paper_on_user_fees.pdf. The World Health Organization's Global Health Cluster argues that: (1) user fees impede access to health care, typically adding to health care costs and resulting in poor and vulnerable groups not always seeking appropriate health care when needed; (2) waivers and exemption policies to deal with the negative impact of user fees often are difficult to implement; and (3) poorer households often must resort to reducing food consumption, self-medicating, and/or enduring catastrophic health expenditures to afford fees. In addition, maintenance of user fees (often prescribed by national policies) flies in the face of impartiality (i.e. needs-based approach) to aid enshrined in the humanitarian principles. For more on the debate, see also: Chris D. James, et al., "To Retain or Remove

User Fees?: Reflections on the Current Debate in Low- and Middle-Income Countries,” *Applied Health Economics and Health Policy* 5, no. 3 (2006): 137–53, http://adisonline.com/healthconomics/Abstract/2006/05030/To_Retain_or_Remove_User_Fees___Reflections_on_the.1.aspx; Ke Xu, et al., “Household Catastrophic Health Expenditure: A Multi-country Analysis,” *Lancet* 362 (July 2003): 111–17, http://www.who.int/health_financing/Lancet%20paper-catastrophic%20expenditure.pdf; Also see Timothy Poletti, “Cost-Recovery in the Health Sector: An Inappropriate Policy in Complex Emergencies,” *Humanitarian Exchange Magazine* 26 (March 2004), <http://www.odihpn.org/report.asp?id=2609>. Poletti provides a critical review of the development-oriented arguments for cost recovery and the negative outcomes of imposition of user fees in emergency settings including diminished access to care, impoverishment of patients, lack of equity, and complications in programming.

For MSF field-based research on the impact of user fees on access to health care, including in DRC, see “No Cash, No Care: How ‘User Fees’ Endanger Health,” March 2008, http://www.msf.org.za/docs/No_cash_No_care_report_April-2008.pdf. This study points to data from 2005 showing that 29 per cent to 38 per cent of the population in some areas of DRC (then in a phase of “reconstruction”) lacked access to health care, with 35 per cent to 85 per cent of those interviewed citing lack of money as the reason for their exclusion from care.

16. Katharine Derderian and Liesbeth Schockaert, “The Limits of Humanitarian Protection: A Field-Based Perspective from an Humanitarian Organization,” paper for conference “Protecting People in Conflict & Crisis,” Refugee Studies Centre, Oxford University and Humanitarian Policy Group, September 2009, <http://www.rsc.ox.ac.uk/PDFs/sessionVgroup1liesbethschorkaertandkatharinederderian.pdf>.
17. On responses in open settings in the Uélés in particular, see Alena Koscalova, Elena Lucchi, and Sabine Kampmüller,

“Outside Camp Settings,” *Forced Migration Review* 36 (November 2010), <http://www.fmreview.org/DR Congo/koscalova-lucchi-kampmuller.htm>.

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This paper draws on fieldwork carried out in several locations in Haut-Uélé by the first author and by other MSF colleagues from March to July 2009—including assessments of local health structures, interviews with Congolese and international medical and humanitarian personnel and project management on the ground.

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Re-theorizing Human Rights through the Refugee: On the Interrelation between Democracy and Global Justice

KIRAN BANERJEE

Abstract

Drawing on Habermas's notion of discourse ethics and agonistic democratic theory I offer an account that attempts to overcome the exclusions revealed by statelessness by appealing to the mutability and contingency of community, as well as the fundamentally unsettled nature of the political. I argue that by placing discourse ethics, as a means to theorize the issues raised by statelessness and the idea of a claim to community, in dialogue with the agonistic emphasis on openness and the contestability of terms, we are provided with potential resources for conceptualizing more open notions of political membership.

Résumé

S'appuyant sur la notion d'éthique de la discussion chez Habermas et la théorie de l'agonisme démocratique, l'auteur propose une lecture qui tente de surmonter les exclusions révélées par l'apatridie en faisant appel à la mutabilité et la contingence de la communauté, ainsi que la nature fondamentalement instable de la politique. L'auteur soutient qu'en ouvrant un dialogue entre l'éthique de la discussion, comme moyen de théoriser les questions soulevées par l'apatridie et l'idée d'une revendication de la communauté, et l'accent agoniste sur l'ouverture et la contestabilité des termes, nous obtenons des ressources pouvant potentiellement conceptualiser des notions plus ouvertes de l'appartenance politique.

Contesting Community: The Refugee as a Site of Tension

Writing in the mid-twentieth century with the horrors of the Second World War still close at hand, Hannah Arendt

noted that the emergence of stateless persons as the “most symptomatic group in contemporary politics” served both as a catalytic factor in the emergence of totalitarianism and as a lasting crisis of the post-totalitarian world.¹ Of course, since Arendt penned her far-sighted observations, the oft-referred-to “humanitarian problem” that refugees and stateless persons have been seen to pose has only become far more ubiquitous, with over 17 million people classified as refugees and displaced persons to date.² To be sure, our categories for describing the stateless have become more nuanced since Arendt's time, but our progress in addressing her concerns has remained rather limited.³ Indeed, alongside the equally pressing international issues of immigration and humanitarian intervention, the questions posed by the phenomenon of widespread statelessness have only intensified the degree to which commitments to universal human rights and the sovereign claims of political communities have been seen to clash, thereby complicating discussions of global justice and the emerging international legal norms of our increasingly interconnected present. Indeed, for our modern paradigm of human rights that has been philosophically advanced on universalistic grounds, and yet linked to the incorporation of such rights into national institutions and law, the refugee appears as a figure both least protected and most vulnerable under present international arrangements.

Yet despite the apparent challenges the position of the refugee appears to offer toward our contemporary understandings of citizenship and human rights, the issue of statelessness has received relatively little sustained attention within discussions of international justice. In many ways it appears as if the general consensus views statelessness as a status far too exceptional, and therefore peripheral, to merit direct concern. It is because of this general trend that this paper attempts in part to reorient normative political

theory to the particular quandaries and issues raised by statelessness. This is because, as I hope to indicate herein, an inattentiveness to the position of the refugee often distorts or clouds discussions of international obligations and human rights, allowing us to gloss over the underlying inconsistencies in our prevailing understandings of international order and global justice. A central example of this blind spot in contemporary political theory is found in the later work of the seminal political theorist John Rawls. In his *The Law of Peoples*, an attempt to work out a theory of justice for international relations, Rawls entirely elides the ethical and political issues raised by immigration and statelessness—problematically articulating a vision of interstate relations that puts the imperatives of self-determination and human rights in stark conflict. In this way, Rawls's inattentiveness to the contingencies of citizenship is emblematic of the refusal to recognize the articulation of the basis and bounds of community membership as a central political question. Moreover, as much of the critical reception of *The Law of Peoples* has suggested, the problems raised by such issues can only be neglected at the cost of considerable conceptual poverty.

With the above considerations in mind, this paper will attempt to provide a provisional engagement with the particular issues raised by the position of the refugee and, more generally, to suggest that the questions of statelessness should occupy a far more central place in the considerations of normative political theory. In doing so, I will attempt to address whether, and if so how, our conceptions of community and citizenship should be transfigured on account of the particular theoretical and ethical concerns raised by statelessness. The first section will offer an account of the problematic status of the refugee by engaging with the work of Hannah Arendt to indicate how the phenomenon of statelessness reveals hidden tensions in our conceptions of political membership and universal human rights. Arendt's incisive analysis brings to light the precarious position of the refugee as located out of the bounds of community, while also highlighting the particular dilemmas that any approach toward statelessness will have to address. The second section will shift focus from a diagnostic to a prescriptive dimension, by turning to the approach of discourse ethics offered in Jürgen Habermas's work as a potential means to theorize the issues raised by statelessness and the question of the claim or right to community. As will become clear, the approach offered by Habermas is suggestive of novel ways of negotiating and transforming our conceptions of political membership toward a more just and cosmopolitan conception. However, while the paradigm of discourse ethics provides a promising framework, I will suggest that this approach is in need of a supplementary orientation toward

openness, given that the question of statelessness has at its very core the problematic of inclusion. In addressing this more fundamental dimension of the question of inclusion, I shall turn to the work and insights of the contemporary theorists of agonistic democracy, William Connolly and Chantal Mouffe. As will become clear, the focus of these theorists on the contestability of terms and the fundamentally unsettled nature of the political provide resources for conceptualizing more open notions of political membership. The paper will conclude by suggesting how the approaches of discourse ethics and agonistic theory can be used to imagine formations of community that eschew the types of exclusion central to the production of statelessness.

The Problematic of Statelessness: Sovereignty and Human Rights

Having established our trajectory of analysis, our engagement with the issue of statelessness will begin by turning to the work of Hannah Arendt. Her thought offers a unique perspective on our contemporary historical situation that importantly challenges our orientation toward the relationship of human rights and citizenship, providing a remarkable vantage point from which to consider such problems anew. Arguably, the figure of the refugee is central to Arendt's concerns regarding our forms of modern politics and community, in part driving her critical analysis in both *The Origins of Totalitarianism* and *The Human Condition*. However, it is in the former work that the situation of the refugee is given most explicit treatment, and it is Arendt's analysis of the emergence of mass statelessness that I shall now address in order to briefly explicate the problematic concerns raised by such phenomena.

As a project, *The Origins of Totalitarianism* represents Arendt's attempt to understand the historically unprecedented emergence of totalitarianism in the twentieth century through an extensive study of the diffuse conditions under which it arose. In her study, Arendt specifically identifies the emergence of widespread statelessness—the rendering of masses of people as rightless and uprooted—as one among many conditions that made possible the horrors of total domination in the modern world. Indeed, with the appearance of the refugee or stateless person as a pervasive phenomenon, many of the previously submerged dangers and contradictions of the nation-state system came to the fore—perhaps most importantly in the conceptual and practical crisis inherent in the notion of inalienable universal human rights. In her discussion subtitled “The Decline of the Nation-State and the End of the Rights of Man” Arendt offers a consideration of the phenomenon of widespread statelessness during the interwar era that delineates her views of the crucial implications of such developments.

Arendt's analysis begins by tracing the emergence of modern statelessness to the moment at which governments of the European continent began the theretofore unheard-of process of revoking the citizenship of segments of their populations en masse. With such developments the figure of the "refugee" emerged in Europe: a stateless individual lacking any governmental protection. Arendt notes that the sudden presence of mass statelessness quickly proved to be more than the existing legal institutions of the nation-state system could accommodate. Both of the traditional remedies to the hitherto exceptional position of the exile, the right to asylum and naturalization, quickly came to conflict with the sovereign rights of the state and, without any grounding in positive law, were quickly disregarded.⁴ But what was perhaps most striking was the manner in which commitments to so-called "human rights," paradigmatically expressed in the Declaration of the Rights of Man, rapidly began to reveal their fragile and contingent basis amid such unprecedented developments.

In her discussion of the problematic nature of "human rights" Arendt draws our attention to the basis on which these rights were proclaimed—namely an abstract conception of man generalized beyond his situation within a political community, a conception that depended on the assumption that these rights derived from no other source than man's inherent nature. Any valid political system presupposed these rights, and thus needed to recognize them in order to govern legitimately. But as Arendt notes, within a political system the sole guarantor of these rights was the political sovereign itself. A tension arose, in that the very rights set forth as natural and thus prior to the sovereign, relied upon the sovereign for their protection within the political community.

What Arendt wished to emphasize is that the rights enshrined in such proclamations of human rights actually refer to civic rights that can only have significance in the context of membership in a political community. Therefore what was revealed in the phenomenon of mass statelessness was the deep interrelation and dependency between so-called "human rights" and membership rights within a polity. Thus the fundamental loss suffered by the rightless was not a loss of a natural, inalienable right. It was rather the loss of their right to belong to a community in which such rights could have meaning, and of a place in the world in which their words and actions would be taken into account. This "right to have rights," the fundamental right which the refugee lost, was completely absent from the framework of The Declaration of the Rights of Man. The very structure of such rights, in presupposing an abstract human nature as the source of their legitimacy, could not articulate or express this fundamental right whose alienation constitutes

the denial of one's human dignity. Yet, as Arendt observed and to some degree experienced, it was precisely as a mere human, stripped of the markers of nationality and citizenship, that the refugee appeared. Moreover within Arendt's analysis the phenomenon of statelessness emerges as a symptom of the contradiction inherent between the expansion of the system of the nation-state and the earlier notion of inalienable rights arising out of man's nature. The genesis of this tension is exemplified in the French Revolution's simultaneous and, ultimately contradictory, expression of the Declaration of the Rights of Man and the demand for the national sovereignty of the people. The people were at once supposed to have universal rights and unlimited political power—but only as members of a nation, and therefore the sovereign political force therein. Arendt writes:

The same essential rights were at once claimed as the inalienable heritage of all human beings *and* as the specific heritage of specific nations, the same nation was at once declared to be subject to the laws, which supposedly would flow from the Rights of Man, *and* sovereign, that is, bound by no universal law and acknowledging nothing superior to itself.⁵

In her tracing of a genealogy of the modern nation-state, we see that the crisis of modern statelessness, as precipitated by the exclusionary logic of what had been thought to be "human rights," lies in this underlying tension between the state and the nation, as well as that between universal rights and civil rights. Arendt's analysis suggests that the phenomenon of statelessness is not merely coeval with the rise of the nation-state system, but a direct extension of the logic of sovereignty that system is predicated upon. But what perhaps was most striking about the position of the refugee was the way in which denationalization related to the conditions that underwrite the human ability to act inhumanely to others. Within Arendt's analysis the situation of the refugee is tantamount to the loss of the intersubjective "modes in which human beings appear to each other, not indeed as physical objects, but *qua* men."⁶ Thus within Arendt's analysis the phenomenon of statelessness is not only symptomatic of contemporary exclusionary modes of community and the concomitant tensions between human rights and state sovereignty, but actually constitutive of modalities of relatedness that allow human rights violations to take place.

As I have tried to emphasize above, the phenomenon of statelessness is fundamentally tied to the tension we find between the universalizing impulse of human rights discourse and the limitations imposed by our current understandings of citizenship and the state. As the sociologist Saskia Sassen has noted of the developments of the interwar era, "the emergent interstate system was the key to

the creation of the stateless person, the identification of refugees as such, and their regulation or control.⁷ Indeed, perhaps what is most remarkable about Arendt's insights is how pertinent they remain for our contemporary situation. The primary international response to the issues posed by statelessness has been the constitution of intergovernmental organizations responsible for overseeing the condition of refugees—but these institutions are themselves symptomatic of the only intensified pervasiveness of statelessness within the world. Moreover, despite the presence of emerging norms concerning the question of humanitarian intervention, in which sovereignty has become understood as contingent upon the state's responsibility to protect,⁸ norms regarding the position of refugees and asylum seekers have become only more ambiguous in relation to the prerogatives of *raison d'état*. Three remarkable, though by no means isolated, recent illustrations of the unresolved nature of these tensions clearly indicate the crucial limitations of modern human rights norms for dealing with such issues. The first has been the 2001–2008 “Pacific Solution” of the Australian government, under which a system of offshore detention centres was established for individuals entering the country without valid papers in order to provide greater discretion in the evaluation of asylum seekers without violating the human rights norms that come into effect with landed status. Such a system, which lived on in the country's mandatory detention policy, led to the pervasive long-term incarceration of asylum seekers and refugees.⁹ The second notable case is to be found in the intervening stages of the British Belmarsh decision of 2004 which allowed the UK government to detain indefinitely non-citizens who would normally face deportation, but who could not be deported without derogation from human rights obligations because of the risk they faced of being tortured in their country of origin. The paradoxical outcome of this situation was the legalization of indefinite incarceration without trial for non-citizens under the aegis of conforming to human rights norms, although the legality of this affront to the rule of law was eventually overturned.¹⁰ More remarkable, at just the moment when institutional innovations such as the Schengen Agreement in Europe are beginning to supposedly de-territorialize states and break down borders, “detention camps for foreigners have mushroomed across the European Union” with experiments with the externalization of borders along the lines of the “Pacific Solution” already beginning to take form through multilateral agreements with bordering states.¹¹ While these cases provide extreme examples of the conflict between human rights norms and state sovereignty within the policies of advanced industrial democracies, they are merely emblematic of general contradictory features of our international system.

Civil wars, natural disasters, widespread poverty, and failed states, amid a world of only tightening borders, have only increased the number of people caught between the interstices of our international order.

I would contend, along with Arendt, that the underlying source of our contemporary inability to manage these pathologies of the nation-state system lies in the exclusionary nature of our current forms of citizenship and our inability to recognize the fundamental nature of the right to belong to a community. Indeed, what is perhaps most remarkable about our current era of globalization is that, with supposedly growing mobility and interconnectedness across the world, the ability of human persons to move across borders would pale in comparison to that of international trade and monetary exchange. The costs of this contradictory logic are of course born heavily by those who find themselves on the outside of states, or as the “others” of the citizens within nations. But while Arendt's work brings to the fore the untenable nature of our current conceptions of community and the fundamental limitations of human rights discourse, her insightful analysis provides us with only a problematization of the issues at hand.¹²

Discourse Ethics and the Right to Belong

Having provided a provisional sketch of the problematic conceptual challenges raised by the phenomenon of statelessness, I would now like to turn to the theoretical approach toward these issues that can be articulated through an engagement with Habermas's work, in particular the mode of philosophical justification he has developed under the rubric of discourse ethics. The salience of Habermas's thought for addressing the conceptual problems of statelessness raised initially by Arendt is suggested by the critical edge discourse ethics potentially offers for interrogating and dislodging the presuppositions that currently underpin our exclusionary conceptions of “belonging” necessary to the production of statelessness. Indeed, in the way they are entwined with the ideas of community, citizenship and human rights, the issues of inclusion raised by statelessness seem to be intimately tied to “questions having to do with the grammar of forms of life” in our late modern era.¹³ Moreover the broader focus of his larger project of the theory of communicative action, with its focus on intersubjective engagement and attentiveness to the distorting effects of power relations, further confirms the promise of appealing to his work within the context of our present discussion.¹⁴

In taking up Habermas's approach of discourse ethics for the issue of statelessness, I will interpret Habermas as a post-metaphysical, non-foundationalist theorist.¹⁵ Based on this reading, I suggest the promise of his approach lies in providing a conceptualization of the issues raised by statelessness

and citizenship without having to rely upon problematic philosophical or metaphysical assumptions that often seem to underpin our understanding of human rights. Given the cautionary warning that Arendt's analysis offers regarding the fragility of such premises, a theoretical commitment to non-foundationalism in our conceptual approach seems most prudent and promising. Granted, this reading of Habermas as eschewing foundationalism in his approach to communicative action is somewhat complicated by his apparent essentialism regarding the nature of language as having as its "inherent telos" the reaching of mutual understanding.¹⁶ However the apparent import of such accusations of a hidden foundationalism are themselves seemingly overstated.¹⁷ Moreover, regardless of whether we are fully sanctioned in interpreting Habermas's theoretical commitments in this way, I believe we can easily take up his position while still acknowledging that his account of language may merely have the status of, to use Connolly's phrase, "premises deeply rooted in modernity itself."¹⁸ Moreover, the appropriation of an approach said to be rooted in the emergence of modernity itself seems entirely appropriate for interrogating the distinctively modern forms of community and collective identity that are implicated in the production of statelessness.¹⁹

In turning to Habermas's framework, we should begin by recognizing that the approach of discourse ethics is best understood as an extension of the conception of communicative "rationality" presented in *The Theory of Communicative Action*. The conception of communicative rationality, according to Habermas, "carries with it connotations based ultimately on the central experience of the unconstrained, unifying, consensus bringing force of argumentative speech."²⁰ Appealing to our everyday intuitions, Habermas points to the basis of this conception of rationality in our ability to give reasons or justifications for certain modes of action or statements about our social world, a tendency that Habermas explicitly links with the redeeming of normative claims.²¹ In reconstructing a moral theory from the suppositions of unconstrained argumentative discourse, Habermas begins with the constrained assumption that normative claims can be redeemed in a way analogous to truth claims.²² The weakening of the cognitivist commitments of Habermas's approach and the consequent limiting of the transcendental scope of discourse ethics to "give up any claim to 'ultimate justification'" is itself consistent with understanding of norms that Habermas attributes to the post-conventional era of modernity.²³ The approach of discourse ethics is therefore best understood as the working out of implications of his conception of communicative rationality in relation to claims of normative validity and moral legitimacy. As Thomas McCarthy notes, for

Habermas the elaboration of the principles of ethics justification "begins with a reflective turn, for these principles are built into the very structure of practical discourse itself."²⁴ Therefore it is the model of argumentative discourse that provides the principle of discourse ethics, that "only those norms can claim to be valid that meet (or could meet) with the approval of all affected in their capacity as participants in a practical discourse."²⁵ The principle of discourse ethics therefore stipulates the intersubjective condition under which a norm can be justified as expressing the common will of the plurality of those who will be affected.

Before turning toward the application of discourse ethics within our current context, it is important to note the relation of Habermas's approach to the tradition of Kantian moral theory, if only to stress its crucial divergences. As a deontological approach, Kant's monistic oriented moral theory attempts to avoid the issue of conflicting obligations by claiming to show that the categorical imperative itself is adequate as a moral standard for validating norms or maxims. In this way the Habermasian approach can be seen as an extension of the Kantian tradition with notable modifications: the rejection of the metaphysical division of the world into the nominal and the phenomenal realm, and the insistence on a dialogical basis for moral consciousness. For Habermas the criterion is, contra Kant, not what the individual can will without contradiction, but what all affected parties can agree to within rationally grounded discourse. Key to Habermas's approach is the way he construes the universalizing dimension of moral discourse in a decentred fashion. Hence the criterion of impartiality for discourse ethics, taken from the suppositions of everyday communication, is captured in the principle of universalism for the validity of every norm, such that: "All affected can accept the consequences and the side effects its *general* observance can be anticipated to have for the satisfaction of *everyone's* interests."²⁶ This is because Habermas identifies the fault in Kantian approaches to the principle of universalization as lying in the reliance on the orientation of a subject-centred perspective. Such approaches fail to fully acknowledge that "valid norms must *deserve* recognition from *all* concerned" and instead presents a conception of moral norms in which the "process of judging is relative to the vantage point and perspective of *some* and not *all* concerned."²⁷ Moreover, Habermas's approach openly acknowledges the situated nature of the participants to discourse, and therefore attempts to avoid the monological and transcendental dimensions of the Kantian tradition. As Habermas writes: "Discourses take place in particular social contexts and are subject to the limitations of time and space ... their participants are not Kant's intelligible characters but real human beings."²⁸ In alternatively proposing a principle

that “constrains all affected to adopt the perspectives of all others in the balance of interests” one can read Habermas as following up on the Hegelian critique of the “abstract universal” of Kantian morality that had initially suggested an attentiveness to the intersubjective dimension of interaction so central to the overall project of communicative action.²⁹ Within the domain of our concerns over the question of inclusion, this aspect of Habermas’s theory importantly tethers the approach of discourse ethics and grounds the criteria of the intersubjective validation of norms in the situated nature of participants.

In turning to the evaluation of the norms underlying the prerogatives of national territory and state sovereignty, we should begin by briefly drawing attention to the implicit forms of ethical justification that underwrite our contemporary understandings of citizenship and national communities. The claims of modern states to exercise control over their borders and define the limits of community membership extend from the logic of self-determination—itsself rooted in the idea of democratic legitimacy and popular sovereignty.³⁰ The basis of this understanding of self-determination is put succinctly by Michael Walzer in his description of the state as “constituted by the union of people and government, and it is the state that claims against all other states the twin rights of territorial integrity and political sovereignty.”³¹ Under this mode of justification, the prerogatives of territorial control and the demarcation of citizenship stem from the right of a nation or people to determine the structure and form of their mode of collective life. In this sense, it is by appeal to the claim of self-determination that the exclusion of the asylum seeker and refugee are purportedly legitimated by the traditional norms of national sovereignty. Moreover, from the standpoint of citizenship, one might infer that part of the moral justification of the bounded nature of states would have to be tied up with the claim of all to membership. In this sense, the claim to community, which must clearly imply the exclusion of those outside the boundaries of such a group, is supposedly redeemed by the expectation that those without have recourse to their own forms of self-determining political membership. At least as much seems to be implied in the somewhat euphemistic term of “displaced persons”—as if the issues posed by statelessness were merely the products of disturbances of the interstate system, rather than symptomatic of deeper problems.³² However, in this context it is crucial to note that in understanding the claim to community as both a normative and a moral demand, we need to recognize that the universalizing dimension of such an appeal must be directed both to those within and those outside particular polities. But as we have seen in our earlier interrogation of the relation of citizenship to the state,

the production of refugees seems to be inherent in the logic of our contemporary forms of community. How are we to reconcile the status of the modern state as the underlying source of the crisis of statelessness, and as the only means by which a “right to have rights” may be secured?

Having laid out in broad outline the current structure of presumptions that underwrite our contemporary understanding of citizenship and polity, it should be apparent that the framework of discourse ethics forces us to re-evaluate the legitimacy of such norms. From the impartial and inclusive perspective suggested by discourse ethics, the normative privileging of the position of the citizen cannot simply be presumed, while the sovereign prerogatives of the state to control entrance and limit citizenship are now in need of substantial justification. In asking us to consider whether our current norms of citizenship and sovereignty would be accepted by all those affected by such norms, we must clearly take into consideration the position of those who are most disadvantaged by such institutions and who find themselves asymmetrically located in relation to citizens—that is, at the periphery or outside the bounds of inclusion. In this appropriation of discourse ethics, normative justification cannot be merely circumscribed to the concerns of those within political communities, but must come to account for those without. Moreover, while our reading of Arendt brought to the fore the factors producing statelessness at its emergence as a mass phenomenon, at our current historical juncture the claims to validity of such norms have only become more problematic as the idea and integrity of the nation-state has itself become conceptually dubious. The question that discourse ethics asks us to raise is whether the norms of sovereignty and self-determination that allow individual states to set the criteria of entrance and control the distribution of citizenship can be fully justified when the perspective of the refugee is taken into account. In a sense, the issue of whether the number of claimants who fulfill the qualifications for the status of asylum seekers or refugees are actually admitted by states that claim to adhere to human rights is actually secondary for our current considerations. From the perspective of discourse ethics, the real question is whether such stringent and exclusionary criteria can be justified at all.

When taking into consideration the perspective of those caught in between communities or who find themselves admitted under a precarious or illicit status—asylum seekers, refugees, immigrants—we have good reason to doubt the acceptability of contemporary norms of citizenship and territorial sovereignty. Indeed, if our foregoing analysis is correct in suggesting a fundamental relation between our current modalities of community and citizenship with the practices of exclusion that produce statelessness, we have

good reason to believe that a moral imperative exists for weakening the boundaries of states and liberalizing the means of gaining membership within communities. While still allowing for the values of cultural integrity and communal life, a consideration of the question of inclusion from the position of *all* those affected by the exclusionary norms of membership will clearly push us to take up a more cosmopolitan perspective. One form this might take is in the recognition of a fundamental right to claim citizenship within a polity—with the burden of proof against such a claim lying on the part of the state. The development and articulation of such a right to belong would not necessarily be incompatible with some forms of communal integrity. However such claims will have to be justified in relation to the claims of those outside of a particular state, and not simply decided in advance by the presumptive bias of the national interest.

As I have tried to indicate in the foregoing discussion, the approach of discourse ethics when universally applied to the realm of those affected by our contemporary norms of citizenship and sovereignty forces us to reconsider the contours of our current practices. However, I would also like to suggest that the formal dimensions of discourse ethics raise certain issues for our attempt to address the particular concerns brought to the fore by statelessness and point to the limitations that such an engagement will have to overcome. As Habermas himself notes of his approach, the principle of discourse ethics is procedural rather than substantive in form, making reference to the discursive process of the evaluation of normative claims to validity. As he writes:

To this extent discourse ethics can properly be characterized as formal ... Practical discourse is not a procedure for generating justified norms but a procedure for testing the validity of norms that are being proposed and hypothetically considered for adoption. That means that practical discourses depend on content brought to them from the outside.³³

Thus, much like the Kantian conception of morality based on the categorical imperative that it aims to supersede, discourse ethics itself is not aimed at the generation of moral norms, but rather offers a way of evaluating and potentially legitimating norms that are brought into question. However as we have noted above, unlike the monological dimension of the Kantian approach, Habermas explicitly constructs discourse ethics around a communicative model, thereby explicitly emphasizing the dimension of intersubjective agreement between a community of participants.³⁴ Yet the very virtue of discourse ethics in attempting to base the validation of norms in the actual participation of concrete agents in practical discourse itself raises questions about

how the realm of participants is constituted. As Habermas notes, the very idea of practical discourse is dependent on a “horizon provided by the lifeworld of a specific social group ...” and thereby tied to particularized conceptions of community.³⁵ Moreover, the very means in which the norm in question is itself conceptualized—a matter of economics, of immigration, of human rights—seems to radically shift our sense of the scope of relevant participants, and indeed points to the question of how those bounds are themselves politically constituted. An instructive example of this is the gradual shift we have seen in the past few decades in the refugee policies of many Western industrial democracies. Arguably, there has been a widespread move in policy away from conceptualizing such issues as concerning human rights, and toward treating the claims of refugees and asylum seekers primarily as an immigration question. Such trends are exemplified more recently in the emergence of policies designed to deflect claimants without violating international obligations, such as the Safe Third Country Agreement between the United States and Canada.³⁶ These developments of course imply the normative privileging of the position of citizens by more fully excluding potential claimants themselves from the realm of parties whose views and positions are fully relevant to the formulation of policy. Such issues only highlight the possible difficulties in addressing what it would mean to have stateless persons play a role in the adjudication of the norms that would secure their inclusion in the first place. The potentiality of discourse ethics to validate new and intrinsically open forms of community is clear from our earlier discussion, but from our contemporary standpoint we seem terribly far from having adopted the “enlarged mentality” that the implementation of such considerations would seem to demand. Moreover, the rootedness of our fundamental conceptions of democratic legitimacy in the idea of bounded communities makes the leap to the standpoint of “citizen of the world,” or even to a post-national consciousness, seemingly rather distant. This suggests that addressing the issue of statelessness in the present requires that we direct our attention toward problematizing the very notions of citizen and “people” that seemingly necessitate political closure.

Theorizing the Contingency and Contestability of Community

Having drawn attention to the potential and limits of discourse ethics to point the way toward more inclusive understandings of community and citizenship, we will now engage with the emergent perspective of agonistic democratic theorists in order to suggest ways in which the idea of a “people” itself can be understood as intrinsically open. As indicated above, the central dilemma facing our

attempt to overcome the issues posed by statelessness is that the position of the refugee is itself one of exclusion and in a sense constitutes a form of identity which seemingly eludes solidarity. Therefore any attempt to overcome the particular challenges posed by statelessness and the attempt to articulate a fundamental right to belong to community will crucially have to underwrite the modes of inclusion necessary to bring those who fall outside of the community within the threshold of the relevant. It is with this aim in mind that we turn to writers such as William Connolly and Chantal Mouffe, who have helped develop and articulate the agonistic approach toward democratic theory that places the issues of conflict and contestation at the centre of the political. Using their insights I will further develop our engagement with the issue of statelessness along three dimensions: the unsettled nature of our concepts of citizen and “people,” the constitutive tension between liberalism and democracy, and the potentiality for more inclusive and open notions of community that the agonistic vision of politics suggests. These considerations will bring to light how we should understand the basis and bounds of community as always inherently contingent, and therefore help cultivate the orientation necessary to be attentive to the needs of those excluded.

Before beginning our engagement with the work of the aforementioned theorists it seems best to briefly address and defuse the apparent opposition that such perspectives have been claimed to have with the approach of deliberative democracy that Habermas’s work is associated with. Given the often emphasized challenge that the agonistic conception of democratic politics claims to pose to the approach toward radical democracy stemming from the critical theory of Habermas, the attempt to supplement our understanding of the issue of statelessness by turning to both traditions is in need of some explanation. Chantal Mouffe in particular has continually emphasized the divergences between the agonistic approach toward the political and the understanding of politics expressed in the work of deliberative democrats that follow Habermas, with their emphasis on rationalism and consensus.³⁷ However, I believe that the claims of Mouffe and others of an extreme divergence between the two approaches are greatly overstated—at least insofar as such claims suggest that we deny the fruitfulness of an engagement between the perspectives. As Simone Chambers writes:

Discourse ethics does not project the ideal of a dispute-free world, nor does it devalue contestation. Not only is such a world unattainable, it is also undesirable. Diversity and difference lead to criticism, and criticism leads to well founded norms.³⁸

Positing a radical opposition between the two perspectives and their respective emphasis on the values of political contestation/conflict and consensus obscures how they can be brought together creatively. Moreover, Mouffe’s tendency to criticize the consensus-oriented dimension of discourse ethics shows a failure to appreciate the central role of the contestation of norms to Habermas’s approach. Such an understanding of his project is echoed in Patchen Markell’s reading of Habermas’s project as understanding “democratic politics as an unending process of contestation” in which there is a clear recognition that “no actually existing settlement can constitute a satisfactory embodiment of the regulative idea of agreement.”³⁹ While this is not the place to develop a full response to Habermas’s detractors, the notions of *disagreement* and dissent play important roles in Habermas’s theory which are often obscured by readings that tend to mistakenly classify his work along with that of Rawls.⁴⁰ However, such commentators are right insofar as they contend that the agonistic approach does provide us with a critical purchase on particular elements of political practice by distinctively emphasizing a model of politics centred around conflict, and it is precisely this focus we should engage with to supplement our developing approach toward statelessness.

Having indicated the general direction of my engagement with agonistic perspectives, I would like to first turn to William Connolly’s analysis of the inherently contested nature of our central political concepts in his book *The Terms of Political Discourse*. One of Connolly’s central aims in this work is to challenge the prevalent assumption within the social sciences that the language of politics is somehow a neutral medium that merely conveys meaning and to “focus attention on the locus of space for contestation” that exists within “the fine meshes of social and political vocabularies themselves.”⁴¹ Taking an expressivist perspective on language, Connolly draws our attention to the fact that discussions over the “correct use of partly shared appraisal concepts are themselves an intrinsic part of politics” and introduces the idea of “essentially contested concepts” to denote such terms.⁴² In this way, he carefully frames his analysis of political discourse in opposition to what he calls “empiricist” or “rationalist” tendencies within political science in order to highlight the deeply political valence of our arguments over the use of such words as “democracy,” “power,” and “freedom.” Connolly’s emphasis on the potentialities of contestation and the internal discord within our political language emphasizes a certain vision of the political as essentially open. As he writes: “Politics is, at its best, simultaneously a medium in which *unsettled* dimensions of a common life find expression and a mode by which a temporary or permanent settlement is sometimes

achieved.”⁴³ Thus, perhaps most importantly for our purposes, Connolly’s work highlights the political dimension of language itself in ways that enable us to track potential opportunities for political innovation by allowing us to “expose conceptual closure when it has been imposed artificially.”⁴⁴ In this way, what Connolly’s analysis forces us to confront is the continually partial and incomplete nature of our core political concepts. This suggests that the extension and meaning of such concepts as community and citizenship can never be said to be fully decided, while our understandings of such central ideas as “justice” at any specific moment are to be understood as always the conception of a particular group and therefore always open to contestation and further negotiation. In this way, distancing ourselves from the approach toward our social world that treats such questions as static and “operationalizable” allows us to see that our central concepts are not any more settled than the actual communities within which we live.

Connolly’s insights on the inherent contestability of our central political concepts has a central import for our discussion of how we might overcome the forms of exclusion that produce the situation of statelessness. In particular, the very idea of the bounds of a “people” and the notion of citizenship are revealed as themselves highly contested in the very way Connolly’s analysis suggests. In no context attuned to the complexities of our political landscape can we truly speak of the category of citizen as having a fixed nature, or of a particular shibboleth—whether of language, ethnicity, race, nationality, gender, or class—that defines the bounds of political membership once and for all. The disputed and variable status of the idea of the citizen is echoed in the work of Judith Shklar, who has pointed out that “there is no notion more central in politics than citizenship, and none more variable in history or contested in theory.”⁴⁵ While on some banal level citizenship can be understood as a particular relationship between the individual and the state, the contours of that membership and the status it confers have varied widely through the tradition of Western thought. Such sentiments regarding the contingent and potential variability of our social practices of inclusion and exclusion are brought to mind in Chantal Mouffe’s statement that:

What is at a given moment considered the ‘natural order’—jointly with the ‘common sense’ which accompanies it—is the result of sedimented practices; it is never the manifestation of a deeper objectivity exterior to the practices that bring it into being.⁴⁶

Placing this dimension of contestability at the centre of our thinking about citizenship therefore helps us keep in mind the inherent contingency to any idea of a “people” and allows us to cultivate a sense of solidarity with those

outside our particular form of community by viewing them always as potential citizens with legitimate claims to our concern.

Having offered an account of how the valence of contestability can begin to orient us toward intrinsically more open conceptions of community, I would like to now attend to the elements of the tradition of agonistic theory that emphasize the central role of conflict and antagonism to the realm of the political more generally. Much like Connolly, the work of Mouffe also centres around the radical potentiality of a conception of politics that emphasizes the value of contestation for forestalling the threat of closure that seemingly haunts our democratic practices. However, Mouffe in particular carries the thematic of contestation to the extreme in order to argue for the irreducibility and ineliminability of the potential for antagonism within the domain of the political. Mouffe’s antagonistic conception of politics is in part indebted to a tempered engagement with the work of Carl Schmitt that draws off his insistence on the fundamentally “conflictual nature of politics” and the importance of recognizing the antagonistic and relational basis of identity, while rejecting his insistence on the “existence of a homogenous demos.”⁴⁷ According to Mouffe, this revised vision of politics centred around the ever-present possibility of conflict is both more in tune with the oppositional foundation of identity and more open to the potentials for radical challenge and transformation that democracy allows.

Within Mouffe’s interpretation of modern democracy, our fundamental framework of political activity is structured by the paradoxical tension between democracy as a form of rule and the symbolic framework of legalism, rights, and equality, that characterizes liberalism.⁴⁸ Drawing off the insights of Schmitt’s critique of the liberal understanding of politics while rejecting his dismissal of liberalism, Mouffe emphasizes how this “democratic paradox” between the two components of our modern framework of politics leads to a permanent site of tension, for “no final resolution between these two conflicting logics is possible” with our options limited to only precarious and temporary negotiations of this divide.⁴⁹ More fundamentally, we can read Mouffe’s identification of the conflicting logic of liberal democracy as part of the deeper tension between legality and the sovereign will of the demos. The signature of *this* conflict runs like a red thread through the history of political theory. Emblematic of this are Aristotle’s discussions in the *Politics* of the tension between the will of the people and the laws of the polity, as well as Rousseau’s opaque considerations on how to resolve that tension in a period at which liberalism was more a nascent theory than an established tradition.⁵⁰ Yet Mouffe does helpfully flag how this tension is itself deepened by the advent of liberalism and

its emphasis on equality and rights discourse. As Mouffe notes:

By constantly challenging the relations of inclusion-exclusion implied by the political constitution of the “people”—required by the exercise of democracy—the liberal discourse of universal human rights plays an important role in maintaining the democratic contestation alive. On the other side, it is only thanks to the democratic logics of equivalence that frontiers can be created and a demos established without which no real exercise of rights would be possible.⁵¹

By dramatizing the site of liberal democracy as contingent and unstable, her analysis brings to the fore the radically precarious and problematic dimension of any attempt to permanently articulate more inclusive and open conceptions of community. Moreover, Mouffe’s warning regarding the fragility of any particular political configuration is exceedingly apt in our current age of the “war on terror” when the civil rights of citizens, let alone those of resident aliens and non-nationals, have been notably eroded under more or less democratic institutions. As she notes of political negotiations in general, “every order is the temporary and precarious articulation of contingent practices”—a point that emphasizes the provisional and limited character of any political “solution.”⁵² Such observations speak directly to the concerns at hand by asking us to temper the cosmopolitan aspirations and pretensions of any project with the recognition that the negotiation of the terms of political membership is always inherently an ongoing political project and can never be considered a *fait accompli*. Recognizing that the universalizing tendencies of liberalism and human rights discourse exist in tension with the potentialities of popular sovereignty brings to light the ever present potential to reconstitute more open notions of community membership necessary to secure a “right to belong,” while also stressing the precariousness of such arrangements.

Conclusion: Toward Practices of Inclusion

Our aforementioned reading of theorists from within the agonistic tradition of radical democracy has attempted to illustrate how an understanding of the political centred around conflict and contestation can be put to the uses of overcoming the conditions that produces statelessness in our contemporary world. Such an engagement arguably provides a needed supplement to the Habermasian approach toward statelessness by positing new modalities for understanding citizenship as intrinsically open, and therefore provides a basis for including those presently excluded from our forms of community in our realm of

moral concern. However, while our discussion of agonism has highlighted the essentially contestable nature of claims to collective identity, it is crucial to emphasize that such contestability is not equally open to all. This is a crucial insight that is emphasized in Lawrie Balfour’s recent project of putting agonistic theory and reparations politics into conversation, because it brings to the fore the limitations of our own attempt to engage with the tradition of agonistic theory to diagnose the pathologies of exclusionary citizenship practices. As Balfour saliently points out:

Even if all identities are ultimately unstable or contestable, even if they are all produced through rather than revealing foundational truths about individuals or communities, they are neither produced in the same way or contestable to the same degree. To assume that they are is to overlook crucial asymmetries between members of different identity groups.⁵³

Within the context of our current discussion, such considerations draw attention to the fact that it is just those who are most disadvantaged by our current practices of citizenship who shall also be least able to challenge the norms that produce contemporary forms of exclusion. While the agonistic lens provides a powerful perspective for destabilizing and challenging our conceptions of community, we must also remain attentive to how the potentiality for contestation is often structurally determined. Remaining cognizant of this issue emphasizes the importance of developing forms and practices of solidarity as part of the project of re-conceptualizing our notions of citizenship. Such considerations suggest that the limitations of the agonistic perspective point to the need to foster local potentialities of community in ways that may allow us to transcend the problematic bounds of the state and build the forms of solidarity necessary for more inclusive orientations of citizenship. While such potentialities remain fragmentary and uncertain at present, such experiments in developing alternative practices of citizenship will have to play a central role in any practical attempt to grapple with the issues raised by statelessness.

NOTES

1. Hannah Arendt, *The Origins of Totalitarianism* (New York: Harcourt Brace Jovanovich, 1973), 277.
2. Given that there is an obvious political dimension to the classification of individuals as refugees, it is worth noting that the United Nations Population Fund (UNFPA) estimates that there are over 190 million immigrants worldwide.
3. As the reader will note, perhaps with some frustration, I follow Arendt in using the terms “stateless person” and

- “refugee” interchangeably. This choice is deliberate. The perspective motivating this paper and developed in my subsequent work assumes that the seemingly helpful, or at worst innocuous, proliferation of legal categories and types of statelessness we have witnessed should be understood as potentially pernicious. This paper focuses on problematizing the terms of inclusion; a related concern is obviously the power of states in shaping and defining the categories of exclusion. The very categories of status—refugee, IDP, asylum seeker, or more recently climate refugee—are instantiated and controlled by states, agents with clear interests in manipulating the scope and implications of such designations. Thus it is worth considering how this proliferation of categories of persons exemplifies an epistemic exercise of power, given that such processes of identification allow states to circumscribe and frequently circumvent the moral and legal claims of individuals. Against this proliferation of categories related to political exclusion, in my work I use a broader conception of statelessness meant to encompass a range of forms of political exclusion arising from the refusal of access to the protection and well-being that citizens are understood to be owed by the state.
4. Arendt, *Origins of Totalitarianism*, 280.
 5. *Ibid.*, 230.
 6. Hannah Arendt, *The Human Condition* (Chicago: University of Chicago Press, 1958), 176.
 7. Saskia Sassen, *Guests and Aliens* (New York: New Press, 2000), 84.
 8. Thomas Weiss, *Humanitarian Intervention* (Cambridge: Polity, 2007), 116.
 9. Human Rights Watch, “Not for Export’ Why the International Community Should Reject Australia’s Refugee Policies,” (New York: Human Rights Watch, September 2002); Ian MacKinnon, “Australia Opens Controversial Asylum Centre on Christmas Island,” *The Guardian*, December 19, 2008.
 10. On this, see David Dyzenhaus, *The Constitution of Law: Legality in a Time of Emergency* (Cambridge: Cambridge University Press, 2006).
 11. Caroline Brother, “Obscurity and Confinement for Migrants in Europe,” *International Herald Tribune*, December 30, 2007.
 12. I have elsewhere argued that Arendt’s work implicitly contains a response to the paradox posed by statelessness in her critique of sovereignty. But I have begun to have doubts whether such an account is a sufficient enough basis for theorizing substantive solutions to the problems posed by statelessness. Hence this paper, which takes Arendt’s work as a starting point for engaging with more disparate perspectives.
 13. Jürgen Habermas, *The Theory of Communicative Action*, vol. 2, *Lifeworld and System: A Critique of Functionalist Reason*, trans. T. McCarthy (Boston: Beacon Press, 1985), 392.
 14. Such *decentred* and intersubjective features of Habermas’s approach are in marked contrast to the conceptual lineage we find in the work of John Rawls, whose subject-centred approach clearly has its roots in Kantian moral philosophy. Given the marked inattentiveness of Rawls’s work on global justice to the questions raised by statelessness, such divergences are suggestive of the potential of discourse ethics.
 15. Habermas, *Theory of Communicative Action*, vol. 2, 387–88.
 16. Jürgen Habermas, *The Theory of Communicative Action*, vol. 1, *Reason and the Rationalization of Society*, trans. T. McCarthy (Boston: Beacon Press, 1985), 287.
 17. This reading of Habermas seems to be vindicated by his claim to be adopting the position of someone who is “operating without metaphysical support and is also no longer confident that a rigorous transcendental-pragmatic program, claiming to provide ultimate grounds, can be carried out;” *Theory of Communicative Action*, vol. 1, 137. Also, for a related discussion of the “hypothetical and fallible” universalism of Habermas’s approach, see Simone Chambers, *Reasonable Democracy: Jürgen Habermas and the Politics of Discourse* (Ithaca: Cornell University Press, 1996), 162.
 18. William Connolly, *The Terms of Political Discourse* (Princeton: Princeton University Press, 1974), 241.
 19. The relation between the approach of discourse ethics as an extension of communicative action to the conditions of modernity is clear from its dependency on the world differentiation that Habermas attributes to shift to modernity. See Habermas, *Theory of Communicative Action*, vol. 1, 52.
 20. *Ibid.*, 10.
 21. *Ibid.*, 8.
 22. Jürgen Habermas, *Moral Consciousness and Communicative Action*, trans. C. Lenhardt and S. Nicholsen (Cambridge, MA: MIT Press, 2001), 76.
 23. Habermas, *Moral Consciousness and Communicative Action*, 77.
 24. Thomas McCarthy, *The Critical Theory of Jürgen Habermas* (Cambridge, MA: MIT Press, 1981), 324.
 25. Habermas, *Moral Consciousness and Communicative Action*, 66.
 26. *Ibid.*, 65 (original emphasis).
 27. *Ibid.*, 65 (original emphasis).
 28. *Ibid.*, 92.
 29. Jürgen Habermas, *Theory and Practice*, trans. J. Viertel (Boston: Beacon Press, 1988), 144–46; Habermas, *Moral Consciousness and Communicative Action*, 65.
 30. Such norms are woven into our current structures of international order in the form of the central role respect for state sovereignty occupies in the UN Charter.
 31. Michael Walzer, “The Moral Standing of States: A Response to Four Critics,” *Philosophy and Public Affairs* 9, no. 3 (1980): 212.
 32. On this, see Goodwin-Gill’s discussion of the postwar re-emergence of the term “displaced person,” and its initial

- use as a surrogate for what were essentially refugees of the conflict in Indochina; Guy Goodwin-Gill, *The Refugee in International Law* (Oxford: Oxford University Press, 1996), 11–13.
33. Habermas, *Moral Consciousness and Communicative Action*, 103.
 34. Hence this is a far cry from a mere empty formalism. See Jürgen Habermas, “Labor and Interaction: Remarks on Hegel’s Jena Philosophy of Mind During 1803–1804 and 1805–1806” in *Theory and Practice*; and also “Morality and Ethical Life: Does Hegel’s Critique of Kant Apply to Discourse Ethics?” in *Kant and Political Philosophy: The Contemporary Legacy*, ed. Ronald Beiner and William James Booth (New Haven: Yale University Press, 1996).
 35. Habermas, *Moral Consciousness and Communicative Action*, 103.
 36. Allan Thompson, “Unfair Refugee Accord Should Be Struck Down,” *Toronto Star*, January 26, 2008.
 37. Chantal Mouffe, *On the Political* (New York: Routledge, 2005), 12–13.
 38. Chambers, *Reasonable Democracy*, 162.
 39. Patchen Markell, “Contesting Consensus: Rereading Habermas on the Public Sphere,” *Constellations* 3, no. 3 (1997): 379.
 40. The role of conflict in his thought is perhaps most pronounced in his theorizing of the public sphere as domain of contestation or “medium for permanent criticism;” *Theory of Communicative Action*, vol. 2, 341. Indeed, reading the public sphere as the domain where the domination of public debate by organized political and economic interest is *challenged* and *contested* by citizens further emphasizes this connection.
 41. Connolly, *Terms of Political Discourse*, 231.
 42. *Ibid.*, 39. The phrase “essentially contest concept” is used to refer to case in which “the concept involved is *appraisive* in that the state of affairs it describes is a valued achievement, when the practice described is *internally complex* in that its characterization involves reference to several dimensions, and when the agreed and contested rules of application are relatively *open*, enabling parties to interpret even those shared rules differently as new and unforeseen situations arise”; *ibid.*, 10.
 43. *Ibid.*, 227.
 44. *Ibid.*, 231.
 45. Judith Shklar, *American Citizenship: The Quest for Inclusion* (Cambridge, MA: Harvard University Press, 1991), 1.
 46. Mouffe, *On the Political*, 18.
 47. *Ibid.*, 13–14.
 48. Chantal Mouffe, *The Democratic Paradox* (New York: Verso, 2000), 2.
 49. Mouffe, *Democratic Paradox*, 45.
 50. Aristotle, *The Politics*, trans. Carnes Lord (Chicago: University of Chicago Press, 1985), 1292a.; Jean-Jacques Rousseau, *The Social Contract and The First and Second Discourses*, trans. Susan Dunn (New Haven: Yale University Press, 2002), 80–83.
 51. Mouffe, *Democratic Paradox*, 10.
 52. Mouffe, *On the Political*, 18.
 53. Lawrie Balfour, “Act and Fact: Slavery Reparations as a Democratic Politics of Reconciliation,” in *The Politics of Reconciliation in Multicultural Societies*, ed. W. Kymlicka and B. Bashir (Oxford: Oxford University Press, 2008), 99.

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A “Great” Large Family: Understandings of Multiculturalism among Newcomers to Canada

CHRISTOPHER J. FRIES AND PAUL GINGRICH

Abstract

Analysts have taken positions either supporting or attacking multicultural policy, yet there is insufficient research concerning the public policy of multiculturalism as it is understood and practiced in the lives of Canadians. This analysis approaches multiculturalism as a text which is constituent of social relations within Canadian society. Data from the Regina Refugee Research Project are analyzed within Nancy Fraser’s social justice framework to explore the manner in which multiculturalism and associated policies are understood and enacted in the lived experience of newcomers. Newcomers’ accounts of multiculturalism are compared with five themes identified via textual analysis of the Canadian Multiculturalism Act—diversity, harmony, equality, overcoming barriers, and resource. Embedded within the accounts newcomers offered of Canadian multiculturalism are relations of ruling that can be understood within the context of struggles for recognition and social justice. Further research is needed to investigate the relational processes in which differing perceptions of and experiences with multiculturalism are embedded and to compare the present accounts with those of other groups of immigrants and Canadian-born.

Résumé

Les analystes ont pris position soit pour ou contre la politique du multiculturalisme, mais il y a insuffisance de la recherche sur la politique publique du multiculturalisme tel qu’on le comprend et pratique dans la vie des Canadiens. Cette analyse aborde le multiculturalisme en tant que texte constitutif des relations sociales au sein de la société canadienne. Des données statistiques du Regina Refugee Research Project sont analysées dans le cadre de justice sociale élaboré par Nancy Fraser afin d’explorer la manière dont le multiculturalisme et les politiques connexes sont comprises et adoptées dans le vécu des nouveaux arrivants. Les témoignages de nouveaux arrivants sur le multiculturalisme sont comparés à cinq thèmes identifiés par l’analyse textuelle de la Loi sur le multiculturalisme canadien – la diversité, l’harmonie, l’égalité, la suppression des obstacles, et l’ingéniosité. Les nouveaux arrivants intègrent à leurs témoignages concernant le multiculturalisme canadien des relations de pouvoir qui peuvent être comprises dans le contexte de luttes pour la reconnaissance et la justice sociale. D’autres recherches sont nécessaires pour étudier les processus relationnels auxquels sont intégrées différentes perceptions et expériences du multiculturalisme et comparer les témoignages actuels avec ceux d’autres groupes d’immigrants et natifs du Canada.

[To me, multiculturalism means] opportunities for all groups, cultures, or persons to develop or act within their community. The governments try to treat everybody as part of a 'great' large family.

Regina Refugee Study participant

[Canada is not] a melting pot in which the individuality of each element is destroyed in order to produce a new and totally different element. It is rather a garden into which have been transplanted the hardiest and brightest flowers from many lands, each retaining in its new environment the best of the qualities for which it was loved and prized in its native land.

*The Right Honourable John Diefenbaker,
former Canadian Prime Minister*

Introduction

Perhaps no Canadian policy initiative has greater potential relevance for the lives of newcomers to Canada than does multiculturalism. Multiculturalism has been both widely applauded and subjected to much criticism. One reason for this ambivalence may be the variety of meanings associated with multiculturalism—it can refer to any of policy, program, practice, educational approach, sociological concept, symbol, ideal, ideology, theory, or description of Canadian society. No definitive meaning has been attached to the term and “as a federal policy multiculturalism is difficult to explicate since its substance remains obscure and the program content of multiculturalism is periodically modified.”² While many analysts have taken positions either supporting or attacking multicultural policy,³ there are few empirical studies of multicultural policy and its effects.⁴ In addition, there has been little in the way of empirical investigation⁵ into the ways Canadians perceive the policy and how the accounts of newcomers are implicated in the construction of multiculturalism as a feature of the Canadian ethnocultural landscape. Drawing upon Ng’s conceptualization of Canadian multiculturalism as an “ideological frame,” it becomes clear that implementation of the policy is a relational process that is “produced and constructed through human activities.”⁶ Consequently, the starting point for this analysis is approaching Canadian multiculturalism as a text which is constituent of social relations within the wider Canadian society: “In taking up a text as a constituent of a social relation, we are constrained not only to understand it as a moment in a sequence, but also to recognize that the interpretive practices which activate it are embedded in a relational process.”⁷ In this article we explore how multiculturalism and its associated policies and legislation are understood and enacted in the lived experience of newcomers to Canada. Data for this exploration come from interviews

with newcomers to Regina, Saskatchewan, who arrived in the city as government-sponsored refugees. Before presenting our findings, we provide a historical and theoretical background for understanding multiculturalism.

Historical and Theoretical Background

Multicultural Policy in Canada

Multicultural policy is closely linked to the social, economic, and political history of Canadian society, and more specifically to immigration⁸ and the labour market, along with issues of citizenship and social justice. In English-speaking Canada prior to the 1960s, “integration” meant assimilation into a British model of society, although there were exceptions and assimilation was often incomplete. More recently, there have been changes in the composition of the population, in the structure of Canadian society, and in official policy and practice, so that integration in a multicultural context has become widely accepted.⁹ While this has created a greater degree of social justice in areas of cultural differences, inequalities of incomes and opportunities remain structured into the operation of the Canadian economy and society.¹⁰ These have not been eliminated, leading to dramatic differences in life experiences for individuals from different ethnocultural backgrounds.

Some writers have found historical precedents or continuities for federal multicultural policy,¹¹ but most date the beginning to the early 1970s.¹² Following the Royal Commission on Bilingualism and Biculturalism, appointed in 1963, the federal government “proclaimed a policy of multiculturalism within a bilingual framework.”¹³ On October 8, 1971, Canadian Prime Minister Pierre Trudeau announced that federal government policy would officially be directed toward “preserving human rights, developing Canadian identity, strengthening citizenship participation, reinforcing Canadian unity and encouraging cultural diversification within a bilingual framework.”¹⁴ In 1977, legal safeguards against discrimination based on race, ethnic origin, or religion were made law as part of the *Canadian Human Rights Act*. When the Canadian Constitution was patriated in 1982 the *Charter of Rights and Freedoms* enshrined guarantees of equality and multiculturalism in sections 15 and 27. And perhaps most significantly, on July 21, 1988, Bill C-93, an Act for the preservation and enhancement of multiculturalism in Canada, or the *Canadian Multiculturalism Act (CMA)* became law.

Responsibility for administering the policy was initially vested in the Multiculturalism Directorate of the Department of the Secretary of State and, after 1993, in the Department of Canadian Heritage.¹⁵ Following a 1996 review¹⁶ Canadian Heritage established a renewed multiculturalism program with “social justice, identity

and civic participation” as goals.¹⁷ Since 2008, multiculturalism policy and programs have been located in the Department of Citizenship and Immigration.¹⁸ Among the current emphases are inclusive citizenship, “reaching out to Canadians and newcomers and ... developing lasting relationships with ethnic and religious communities in Canada,” identity, integration, equality, acceptance, and harmony.¹⁹

Multicultural policy in Canada has had both vociferous defenders and critics. Ministerial statements defending and promoting the federal policy and program²⁰ have been accompanied by reports and polls that generally show public support.²¹ Academic analysis has provided historical, sociological, and theoretical support for multiculturalism.²² At the same time, opposition to and questioning of multiculturalism has come from some academics,²³ writers and media analysts,²⁴ and non-governmental organizations and political parties and groups.²⁵ Changes in federal program structures and a shift in emphasis have been seen by some to weaken the federal commitment to multiculturalism.²⁶ Despite this, multicultural policy continues to attempt to deal programmatically with cultural difference in an accepting manner, within the context of unequal relationships among individuals and groups. The policy is a means of countering homogenizing cultural tendencies in contemporary societies such as Canada.²⁷ As such, multiculturalism is not an ethereal or merely platitudinous concept, but in dealing with disparate and unequal power relationships, the policy has direct consequence for how both Canadians and newcomers live and realize social aspirations. As an ideological process that is contested and subject to ongoing negotiation, multiple viewpoints on multicultural policy are inevitable. Ng employs textual analysis to demonstrate that Canadian multiculturalism “is through and through an artifact produced by the administrative processes of a liberal democratic state in a particular historical conjuncture to re-conceptualize and reorganize changing social, political, and economic realities.”²⁸ As such, multicultural policies are inextricably bound up with issues of social justice.

Multiculturalism and Social Justice

The theoretical framework informing this analysis is provided by critical theorist Nancy Fraser’s analysis of recognition within a social justice framework, examining sources of injustice in culturally diverse societies.²⁹ In Fraser’s framework, “social identities are discursively constructed in historically specific social contexts.”³⁰ As such, multicultural policy can be understood as constitutive of status orders such as “refugee.” In Fraser’s words, “status represents an order of intersubjective subordination derived from institutionalized patterns of cultural value that constitute some members of society as less than full partners in

interaction.”³¹ This is social status not in terms of prestige or an index of socio-economic status, but in the Weberian sense of social honour and status group.³² This form of status affects how members of a society interact (or how some are not permitted to interact) with each other and the extent to which all members are considered full participants in social relationships.

Initially, Fraser’s social justice framework³³ identified two distinct social spheres that have associated with them different sources of injustice and different solutions to economic and cultural injustice.³⁴ Her original model presents two overlapping but analytically distinct sources of inequality (maldistribution / misrecognition) with two solutions (redistribution / recognition). Later, Fraser³⁵ would introduce a third dimension focusing on the issue of political representation within the context of global neo-liberalism. Here her concern is with the ways in which the political framing of social justice includes and excludes parties. In view of Fraser’s later work, redistribution, recognition, and representation are understood as conjoined in struggles for social justice. The present analysis is grounded in the redistribution / recognition debate that is central to Fraser’s earlier work.

Fraser argues that social injustice can be a result of maldistribution in the material sphere of society or misrecognition in the cultural and symbolic sphere. Maldistribution of resources is associated with exploitation, economic marginalization, and deprivation while misrecognition is associated with cultural domination, nonrecognition, and disrespect.³⁶ However, Fraser argues that redistribution of economic resources will not necessarily solve problems of misrecognition; the latter are in the cultural or symbolic sphere and “the remedy for cultural injustice ... is some sort of cultural or symbolic change.”³⁷ As such, Fraser sets misrecognition in the sphere of culture and the symbolic, emerging as a result of status subordination.

Fraser elaborates that each specific social inequality, such as discriminatory or inequitable treatment of immigrant groups, has elements of both maldistribution and misrecognition. Because of the close connection between maldistribution and misrecognition, social justice can be achieved only by tackling and eliminating the causes of both injustices. As such, she considers the material and symbolic spheres to be two distinct, but interlocking, dimensions of social life. Achieving social justice involves both redistribution of resources in the material sphere and achieving a form of recognition that allows all members of society to have the status of full partners in social interaction.³⁸ Following on the redistribution / recognition model, Fraser’s criterion for achieving social justice is “parity of participation” or “participatory parity.”³⁹

Fraser develops parity of participation as a standard for inclusion, in that a socially just society will eliminate barriers that prevent participation of all in social institutions. This means the elimination of socially constructed barriers in both the material and symbolic spheres so that all can participate as peers in social relationships and social institutions; in the economic and cultural spheres, respectively. By applying this norm, there is a possibility for some form of equality of opportunity and for all members of a society to have "the status of full partners in interaction."⁴⁰ As such, parity of participation rests on two conditions: The objective condition, that of greater equality of distribution of resources, is necessary "to ensure participants' independence and 'voice'" and provide "the means and opportunities to interact with others as peers."⁴¹ The intersubjective condition means eliminating misrecognition and "requires that institutionalized patterns of cultural value express equal respect for all participants and ensure equal opportunity for achieving social esteem."⁴² Fraser argues that there are two distinct processes, which she terms "affirmation" and "transformation," that can help achieve participatory parity, with comprehensive social justice emerging only from the later, transformative processes. However, these processes are interlinked, so that achievement of social justice requires attention to both affirmation and transformation.

One means of reducing cultural or symbolic injustice is accordance of recognition to individuals and groups whose culture has been devalued, ignored, or considered inferior by those who have been able to exercise subordination over individuals and groups who practice that culture. Fraser terms this an affirmative approach, one of recognizing and respecting the individuals, groups, and cultures that had been misrecognized and not respected. A more radical, or what Fraser terms a transformative, approach is to deconstruct group identities and differences. This means changes that "redress disrespect by transforming the underlying cultural-valuational structure."⁴³

Deconstruction could transform social relationships and social institutions, leading to new and restructured identities and institutions. In her analyses, Fraser points to the need for deconstruction of difference and reconstruction of the relations of recognition. Since she considers transformative approaches to be necessary in order to achieve social justice, she cannot provide a roadmap—the form such a solution takes depends on how members of society transform social institutions. Fraser does, however, provide a guideline for reconstruction when she argues that the norm of parity of participation is the standard for overcoming misrecognition.⁴⁴ Subordination "denies some individuals and groups the possibility of participating on a par with others in social interaction."⁴⁵ As a corrective, she argues

that "justice requires social arrangements that permit all (adult) members to interact with one another as peers."⁴⁶

Fraser does not consider multiculturalism to be sufficient to achieve participatory parity or transformation in the cultural and symbolic spheres. Rather, she argues that mainstream multiculturalism requires ongoing reallocations of respect to existing identities. This parallels a reformist approach in the economic sphere, where continual redistribution of material resources may be necessary to counter new forms of inequality. Some aspects of multiculturalism can be considered to be primarily affirmative and other aspects transformative, with the latter having the possibility of deconstructing differences, creating new social relationships and institutions, and leading to greater participatory parity. Fraser argues that mainstream multiculturalism is primarily concerned with surface reallocations of respect to identities that currently exist, without challenging or changing these identities. For Fraser, political and social solutions to injustice must move beyond affirming or recognizing difference and involve transforming society by deconstructing the meaning of difference and reconstructing the social relationships of distribution and recognition. The framework developed by Fraser provides a powerful vision of how societies can be transformed in a way that promotes social justice. Her analyses provide a way of analyzing and conceptualizing how Canadian multicultural policy is constitutive of particular social relations.

Methodology

Data and Sampling

The data for this article come from interviews with fifty-five newcomers to Canada who participated in the Regina Refugee Research Project.⁴⁷ Most of the newcomers arrived in Regina as government-sponsored refugees between 1985 and 1994. They were welcomed to the city by the Regina Open Door Society (RODS), a community settlement agency. To improve sample representativeness, some individuals who arrived prior to 1985 also became project participants. While the aim was to interview equal numbers of males and females, only sixteen of the fifty-five participants were female.

Table 1 compares the number of sample participants by region of origin with the number of government-sponsored refugees who arrived in Regina between 1985 and 1994. While not a random sample, the project participants constitute a cross-section of adult Regina residents who arrived as refugees between 1985 and 1994. The sample is reasonably representative of these newcomers from Southeast Asia and Africa, while it under-represents Europe and West Asia and over-represents Central and South America.

Table 1. Number and percentage of individuals in sample and in population of arriving Regina government-sponsored refugees (1985–1994), by region of origin

Region of origin of individuals	Number of individuals		Per cent of individuals	
	Sample	Population.	Sample	Population.
Southeast Asia	17	572	31	31
Central/South America	24	360	44	19
Europe	4	365	7	20
Africa	6	270	11	15
West Asia	4	281	7	15
Total	55	1,848	100	100

Source: Regina Open Door Society Inc., *Annual Report*, 1989–1990 through 1993–1994. Note: Regions of origin are as follows. Southeast Asia: Cambodia, Laos, Vietnam; Central/South America: Chile, El Salvador, Guatemala, Honduras, Nicaragua; Europe: Albania, Bosnia, Bulgaria, Czechoslovakia, Hungary, Poland, Romania; Africa: Eritrea, Ethiopia, Rwanda, Somalia, Sudan, Uganda; West Asia: Afghanistan, Iran, Iraq.

The Interview

Researchers contacted newcomers and conducted semi-structured interviews with newcomers in English exploring a wide range of topics such as English language acquisition, employment experiences, health and health care, and family, friends, and community. During the interview, newcomers were provided prompts meant to elicit discussions of their awareness and experiences of Canada's policy of multiculturalism. These interviews contribute to a discussion of multiculturalism in two ways. First, by providing newcomers' views, we address the concern of Bloemraad, Korteweg, and Yurdakul, who note, "Future research also needs to break down the meaning and practice of multiculturalism in different times and places."⁴⁸ Second, by giving "voice" to participants and listening carefully to their narrative histories, it is possible to learn about the lived experience of the individual and the social context within which multicultural discourses are given meaning and enacted.

Newcomers' accounts of multiculturalism were coded according to five themes identified via textual analysis within the *Canadian Multiculturalism Act* (see Table 3). While other researchers might identify themes differently, we consider the five themes of diversity, equality, overcoming barriers, harmony, and resource to summarize the major statements of the *Act*. Further, the themes identified via textual analysis of the *Act* are similar to those identified in other discussions of multiculturalism.⁴⁹ The themes refer only to statements in the *Act*, and not other government

documents or policies. Three researchers independently read the responses and identified themes newcomers recognized. Where ratings were inconsistent, we discussed them and arrived at a mutually agreed-upon coding.

Regina and Immigration

Regina has a population of approximately two hundred thousand people, making it a medium-sized Canadian city.⁵⁰ While Regina receives relatively few of immigrants to Canada, over the last thirty years there has been a small but steady flow of immigrants and refugees to Regina, with immigration to the city tripling in the last five years.⁵¹ Examining the views and experiences of newcomers to Regina is important for at least three reasons.

First, Regina is a city with a strong European multicultural heritage. In the early part of the twentieth century the population was primarily British in origin, but by the second half of the century, through migration and immigration to the city, the population became what can be termed multi-European.⁵² On the ethnicity question of the 2006 Census of Canada, close to one-half of the population of the city gave single or multiple European origin responses. And the population of Aboriginal and visible minority origins reached 8.9 and 6.6 per cent, respectively, in 2006. This represents a population mix differing from that of Canada's largest metropolises.⁵³

Related to this is that in medium-sized cities "the process of immigrant settlement and integration may be decidedly different from and perhaps more successful than that in the largest metropolitan areas of Canada."⁵⁴ One difference is that Regina has no immigrant or ethnic enclaves⁵⁵ although there are areas of the city that can be considered Aboriginal neighbourhoods.⁵⁶ Newcomers to Canada who reside in Regina cannot settle into a neighbourhood composed of others of their background.⁵⁷

A third reason is that immigration to Regina and several other medium-sized cities is growing. From 2000 to 2010, immigration to Toronto, Montreal, or Vancouver declined from 76 per cent to 63 per cent of all Canadian immigrants while immigration to the largest Prairie cities rose from 8 per cent to 17 per cent.⁵⁸ Immigration to Regina accounts for only 1 per cent of Canada's immigration but the situation in other Prairie cities may have parallels to that of Regina.

The Regina Refugee Research Project did not explore the background of participants in great detail. But all participants had been accepted by Canada as refugees, meaning that they had been displaced from their country of origin and feared persecution if they were to return.⁵⁹ The two regions from which most participants came were Southeast Asia, as part of the aftermath of the war in Vietnam, and El Salvador, as a result of the civil war.⁶⁰

Findings

Awareness of Multiculturalism

Approximately one-half (twenty-five of forty-nine) of the newcomers who responded to the prompt regarding multicultural policy were either unaware of the policy (fifteen) or demonstrated little awareness (ten). Of the latter, while some may have had a fuller understanding than evidenced in their responses, they said little more than that the policy means "a lot," is "essential," or "freedom." In contrast, many of the twenty-four newcomers who demonstrated an awareness of multiculturalism provided detailed accounts concerning its meaning. A few examples are the recognition of diversity and harmony ("lots of cultures living together in harmony"), learning from each other ("learning about other countries [and] their cultures"), and government policy ("government receives different people, different cultures and they promote it"). Some accounts indicate ambivalence, outright opposition, or a misunderstanding of the policy: "A smoke screen for Canadians [which does] nothing for me." In terms of awareness of multiculturalism, Table 2 shows that responses of Regina newcomers are almost identical to those reported for all Canadian adults and for respondents born outside Canada in *Multiculturalism and Canadians: Attitude Study 1991*.⁶¹

Table 2. Level of awareness of multiculturalism, Regina participants and Multiculturalism and Canadians 1991 Survey. Percentage with each response

Level of awareness of multiculturalism	Regina Refugee Project participants (n=55)	1991 Survey (n=3,325)	
		All respondents	Born outside Canada
Unaware	27%	25%	28%
Little awareness	18%	63%	62%
Aware	44%		
No response	11%	12%	10%
Total	100%	100%	100%

Note: The question asked in the Multiculturalism and Canadians Survey was, "To the best of your knowledge, does the federal government have a policy of multiculturalism?" with the response being a "yes" or "no."

Several factors appear to be implicated in awareness of multicultural policy. Newcomers who indicated awareness reported their mean years of schooling was 15.0 years as compared with a mean of 11.0 years for the less aware and unaware group.⁶² Sixteen of the twenty-eight (57 per cent) who attended at least two English language classes reported awareness, while only five of sixteen (31 per cent)

with less than two classes were aware of the policy. While there appeared to be no relationship between awareness of multiculturalism and the number of Canadian friends, those newcomers who reported having friends from an Aboriginal background were more likely to be aware of multiculturalism. Eleven of the sixteen newcomers who reported having an Aboriginal friend said they were aware of multicultural policy (69 per cent), as opposed to awareness by only eight of nineteen newcomers who reported no Aboriginal friend (42 per cent). This finding is interesting given that no relation was found between awareness and having friends in other ethnic groups.

Year of arrival in Regina appears strongly related to awareness of multiculturalism. Over 60 per cent of the thirty newcomers who arrived between 1988 and 1993 indicated awareness of multicultural policy; only one-quarter of the nineteen arriving earlier reported awareness. This difference may be related to the improved and more systematic settlement services that became available in the city. Several of those who arrived in the 1970s received little initial assistance. In contrast, newcomers arriving as government-sponsored refugees after the mid-1980s obtained basic settlement services from RODS, including classes in the English language and an introduction to Canadian society. Newcomers initially assisted by RODS reported greater awareness of multicultural policy than those not met or assisted by RODS. Newcomers appear to perceive RODS settlement services as indicative of state-sponsored support of multiculturalism. In addition, in the programmatic delivery of settlement services, RODS operates within an ethos of multiculturalism that can be seen as promoting the goals of the policy. Newcomers from Central America and Eastern Europe were most likely to report an awareness of Canada's policy of multiculturalism, and it was these who arrived more recently, were more likely to have been met by RODS, and had higher education levels—the latter being factors generally associated with greater awareness.

An indication that the policy of multiculturalism has met with some affirmative success in promoting recognition of the cultural and ethnic diversity of Canada and the equality of Canadians of all origins comes from the finding that newcomers identifying with both Canada and their country of origin reported a high level of awareness (fourteen of twenty-three or 61 per cent). In contrast, those identifying primarily with either Canada or their home country were less likely to report awareness (eight of twenty-two or 36 per cent). Yet, those who are aware of the policy were least likely to identify themselves as primarily Canadian. Only three of twenty-three newcomers who were aware of the policy identified themselves primarily as Canadian, compared to four of fourteen who were unaware of the policy. Awareness

of the policy then, seems to encourage dual identification as “Canadian-plus,” in which newcomers view themselves both as Canadian and as members of their country of origin. When asked “Would you encourage friends from your native land to come to Canada?” just under 60 per cent of newcomers who responded “yes” were aware of multiculturalism (twenty-two of thirty-nine). In contrast, the seven newcomers who said that they would not encourage friends to come to Canada were less aware. If encouraging newcomers to feel more Canadian by affirming recognition of their background is an objective of multicultural policy, then the policy appears to assist in this. Next, we consider the extent to which the affirmative and transformative dimensions of Fraser’s analysis of multiculturalism find expression in newcomer accounts of the policy.

Understandings of Multiculturalism—Affirmative or Transformative?

In order to study newcomers’ understandings of multiculturalism, we compared the accounts they offered to the themes identified via textual analysis of the *Canadian Multiculturalism Act*. We considered five themes to be central in the *Act*—these are summarized in Table 3, with references to the relevant sections of the *Act*. Most references are to section 3 (1) of the *Act*, the part that states the meaning of federal multicultural policy. In this section of the paper, we present a critical textual analysis of the *CMA* in the light of the analyses of Fraser, commenting on the degree to which four central issues emerging from her theoretical framework—affirmation; participation; deconstruction; and transformation—are evidenced in the narratives offered by newcomers.

Much of the discussion of multiculturalism revolves around preservation of cultures and languages, recognizing and respecting differences among groups, and solidifying group identities. In such discussions, there may be little reference to how cultures continually change, especially as people of different cultures interact with each other. The *CMA* contains many examples of this when it refers to respect or tolerance for cultures other than one’s own, and in phrases such as “preserve, enhance and share culture” and “recognize and enhance development of communities of common origin.”⁶³ Fraser identifies such approaches as “mainstream multiculturalism” with “surface reallocations of respect to existing identities of existing groups” that “support group identification.”⁶⁴ While she does not minimize the importance of these struggles, Fraser argues that such approaches can “drastically simplify and reify group identities.”⁶⁵ She refers to such approaches as affirmative, in the sense that they aim to correct injustices by providing affirmation for devalued group identities. The reallocations

of respect that emerge from such initiatives do not deconstruct the manner in which the identities are formed and maintained, leaving “intact both the contents of those identities and the group differentiations that underlie them.”⁶⁶ In Fraser’s view, such an approach often emerges from struggles for recognition and group identity.

Thematically, the *CMA* contains little reference to deconstructive aspects associated with difference and categorization into ethnicity, culture, and race. In fact, concepts such as “preserve” and “enhance” of the *CMA* may lead to emphasis on affirmation of such difference. In Fraser’s approach, more attention would need to be paid to redistributive issues in the economic and material sphere in order to achieve this aspect of social justice. The statement that comes closest to matching the concept of participatory parity is from the *CMA*, section 3(1) (c), where multiculturalism policy is to “promote the full and equitable participation of individuals and communities of all origins in the continuing evolution and shaping of all aspects of Canadian society and assist them in the elimination of any barriers to that participation.” However, the *CMA* does not develop this idea more fully. In light of the framework developed by Fraser, the *CMA* represents an ideological frame for affirmative approaches to multiculturalism and contains some statements about transformation, but is deficient in dealing with issues such as overcoming barriers, participation, and dealing with racism and discrimination.

Diversity. Affirmation of diversity is central to multicultural policy—without the fact of diversity in culture, cultural heritage, race, and language in Canadian society, there would be little need for the *Act*. Sub-themes are respect for diversity (also in the harmony theme), and protection and promotion of diversity (also in the resource theme). Most newcomers associated multicultural policy with diversity—examples are “a mix of cultures,” “different cultures, different people,” and “different heritage, different culture, different language.”

Equality. Diversity alone could be associated with inequality, antagonism, or conflict among individuals and groups. Regardless of the reality, the *Act* states that equality is a policy aim, through “equal treatment and equal protection,” “equitable participation,” and “equal opportunity.” None of these implies that individuals will be equal in terms of income, wealth, or condition, but one goal of the *Act* is to set out several aspects of equality among individuals and groups. Seven of the accounts reflected the goal of equality as embodied in the *Act*. Newcomers noted, “we are all equal, all Canadians were immigrants at one time,” “equality, friendship, and respect between each other,” and “society which is just, where equal participation can take place.” One newcomer provided a very concrete account of equality

Table 3. Textual analysis: Themes in the *Canadian Multiculturalism Act*

Theme	Affirmative	Transformative
Diversity	<ul style="list-style-type: none"> • cultural and racial diversity of Canadian society 3:1(a) • preservation, enhancement and sharing of cultural heritage 3:1(a) • recognize the existence of diverse communities 3:1(d) • respecting and valuing diversity 3:1(e) 	<ul style="list-style-type: none"> • promote reflection and evolving expression of cultures 3:1(h)
Equality	<ul style="list-style-type: none"> • equal treatment and protection under law 3:1(e) • equal opportunity in federal institutions 3:2(a) 	<ul style="list-style-type: none"> • full and equitable participation of individuals and communities in the continuing evolution and shaping of Canadian society 3:1(c)
Harmony	<ul style="list-style-type: none"> • harmony, respect, appreciation, and understanding 3:1(f) and (j) 	<ul style="list-style-type: none"> • exchanges and cooperation among the diverse communities 5:1(c)
Overcoming barriers	<ul style="list-style-type: none"> • eliminate barriers to participation 3:1(c) 	<ul style="list-style-type: none"> • encourage institutions to be inclusive 3:1(f)
Resource	<ul style="list-style-type: none"> • fundamental to Canadian heritage and identity 3: 1(b) • historic contribution to Canadian society 3:1(d) • make use of language skill and cultural understanding 3:2(e) • value diversity 3:1(e) 	<ul style="list-style-type: none"> • creativity 3:1(g) • invaluable resource in shaping Canada's future 3:1(b)

Note: The numbers and letters in the box refer to the sections or subsections of the *Canadian Multiculturalism Act*.

rights by stating: “Being able to participate in Canadian society. For example, having the right to vote.”

Harmony. We attached this label to concepts such as respect, recognition, appreciation, and understanding. While, in practice, relationships among diverse groups and efforts to reduce barriers to full and equal participation may not be carried out harmoniously, the *Act* mandates this direction. By indicating that Canadians should respect and appreciate various diverse cultures and traditions, a certain harmony is implied by the *Act*. Newcomer accounts that drew upon rhetorical framing of Canadian multicultural policy such as “many people work together looking for better life” and “one culture and another come together, bring cultures together” express this theme most clearly. Many accounts employ similar rhetorical devices and this was the second most widely expressed theme by the newcomers.

Overcoming Barriers. Given the many forms of inequality in Canadian society, it is interesting that the framers of the *Act* noted a need to eliminate barriers. The specific types of barriers and how these might be overcome are not discussed in the *Act*, but there is some recognition of maldistribution. Section 3:1 (f) refers to assisting a variety of institutions to be inclusive, the implication being that some institutions are not inclusive in their practices. While three

newcomers appeared to express this theme, their accounts concerning barriers to jobs and education and “opportunities ... to develop or act” do so only implicitly. Given the limited and peripheral reference to overcoming barriers in the *Act*, it is perhaps not surprising that none of the newcomers’ accounts included explicit recognition of this theme. In fact, some of those who reacted negatively or with ambivalence to the policy noted that a missing element of multiculturalism was its inability to assist in overcoming barriers to fuller social participation.

Resource. Statements in the *Act* express the idea that multiculturalism and diversity are or can be resources integral to Canadian heritage and identity and are important for shaping and building Canada. In this theme, diversity is considered creative, skills are provided, understanding is increased, and Canadian society is transformed. This was the second least expressed theme in the newcomers’ accounts and again, most statements were no more than implicit. Perhaps the clearest narratives were those of the newcomers who noted that “cultures contribute to [the] culture of Canada” and “means we are people from different countries, but have the same responsibilities for our society.”

Most newcomers identified the diversity theme, with just over 40 per cent also making some reference to harmonious

relationships. Approximately one-quarter of the aware newcomers expressed some notion of multiculturalism as equality or resource. The bulk of statements about the meaning of multiculturalism made reference to what Fraser terms the affirmative aspects of multiculturalism. Words used in connection with diversity that the researchers considered to express this approach include “equality,” “respect,” “friendship,” “family,” “harmony” “share,” “preserve,” and “appreciate.” We also considered responses such as “different heritage, different culture, and different language are considered a good thing” and “government receives different people, different cultures and they promote it. There is not laws against it like in some countries. There is freedom of religion and culture” as expressing affirmation. For the most part, the latter accounts are associated with a vision of multiculturalism as one of different cultures and peoples who coexist or get along with each other. But these phrases do not present a view of cultures as changing or society as being transformed. Each of the above accounts represents a view of multiculturalism that is consistent with much of the official discourse of Canadian multiculturalism. Such statements are examples of an affirmative view that accords respect to cultures other than one’s own, without envisioning possibilities for multiculturalism as being transformative. In addition, newcomers identified other factors they felt were associated with multiculturalism—we now turn to these.

Freedom. Four newcomers mentioned freedom with the clearest expressions being “There is freedom of religion and culture,” “free for everyone,” and “freedom.” While section 3:1 (a) states “freedom of all members of Canadian society to preserve, enhance and share their cultural heritage,” the *Act* emphasizes affirmative approaches to cultural diversity and maintenance of culture, rather than promoting the transformative potential of freedom. In this respect, the account “That people have freedom to speech, religion, culture, jobs, and education” is interesting. While the first three mentioned freedoms clearly fit into the policy, the latter two do not appear in the *Act*. Newcomers’ accounts articulated serious concerns about maldistribution of employment and educational opportunities that were not addressed by multicultural policy. When asked what aspects of their new lives present the greatest problem and what changes would make life a lot better, fourteen newcomers specifically directed their narratives to employment difficulties.

Participation. Following Fraser’s criticisms of multiculturalism, we did not identify participation as a major theme in the *Act* although section 3:1 (c) states that the policy is to “promote the full and equal participation of individuals and communities of all origin ...” Several newcomers identified participation as key, for example, “participate in Canadian

society,” “where equal participation can take place,” and “opportunities for all groups, cultures, or persons to develop or act within their community.” Others noted that it is possible to “sample of [the] best elements in every culture” or expressed the idea of peaceful coexistence: “lots of cultures living together in harmony.” One newcomer said multiculturalism “means we are people from different countries, but have the same responsibilities for our society.” What is interesting about the latter account is that it extends individual or group action beyond participation, to responsibility. As the next section will discuss, this is reminiscent of some contemporary discussions on citizenship,⁶⁷ but appears to be beyond multicultural policy, at least as expressed in the *Act*.

Rights and Privileges. Six newcomer accounts identified rights or privileges they felt were guaranteed by the policy. One explained, “There is freedom of religion and culture” and another indicated the right to “exercise language and customs so long as it doesn’t affect someone else.” The latter is an example of a commonly expressed theme—affirmative aspects of multicultural policy are moderated to allow development of a greater sense of Canadian cultural unity.

Critical View. While most newcomers who provided accounts of multicultural policy evaluated it positively, three newcomers expressed serious reservations toward the policy, providing their own variant of Fraser’s criticism that multiculturalism is merely affirmative. One newcomer, apparently frustrated by the policy, referred to it as “A smoke screen for Canadians which does nothing for me.” Two accounts provide illustrations of the failure of multicultural policy to fulfill transformative purposes as articulated by newcomers: “Activities may help but doesn’t help integration, but can help preserve culture” and “[I] like it and hate it at the same time. We can live in our culture but we are called minority groups. Appears on job applications. You are different. Never part of the total.” As used by Fraser, “deconstruction” involves eliminating such socially constructed differences that impede parity of participation. In connection with multiculturalism, this involves deconstructing race, ethnicity, national origin, and religion in a way such that differences associated with these categories no longer impede the ability of anyone to participate as a peer in social institutions and relationships. There were few accounts that mentioned culture and social life in a way that implies change that could produce a new culture and way of life. As compared with Canadian multicultural policy, a few of the accounts appear to place an even greater emphasis on the transformative potential of promoting Canadian cultural unity through mutual respect for diversity. Consider the following account: “Putting together people from different cultures to be unified in one idea and to learn each from the other and to live together.” This account pulls

together themes of diversity, harmony, and resource. The view expressed is one of creating a new culture. This implies some deconstruction of differences created by earlier cultures, so that new social relationships and culture emerge. The above statements certainly contrast with affirmative accounts such as "practice your own culture," where no change in culture is suggested.

Discussion

Multicultural Relations of Ruling

Analysis of newcomers' accounts in this article has been an exercise in research concerning understandings of the public policy of multiculturalism. Issues of social justice are central to a critical understanding of multiculturalism and several interrelated conclusions emerge from this study, which demonstrates how Canadian multicultural policy is constituent of ruling relations. Newcomer accounts do not always match the concepts and approaches of Fraser, although some participants made statements that point toward multiculturalism as a transformative social process that can lead to social change. While many of the accounts presented no more than an affirmative approach to multiculturalism, few stated that multiculturalism was a way of transforming social relationships. Many of the statements implied little more than an affirmative form of relationship—that of respect, harmony, and understanding—and few had more dynamic implications. The latter tended to consider individuals and groups of different cultural backgrounds to be actively involved in interaction, sharing, working together, and creating a new or different culture and set of social relationships.

Of the five themes embedded in the *Canadian Multiculturalism Act*, overcoming barriers was the theme newcomers' accounts were least likely to employ as interpretive resources. "Overcoming barriers" refers to ways of creating equal participation and life chances for all Canadians, regardless of their cultural heritage. Given that employment and educational opportunities are central issues for newcomers, multicultural policy could have great relevance by promoting these. If newcomers to Canada are unaware of guarantees to full and equal participation, they are unlikely to seek redress when they encounter such barriers. Newcomers may suffer in silence, unaware of the legislative commitment to removing such barriers. This is a key area, one that educational programs could beneficially address.

Many critics have considered the promise entailed in multicultural policy and the *Act* as unfulfilled. A key element of a sociological understanding of multiculturalism relates to the power relationships between cultural minorities and the majority. To the extent that maldistribution is

not addressed and economic and social inequalities among ethnic groups persist, multicultural policy can be viewed as having failed to achieve its transformative potential. This failure has direct and concrete effects on the lives and social realities of newcomers. One concrete manifestation of this is the inability of some members of such groups to gain educational and employment opportunities equal to those of other Canadians or exercise rights that other groups take for granted.

Related to this is multiculturalism as a resource for developing and shaping Canada's future. Only one-quarter of aware newcomers identified this theme, yet unique cultural characteristics can provide valuable resources, relevant for the life chances of all Canadians. From a social policy standpoint, Canadians could be encouraged to view the wide variety of cultural attributes and skills of newcomers as a valuable resource to transform Canadian society, where the potential benefits of the attributes and skills of both newcomers and all Canadians are realized.

An understanding of multiculturalism that is limited to affirming diversity is limited. The theme of affirming diversity found expression in nearly three-quarters of the accounts offered by newcomers, yet only about one-half of these accompanied this with an understanding equality and harmony as part of multiculturalism. History provides many examples of the danger associated with a narrow conception of diversity, one that is not tempered with mutual understanding, respect, tolerance, equality, and harmony.

Each of the five major themes from the *Canadian Multiculturalism Act* found at least some level of expression in newcomer accounts. The public framing of Canadian multicultural policy appears to act as an interpretive resource upon which newcomers draw in their own accounting of their experiences of multiculturalism. At the same time, in no case did any single newcomer identify all five themes, and most identified only one or two themes. Most accounts articulated the affirmative emphasis of the policy rather than more transformative aspects. Since multicultural policy is so potentially relevant to the lives of newcomers, policy makers could undertake greater efforts to develop clearer understandings of multicultural policy. For example, language programs and settlement agencies both help promote Canada's multicultural policy and assist newcomers in participating in Canadian society and improving their life chances. Such programs and agencies could be strengthened as resources to help achieve these dual goals.

For Fraser, the criterion for a socially just transformation is parity of participation. Such participatory parity must be rooted in social institutions and not merely in interpersonal psychology⁶⁸ meaning "participatory parity as a normative standard."⁶⁹ One example of reconstruction that Fraser

provides is that of practices that marginalize or exclude ethnic and religious minorities in France. Fraser argues that affirmative steps to include minorities could have transformative consequences such as “reconstructing French national identity to suit a multicultural society” and “refashioning Islam for a liberal-pluralist and gender-egalitarian regime.”⁷⁰ This example illustrates a transformative solution that focuses primarily on eliminating institutionalized disparities in participation. In other cases, transformation may require more attention to deconstructing differences that impair such participation.

Fraser considers deconstruction of socially constructed identities and differences to be central to achieving a transformation in a socially just direction. For her, this involves deconstructing identities associated with race, ethnicity, sexuality, and gender. By changing the structure and operation of its institutions and social relationships, the practice of multiculturalism can be a way for a diverse society to transform itself. A society where principles of multiculturalism—equality, respect, harmony, recognition, participation—are practiced will attempt to find ways of integrating members from all backgrounds and cultures, allowing all to participate in social life. While it is difficult to predict the direction this may lead, it is unlikely to leave social relationships and social institutions unchanged. Social interaction on the basis of the principles and practices of multiculturalism can help produce a more socially just outcome, with improved opportunities for all to participate in the life of society. The majority of newcomers expressed a desire that both they and their family maintain aspects of their cultural heritage, and it is this affirmation that multicultural policies have been most successful at supporting. In addition, newcomers’ accounts articulated a desire to establish the types of services for their ethnic communities that multicultural policies can in some cases help facilitate greater participation—services such as meeting places, place of worship, and language schools.

Conclusion

Recognition of a “Great” Large Family

In terms of future research, we encourage other researchers to further investigate what Canadians understand by multiculturalism. This project has found that several factors associated with the social lives and life chances of newcomers are positively related to the potentialities of multicultural policy for the affirmation of cultural difference. While some of these findings should encourage multicultural policy makers, these results must be regarded as tentative because of the small sample size and the exploratory nature of this analysis. For example, it would be useful to compare the accounts given by this study’s newcomers with other

groups of immigrants and Canadian-born. Surveys related to multiculturalism often ask people to evaluate the policy and concept, but there appears to be less investigation of the different perceptions of and experiences with multiculturalism. Further research is needed to investigate the relational processes in which differing perceptions of and experiences with multiculturalism are embedded and to compare the present accounts with those of other groups of immigrants and Canadian-born.

In the future, Canadians will continue to welcome individuals and groups from different geographic regions with a variety of cultural histories and experiences. Will the social intolerance and injustice that often characterized the past be repeated, or will Canadian society find new ways of recognizing a “great” large family? One way that societies can transform themselves is by learning from other societies, cultures, and peoples and by incorporating this learning into societal practices. Integration can be considered a two-directional process. One part of the process is that newcomers to a society change their practices and views as they incorporate themselves in the society. At the same time, a truly transformative process will change the society into which newcomers enter, and the social relations and institutions will change in the society.

Following Fraser, socially just multicultural policies require those who were members of the society prior to newcomers arriving to also change their social practices so that all members of the society can participate in social life as peers. The accounts studied here demonstrate an appreciation of diversity and a view that diversity provides a way of learning and tackling problems. New cultural traditions and experiences will be created within Canada, leading to new groups and identities. Based on the accounts articulated by the newcomers studied here, the authors agree that newcomers “typically wish to integrate into the larger society, and to be accepted as full members of it”⁷¹ and that many of the rights such newcomers expect “promote integration into the larger society.”⁷² The newcomers in this project appear to have generally accepted and adopted this affirmative approach—and as they were refugees originally, Canada may not have been their first choice of new home. Given this evidence, we are optimistic about the future. Multicultural principles have already become part of the Canadian identity and may assist in the future transformation of Canadian culture and identity.

NOTES

1. Department of the Secretary of State of Canada, *Multiculturalism ... Being Canadian*, (Ottawa: Ministry of Supply and Services, 1987), 9.

2. Peter S. Li, "The Multiculturalism Debate," in *Race and Ethnic Relations in Canada*, 2nd ed. (Don Mills: Oxford University Press, 1999).
3. For a recent review of these debates, see Keith Banting and Will Kymlicka, "Canadian Multiculturalism: Global Anxieties and Local Debates," *British Journal of Canadian Studies* 23, no. 1 (2010): 43–72.
4. Several writers have urged researchers to develop and analyze empirical evidence as a means of contributing to the debates. Joseph Garcea, "Postulations on the Fragmentary Effects of Multiculturalism in Canada," *Canadian Ethnic Studies*, 40, no. 1(2008): 141–60, argues for investigating "real and perceived problems at the substantive and symbolic levels," 156. Irene Bloemraad, Anna Korteweg, and Gökçe Yurdakul note, "The explosion of scholarly interest in multiculturalism during the 1990s largely revolved around normative theory, with few empirical studies analyzing specific policies and their consequences," page 160 in "Citizenship and Immigration: Multiculturalism, Assimilation, and Challenges to the Nation-State," *Annual Review of Sociology* 34, (2008): 153–79. Kymlicka argues that research findings have been ignored in public commentary on multiculturalism. See Will Kymlicka, *The Current State of Multiculturalism in Canada and Research Themes on Canadian Multiculturalism 2008–2010*, Citizenship and Immigration Canada, Catalogue No. Ci96-112/2010E-PDF, Ottawa, 2010, 11.
5. A notable exception is Labelle and Salee's study of the perceptions of immigrants to Quebec; see Micheline Labelle and Daniel Salée, "Immigrant and Minority Representations of Citizenship in Quebec," in *Citizens Today: Global Perspectives and Practices*, ed. T. Alexander Aleinikoff and Douglas Klusmeyer (Washington: Carnegie Endowment for International Peace, 2001).
6. Roxana Ng, "Multiculturalism as Ideology: A Textual Analysis," in *Knowledge, Experience, and Ruling Relations*, ed. Marie Campbell and Ann Manicom (Toronto: University of Toronto Press, 1995), 36.
7. Dorothy Smith, *Texts, Facts, and Femininity: Exploring Relations of Ruling* (New York: Routledge, 1990), 125.
8. While multiculturalism addresses social relationships among all individuals and groups, the focus for this article is on immigration and multiculturalism.
9. Banting and Kymlicka, "Canadian Multiculturalism," 57–62, review Canadian responses to immigration and multiculturalism.
10. Recent and earlier estimates of inequalities for minorities are examined and reviewed in Krishna Pendakur and Ravi Pendakur, "Colour by Numbers: Minority Earnings in Canada 1996–2006," accessed April 5, 2011, <http://www.sfu.ca/~pendakur/Colour%20By%20Numbers.pdf>.
11. John W. Berry, Rudolf Kain, and Donald M. Taylor, *Multiculturalism and Ethnic Attitudes in Canada* (Ottawa: Ministry of Supply, 1977), 11; Canada, Department of Canadian Heritage, *Strategic Evaluation of Multiculturalism Programs: Final Report*, study conducted by Brighton Research (Ottawa: Corporate Review Branch, 1996), 12; Richard J. F. Day, *Multiculturalism and the History of Canadian Diversity* (Toronto: University of Toronto Press, 2000).
12. Garth Stevenson reviews the history of multiculturalism in Canada in "Contrasting Images: 'Multiculturalism' as conceptualized in Canada and the United States," paper prepared for presentation at the annual meeting of the Canadian Political Science Association, Montreal, June 3, 2010, accessed April 4, 2011, <http://www.cpsa-acsp.ca/papers-2010/Stevenson.pdf>.
13. Jean R. Burnet and Howard Palmer, *Coming Canadians: An Introduction to a History of Canada's Peoples* (Toronto: McClelland and Stewart, 1988), 224; Charles S. Ungerleider, "Immigration, Multiculturalism, and Citizenship: The Development of the Canadian Social Justice Infrastructure," *Canadian Ethnic Studies* 24, no. 3 (1992): 14.
14. Accessed April 6, 2011, http://canadachannel.ca/HCO/index.php/Pierre_Trudeau,_on_Multiculturalism.
15. Yasmeen Abu-Laban and Tim Nieguth, "Reconsidering the Constitution, Minorities, and Politics in Canada," *Canadian Journal of Political Science* 33, no. 3 (2000): 491.
16. Canada, Department of Canadian Heritage, *Strategic Evaluation of Multiculturalism Programs*.
17. Canada, Department of Canadian Heritage, *10th Annual Report on the Operation of the Canadian Multiculturalism Act*, p. v (Ottawa: Minister of Public Works and Government Services, 1999), accessed April 6, 2011, <http://dsp-psd.pwgsc.gc.ca/Collection/Ci95-1-1998E.pdf>.
18. Citizenship and Immigration Canada, *Annual Report on the Operation of the Canadian Multiculturalism Act, 2007–2008*, Catalogue Number CH31-1é2008, Ottawa, 2009.
19. Citizenship and Immigration Canada, *Multiculturalism and Canadian Multiculturalism: An Inclusive Citizenship*, accessed April 5, 2011, <http://www.cic.gc.ca/english/multiculturalism/index.asp>.
20. See the annual reports from Canadian Heritage and Citizenship and Immigration Canada, *Annual Report on the Operation of the Canadian Multiculturalism Act*.
21. Angus Reid Group, Inc., "Multiculturalism and Canadians: Attitude Study 1991," *National Survey Report* (1991); Reginald W. Bibby, *The Bibby Report: Social Trends Canadian Style* (Toronto: Stoddart, 1995), 38–39; Canada, Department of Canadian Heritage, *Strategic Evaluation of Multiculturalism Programs*, 38–42.
22. Charles Taylor, "The Politics of Recognition," in *Multiculturalism and the "Politics of Recognition"*, ed. Amy Gutman (Princeton: Princeton University Press, 1992); Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Clarendon Press, 1995); Will Kymlicka, *Finding Our Way: Rethinking Ethnocultural Relations in Canada* (Toronto: Oxford University Press, 1998).
23. Karl Peter, "The Myth of Multiculturalism and Other Political Fables," in *Ethnicity, Power and Politics in Canada*,

- ed. Jorgen Dablie and Tissa Fernando (Toronto: Methuen, 1981); Reginald W. Bibby, *Mosaic Madness: Pluralism without a Cause* (Toronto: Stoddart, 1990).
24. Neil Bissoondath, *Selling Illusions: The Cult of Multiculturalism in Canada* (Toronto: Penguin Books, 1994).
 25. See discussion in: Yasmeen Abu-Laban and Daiva Stasiulis, "Ethnic Pluralism under Siege: Popular and Partisan Opposition to Multiculturalism," in *Canadian Public Policy* 18, no. 4 (1992): 365–86; also Augie Fleras and Jean Leonard Elliot, *Multiculturalism in Canada: The Challenge of Diversity*, 2nd ed. (Scarborough: Nelson Canada, 2002); Li, "The Multiculturalism Debate."
 26. Bohdan S. Kordan, "Multiculturalism, Citizenship and the Canadian Nation: A Critique of the Proposed Redesign for Program Renewal," *Canadian Ethnic Studies* 29, no. 2 (1997):136–43; Abu-Laban and Nieguth, "Reconsidering the Constitution"
 27. Kymlicka, *Multicultural Citizenship*; Kymlicka, *Finding Our Way*.
 28. Ng, "Multiculturalism as Ideology," 35.
 29. Nancy Fraser, "From Redistribution to Recognition? Dilemmas of Justice in a 'Post-Socialist' Age," *New Left Review*, 1 / 212, (1995): 68–93; Nancy Fraser, *Justice Interruptus: Critical Reflections on the "Postsocialist" Condition* (New York: Routledge, 1997); Nancy Fraser, "Rethinking Recognition," *New Left Review* 3 (2000): 107–20; Nancy Fraser and Axel Honneth, *Redistribution or Recognition? A Political-Philosophical Exchange* (New York: Verso, 2003).
 30. Fraser, *Justice Interruptus*, 152.
 31. Fraser and Honneth, *Redistribution or Recognition?*, 49.
 32. *Ibid.*, 17.
 33. Fraser, "From Redistribution to Recognition?"; Fraser, *Justice Interruptus*; Fraser, "Rethinking Recognition"; Fraser and Honneth, *Redistribution or Recognition?*.
 34. In their co-authored book, Fraser debates this point with Axel Honneth, who argues that there is only one dimension of social injustice, that of recognition, with maldistribution emerging from misrecognition; see Fraser and Honneth, *Redistribution or Recognition?*
 35. Nancy Fraser, "Reframing Justice in a Globalizing World," *New Left Review*, 36 (2005) 69–88; Nancy Fraser, *Scales of Justice: Reimagining Political Space in a Globalizing World* (New York: Columbia University Press, 2009).
 36. Fraser, "From Redistribution to Recognition," 70–71.
 37. *Ibid.*, 73.
 38. In her recent work, Fraser argues that the concept of citizenship or member of society is increasingly untenable (see Fraser, "Reframing Justice"; Fraser, *Scales of Justice*). In this paper, we do not address the issues associated with multiple and shifting citizenship.
 39. Fraser and Honneth, *Redistribution or Recognition?*, 38.
 40. *Ibid.*, 36.
 41. *Ibid.*
 42. *Ibid.*
 43. Fraser, "From Redistribution to Recognition," 83.
 44. Fraser and Honneth, *Redistribution or Recognition?*, 31.
 45. *Ibid.*
 46. *Ibid.*, 36.
 47. The project was conducted between 1993 and 1995. The goal of the project was to examine settlement programs and immigrant integration in Regina and investigate the meaning of successful settlement. The funding for the project originated from a grant by the Department of the Secretary of State of Canada to the Saskatchewan Association of Immigrant Settlement and Integration Agencies.
 48. Bloemraad, Korteweg and Yurdakul, "Citizenship and Immigration," 161.
 49. Ng, "Multiculturalism as Ideology," 38–45; Fleras and Elliot, *Multiculturalism in Canada*, 62–65.
 50. Between 1991 and 2006, the population of Regina remained around 179,000. Recent expansion has increased the population and the population of the Census Metropolitan Area was estimated to be 215,000 people in 2010. See Statistics Canada, 2006 Census of Canada, "Population of Census Metropolitan Areas," accessed April 3, 2011, <http://www40.statcan.gc.ca/l01/cst01/demo05a-eng.htm>.
 51. Citizenship and Immigration Canada, *Fact and Figures 2009: Immigrant Overview—Permanent and Temporary Residents* (Ottawa: Citizenship and Immigration Canada, 2010). There were 2,058 permanent resident immigrants who gave Regina as their destination in 2010.
 52. In the 1931 Census of Canada, 69 per cent of the population gave British origins and 30 per cent gave other European origins. Given the mixed origins that have become common in more recent years, with single, multiple, Canadian, and North American origins that respondents provide in recent censuses, it is not possible to obtain precise summary estimates of the ethnic origin of the current population. From data in the 2006 Census of Canada we estimate the current ethnic mix of Regina to be approximately 33 per cent British, 8 per cent French, and 43 per cent other European, recognizing that these estimates are rough. From the Census, 9 per cent of Regina residents were Aboriginal and 7 per cent visible minority origin in 2006.
 53. From the 2006 Census of Canada, the population of Toronto and Vancouver was over 40 per cent visible minority. And, unlike Montreal, Regina has few residents of French origin. Statistics Canada, 2006 Census of Population, "Profile of Ethnic Origin and Visible Minorities for Census Metropolitan Areas and Census Agglomerations," Statistics Canada catalogue no. 94-580-XCB2006004.
 54. Baha Abu-Laban, "Application to SSHRC for the Establishment of a Centre of Excellence for Research on Immigration and Immigrant Integration" (Edmonton: University of Alberta, 1995), 1.
 55. In the 2006 Census of Canada, no one ethnic group accounted for more than 7.6 per cent of any Regina census tract. And in no census tract do the number of immigrants who arrived in the city since 1980 account for 20 per

- cent of the population. Qadeer, Agrawal, and Lovell state: "Anywhere from 10% to 30% of a census tract's population being of a specific ethnic background has been used as the criteria for identifying ethnic enclaves"; see Mohammad Qadeer, Sandeep K. Agrawal, and Alexander Lovell, "Evolution of Ethnic Enclaves in the Toronto Metropolitan Area, 2001–2006," *Journal of International Migration and Integration* 11 (2010): 323–24.
56. Individuals of Aboriginal identity account for more than 30 per cent of the population in three (two of which are adjacent) of Regina's fifty-two census tracts.
 57. See Feng Hou and Garnett Picot, "Visible Minority Neighbourhoods in Toronto, Montreal, and Vancouver," *Canadian Social Trends* (Spring 2004): 8–13.
 58. These are the seven largest Prairie cities: Edmonton, Red Deer, Calgary, Lethbridge, Saskatoon, Regina, and Winnipeg. Calculated from Citizenship and Immigration Canada, *Fact and Figures 2009: Immigrant Overview – Permanent and Temporary Residents and Preliminary Tables—Permanent and temporary residents, 2010*, <http://www.cic.gc.ca/english/resources/statistics/menu-fact.asp>.
 59. Many were convention refugees or persons in need of protection. For current definitions, see Citizenship and Immigration Canada, *Refugee claims in Canada – who can apply*, accessed April 8, 2011, <http://www.cic.gc.ca/english/refugees/inside/apply-who.asp>.
 60. Of the 55 participants, 17 were originally from Cambodia, Laos, or Vietnam and 21 were from El Salvador. For a discussion of the background and experiences with integration in Regina of Salvadorans, see Doug Durst and Allison Lange, "Prairie Adjustments and the Social Integration of El Salvador Refugees in Regina, Saskatchewan," *Prairie Forum* 27, no. 1 (2002): 101–14. While we are unaware of any comparable Regina study of those from Southeast Asia, the volumes edited by Dorais, Chan, and Indra provide extensive analysis of their experiences in other parts of Canada. See Kwok B. Chan and Doreen M. Indra, eds., *Uprooting, Loss and Adaptation: The Resettlement of Indochinese Refugees in Canada* (Ottawa: Canadian Public Health Association, 1987); and Louis-Jacques Dorais, Kwok B. Chan, and Doreen M. Indra, eds., *Ten Years Later: Indochinese Communities in Canada* (Montreal: Canadian Asian Studies Association, 1988).
 61. Canadian Heritage generously provided the authors with a copy of the data file from the *Multiculturalism and Canadians* survey conducted by the Angus Reid Group, 1991.
 62. For the aware group, n=24, the mean years of schooling was 15.0 with a standard deviation of 4.0, and for the less aware and unaware group, n=25, the mean was 11.0 with a standard deviation of 4.7. This produces a t-value of 3.16. If the sample were a random sample, this would produce a one-tailed significance of less than 0.002. We report significance levels even though the project sample was not random. As a result, reported significance levels may not be very precise or meaningful, and we leave their interpretation to the reader.
 63. CMA, sections 3:1 (a) and (d), 5:1 (e) and (h).
 64. Fraser, "From Redistribution to Recognition?," 87.
 65. Fraser, "Rethinking Recognition," 108.
 66. Fraser, "From Redistribution to Recognition?," 82.
 67. Will Kymlicka and Wayne Norman, eds., *Citizenship in Diverse Societies* (New York: Oxford University Press, 2000), 5. Also see Kymlicka's comments on citizenization in Will Kymlicka, "The Rise and Fall of Multiculturalism? New Debates on Inclusion and Accommodation in Diverse Societies," *International Social Science Journal* 199 (2010): 100.
 68. Fraser and Honneth, *Redistribution or Recognition?*, 31.
 69. Fraser, "Rethinking Recognition," 119.
 70. *Ibid.*, 82.
 71. Kymlicka, *Multicultural Citizenship*, 10–11.
 72. *Ibid.*, 31

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Refugee “In-betweenness”: A Proactive Existence

LALAI MANJIKIAN

Abstract

This paper challenges the focus on marginalization that is commonly associated with refugee claimants. By proposing a closer look at the critical period during which refugee claimants residing in Montréal wait for their status to be determined, this paper suggests that “in-betweenness” can be a moment and site that engenders social inclusion.

I argue that during the re-settlement process, certain circumstances can foster pathways of agency and engagement as opposed to reproducing cycles of exclusion, commonly associated with refugee claimants that other authors have documented. Drawing on participant narratives, this paper demonstrates how refugee claimants awaiting determination can become active social and political subjects.

The paper underscores that in-betweenness, in both temporal and spatial dimensions, can foster a proactive stance despite refugee claimants’ lack of status, limited access to resources, and possibly reduced mobility.

Résumé

Cet article conteste l’accent sur la marginalisation qui est couramment associée aux demandeurs d’asile. En proposant d’étudier de plus près la période critique pendant laquelle les demandeurs d’asile résidant à Montréal attendent que leur statut soit déterminé, cette étude suggère que l’« intermédialité » peut former un cadre spatio-temporel qui engendre l’inclusion sociale.

L’auteur soutient que pendant le processus de réinstallation certaines circonstances peuvent favoriser des filières d’agence et d’engagement plutôt que de reproduire des cycles d’exclusion, souvent associés aux demandeurs d’asile que d’autres auteurs ont constatés. S’appuyant sur les témoignages de participants, cette étude montre

comment les demandeurs d’asile en attente de détermination de leur statut peuvent devenir des sujets sociaux et politiques actifs.

L’étude souligne que l’« intermédialité », dans sa dimension tant temporelle que spatiale, peut favoriser une attitude proactive en dépit de l’absence de statut des demandeurs d’asile, de l’accès limité aux ressources et éventuellement d’une mobilité réduite.

Refugee claimants¹ who re-settle² in urban centres embody a complex predicament. Their condition is controlled by regulations and often marked by circumstances of social, racial, and economic marginalization, but also is defined by instances where refugee claimants manifest their belonging to the city, create meaning in their lives, and carve out agency as non-citizens.

This paper underscores how, during the re-settlement process, certain circumstances can foster pathways of agency and engagement as opposed to strictly reproducing cycles of exclusion commonly associated with refugee claimants that other authors have documented. Based on participant narratives, I demonstrate how refugee claimants awaiting determination can become active social and political subjects. As claimants are confronted with indefinite waits, which may extend anywhere between nine weeks and nine years, I argue that this in-betweenness, in both temporal and spatial dimensions, can foster a proactive stance despite their lack of status, limited access to resources, and possibly reduced mobility.

Part of a larger research project within Communication Studies, which examines the everyday lives of refugee claimants residing in Montréal through tensions of social exclusion and inclusion; and, in addition to conducting media discourse analysis of local media coverage surrounding refugees re-settled in Montréal, this paper draws on refugee

narratives to elucidate how both spatial and temporal "in-betweenness" can engender social inclusion, as refugee claimants can partake in and contribute to local community life whether through volunteerism, community involvement, or political activity surrounding other refugees and immigrants.

It has been well documented that public perception and certain media discourses generally frame refugees as being "bogus" claimants, opportunists who abuse and live off the system, as outlined by Valverde and Pratt; who pose a threat to national security, as described by Bigo; and, as argued by Ong, who are deemed invisible in national consciousness.³ In order to counter such stereotypes and misconceptions that circulate around refugee claimants, I pursue a closer examination of the critical period integral to urban refugee re-settlement, during which indefinite waiting periods are imposed. Furthermore, the refugee predicament, particularly in urban settings, is at times oversimplified and often addressed only in terms of social exclusion, based on factors such as poverty, for instance.⁴ This trend is even noticeable in Montréal, where for instance Germain and Rose note that Montréal's Haitian community is strongly bifurcated in economic terms between the families of professionals who arrived in the 1960s and 1970s and more recent arrivals of refugees with low levels of education, who are among the city's poorest residents.⁵ Although it is impossible to neglect economic factors, especially tied to race, I deem it necessary to broaden our understandings and applications of social exclusion – first, to consider social inclusion as a construct just as useful for study as social exclusion, and secondly, to study other sites, besides economic factors for example, in order to provide further insight into the lives of refugees residing in urban settings.

Other authors have also considered refugee claimants' involvement in the community, rather than focus solely on social exclusion, describing refugee claimants as active subjects, despite finding themselves in an in-between position. Danso has discussed how Ethiopian and Somali refugees in Toronto, for instance, have attempted to reconstruct "their social geographies" during the initial settlement experiences.⁶ Mohamed has outlined resistance strategies during resettlement, in particular how "Somali women [...] negotiate dynamic identities of resistance and defy prescriptions and stereotypes in their daily lives."⁷ Kumsa addresses questions of "be-longing" and underpins both the fixed and ever-shifting nature of selfhood based on empirical work conducted on Oromos refugee youth in Toronto.⁸ Authors, such as Indra and Israelite et al., have highlighted the shift that takes place in gender roles during resettlement.⁹ Moreover, previous work on how newcomers access various social networks and community organizations has been

addressed by Rose, Carrasco, and Charbonneau, as well as by Walton-Roberts,¹⁰ who consider the dynamics in the formation of social capital through weak and strong ties.¹¹

It is a common occurrence for refugee claimants to use the term "being in-between" when waiting for their status to be determined. Drawing from the narratives provided by individuals who once claimed refugee status in Montréal, I highlight that, despite enforced in-betweenness, refugees can succeed in forging a meaningful life where they play a pivotal role in managing their agency. The ways in which refugee claimants can overcome, circumvent, and even defy limitations and restrictions imposed on them due to immigration status offers particular insight into understanding the in-between condition of claimants in a more comprehensive manner. Specifically examining in-betweenness through temporal and spatial angles can shed further light onto the conditions of refugee urban re-settlement, viewed from the perspective of inclusivity. After all, as Danso argues, "the initial settlement experiences of any immigrant group are very much instrumental in setting the tone for the way the integration process proceeds for the group in the adopted country."¹² I therefore choose to emphasize the realm of social inclusion—a less explored facet of refugee urban re-settlement—as a productive and positive site of analysis, where social capital can be built and the actions and the notions of civic participation start to develop within the new urban dwelling place.

Even though the distinct dynamics of the plural landscape of Montréal are not detailed in this paper, it is important to note that the local urban context and its effects on claimants' experiences cannot be overlooked. Through their empirical research, Ley and Smith have recognized that place has a profound impact on shaping immigrants' experiences.¹³ In fact, the duality of social inclusion and exclusion unfolding in everyday refugee life in Montréal is likely further exacerbated by what Sherry Simon calls the politics of a "divided city."¹⁴ Montréal, as a distinct urban setting, continuously grapples to reconcile its bicultural and bilingual nature alongside the implications of immigration influxes within a culturally, racially, and religiously diverse city space. The way in which refugee claimants occupy space and attempt to establish belonging unfolds on this backdrop of multiplicity. Such urban plurality echoes Leonie Sandercock's definition of a cosmopolis, "which is an always unfinished and contested construction site, one characterized, above all, by its space for difference."¹⁵ Even though I do not elaborate on it here, I do recognize, in my larger project, the role played by place, in this case, the city of Montréal, and how it can shape the nature, scope, and motivation of refugee claimants' involvement and engagement vis-à-vis spaces, social networks, and organizations based in Montréal.

In order to explore how in-betweenness is a moment and site which can engender civic engagement, this paper draws on qualitative data collected for a larger doctoral project that investigates the everyday life practices of refugee claimants. One of the central aspects of my larger project is the integration of refugee voices, particularly around their day-to-day experiences, as well as when addressing their own existential condition of asylum, namely that of being in-between. Therefore, I find it necessary to acknowledge how refugee claimants themselves perceive and formulate their experiences of inclusion and exclusion in/on their own terms. In-depth, semi-structured interviews were conducted with individuals who were once refugee claimants.¹⁶ The same questionnaire was utilized for all participants, with interviews conducted either in French or English. The questionnaire contained open-ended questions for the most part, which covered issues such as refugee claimant experiences at the border, immediately upon arrival, their reception and initial impressions of the city and of the people they met, and whether they encountered any hostility. Also, the respondents were asked to describe, among other aspects of urban re-settlement, their everyday life, where they went and what they did to socialize, how they went about circulating in the city, which neighbourhoods they felt more secure in, who they turned to for front-line services, and if they were involved in refugee and immigration activism at all. I also inquired about conditions prior to their departure from the homeland, and only proceeded if the respondents were willing to revisit that portion of their trajectories. The narratives collected were intended to provide some insight into the personal experiences of refugee claimants in Montréal and to include their voices in the project, of which only a small proportion appears here. In terms of recruiting the ten participants, the sample selection process entailed having to establish contacts with individuals who had ties within the refugee advocacy community. Given the delicate and private nature of the topics discussed, the primary sampling strategy utilized was that of snowball sampling which relied on referrals, personal contacts with individuals active in refugee advocacy circles, and word of mouth. It was imperative to build a rapport and establish trust with both the contacts and with the respondents. This method of recruiting the research participants likely speaks to the fact that these individuals were in a less vulnerable position in terms of circumventing exclusion due to the strong ties within ethnic communities and especially weak ties they had established with members of advocacy groups, with workers in the para-public milieu, and with other front line service providers. Nevertheless, the participants did recall encountering extensive barriers, but were proactive based on their

own will and resources, as well as with the help of their networks to overcome a number of the difficulties.

In terms of the specific barriers, the indefinite wait for status was one of the recurring themes throughout the interviews. Individuals who claim refugee status in Canada and find themselves channelled into the refugee determination system are confronted with potentially years of legal limbo, during which there are significant barriers to accessing employment and social services. Other important barriers include the non-recognition of education and professional credentials, difficulties in securing employment and housing, barriers in host language, everyday and institutional racism, separation from their families for indefinite periods—aspects connected to social exclusion.¹⁷

Nevertheless, to focus solely on social exclusion when addressing the predicament of refugee claimants who re-settle in urban contexts overlooks other dynamic aspects of their everyday lives. I turn to the notion of social inclusion as a productive concept to frame social and civic engagement. The term became popularized when social inclusion was initiated by the French in an effort to reintegrate the large numbers of ex-industrial workers and an increasing number of young people in the new economy labour force of the 1980s and 1990s.¹⁸ Prior to those decades, the term “social exclusion” was popularized by French social theorist René Lenoir and consists of being a concern with the relationship between members of society and the nation-state.¹⁹ Stemming from his deliberations published in *Les exclus: un Français sur dix*, Lenoir discusses social exclusion as he shows another side of an opulent France, what he refers to as “l’autre France.” He describes how “the others” are individuals historically disregarded by the social contract of the French Republic. Lenoir also highlights how the “other” is unable to fend for him or herself, requires constant assistance, and furthermore is perceived as a threat to society.²⁰

There are numerous legal and political complexities attached to the notion of social inclusion, in particular, how the concept is defined and perceived, how it is implemented, and by whom. Questions of citizenship and rights also surround the rhetoric of social inclusion, though I do not elaborate in much detail here, given the scope of the paper. However, I do believe that reframing social inclusion outside the, at times, narrow confines of citizenship is essential, especially when addressing the social inclusion of refugee claimants, who are de facto outside the mesh of traditional citizenship. Thus, linking social inclusion in this context to social citizenship allows us to enlarge the discussion surrounding refugee claimants’ involvement and participation, as well as possibilities for engagement, namely within the multicultural Canadian context.

As Omidvar and Richmond point out in their work "Immigrant Settlement and Social Inclusion in Canada," the notion of social inclusion is the antithesis of social exclusion.²¹ They define social exclusion primarily in economic terms, as a way of understanding the impact of existing socio-economic systems on marginalized groups. Social inclusion, on the other hand, they write, is about finding out what works and mobilizing resources to resolve the problems brought about through social exclusion. Interestingly, the authors stress the blatant contradiction between official inclusion policies and the reality of growing social exclusion for Canada's newcomers in both the economic sphere and in public life in general, which surfaces in the interviews conducted for the purpose of my larger project. Omidvar and Richmond, in fact, sound an alarm by highlighting the creation of a new Canadian underclass of persons without status who are in need of assistance.²²

Besides economic considerations, Saloojee discusses the potential of social inclusion to move beyond the limitations of multiculturalism by "democratizing democracy" and developing active and meaningful forms of social citizenship. Like a number of scholars, he critiques multiculturalism as a policy model, for leaving communities on the margins and creating fragmentation within society. Instead, he proposes social inclusion as a way of overcoming the limits of multiculturalism policy, which, despite its ideals, has not necessarily brought forth valued recognition and participation for minority communities.²³ Therefore, one can speculate that social inclusion can foster a proactive stance towards democratic citizenship and multiculturalism—regardless of immigration status. As such, being "in-between" and facing precarious conditions do not necessarily imply being passive. On the contrary, many refugee claimants are able to take on political positions or, in Saskia Sassen's words, produce "new types of political subjects and new spatialities for politics"²⁴ which destabilize the formal and narrow apparatus of citizenship as an institution. By engaging in such acts, they temporarily alleviate their alienation and isolation by solidarity and a sense of community, where silenced voices, as Jacques Rancière recognized, "speak against injustice and vocalize grievances as equal beings."²⁵

As a point of departure of my discussion of how social inclusion can emerge from liminality, I rely on Saskia Sassen's notion of the "informal" citizen, which she defines as a citizen who is unauthorized, yet recognized; for instance, "undocumented immigrants who are long-term residents in a community and participate in it as citizens do."²⁶ Engin Isin's ideas on what it means "to be" political are also useful for framing my discussion of refugee claimants' social inclusion and self-determination. He views "being political"

as a "means to constitute oneself simultaneously with and against others as an agent capable of judgement about what is just and unjust."²⁷ Such concepts allow me to explore how refugee claimants can emerge as political and social subjects who demonstrate civic engagement, "social deservedness," and "national loyalty," which as Sassen points out often allows long-term undocumented residents to gain legal residence in many countries.²⁸ In addition to potentially gaining recognition from the state and the community, such involvement on behalf of refugee claimants can institute their agency and belonging to their local dwelling place, despite living in limbo as non-citizens. By citing concrete examples drawn from the interviews conducted with respondents who once sought asylum in Montréal, I illustrate how these individuals can become active social and political actors, taking on the role of informal citizens in the city.

It is inconceivable to address these questions without considering elements that define the refugee condition on a daily basis, namely temporal and spatial limitations, which are two fundamental aspects of the urban re-settlement of refugees. In fact, temporal and spatial limitations are at the root of refugee in-betweenness. Given that the notion of time (such as departures, deadlines), waiting times (like in detention or for status, for family reunification), and timelines (life chronologies, for instance) are inherent to the refugee experience, how does temporality manifest itself through refugee experiences of social inclusion and exclusion in the city? When time is suspended for refugees, particularly as they wait for their status to be determined, what are the ways in which they carve out agency and meaning under temporal conditions typically less conducive to such possibilities? And in terms of refugee mobility around the city and access to services and benefits, how do questions of spatiality surface in relation to exclusion and inclusion? What are the roles refugee claimants take on when they find themselves in cases of spatial restriction, even confinement, for instance during detention or while living in church sanctuary to evade deportation?

To shed light on some of these questions, I turn to refugee narratives I gathered in 2008 and 2009 which consist of in-depth semi-structured interviews. The ten informants interviewed sought asylum in Montréal at some point in time during the past twenty years from the following countries: Algeria, Congo Brazzaville, Mauritius, Zimbabwe, Pakistan (two individuals), Lebanon, Colombia, Venezuela, and Mexico. All informants fell under the "refugee" definition as outlined by the UN Convention and eventually were either granted refugee status or were accepted on humanitarian and compassionate grounds (H&C). The questions and themes covered during these interviews included the

respondents' individual life trajectories, namely experiences immediately upon entry to Canada. I sought to understand how refugees began to establish daily life patterns, family and social networks, and other requirements of everyday life in Montréal as precarious status migrants. The personal narratives were apt in demonstrating that these individuals, who were forced to wait, could not wait and, in some cases, simply refused to just wait.

Sixty-two-year-old Azar²⁹ was a church pastor in Pakistan. Upon his arrival in Montréal in 2000, he quickly became an active member of the community. When asked to describe his day-to-day life while waiting for his status to be determined, which exceptionally took only nine weeks, he recalls that time as being rather fulfilling. Azar explained that he was very busy once in Montréal, because people here knew that not only was he a church pastor in Pakistan, but also a musician, singer, and composer, all skills and roles which the community here needed. Azar was therefore able to contribute to community life, as he transplanted his knowledge and talent—making other citizens in the city value his presence. In his own words:

I was very busy over here. Because here, so many people knew me that I was a church pastor over there, I was a musician and composer over there, and everybody needed me here till now [sic]. Singer, arranger, composer, so many things . . . so that is why I kept busy . . . everybody liked me to go to his or her home and be with them. Everybody was loving me and I spent all those days when my family was not here and when you are speaking particularly about those 9 weeks [before he was granted status] I was very happy and at home because the people over here love me and still they love me.

(Azar, sixty-two years old, from Pakistan, was a pastor, teacher, musician holding a master's degree. He arrived in Montréal on October 10, 2000. His status at the time of the interview was Canadian citizen.)

While Azar's period of limbo lasted only nine weeks, twenty-three-year-old Myriam, who had fled from Algeria, indicated how the interminable wait of nine years for status took a heavy emotional and financial toll on her and her family. This extreme case of what I refer to as "suspended temporality" was marked by several institutional and legal system obstacles, as well as deportation threats. Over the course of the interview, Myriam frequently mentioned struggling to make up for "lost time," whether in terms of finances, life dreams, or employment and education opportunities. When her parents were increasingly absent from home due to their involvement with the Action Committee for Non-Status Algerians³⁰ (Comité d'Action des Sans-Statut Algériens or CASS), Myriam found herself taking

care of her three younger siblings alongside other household responsibilities. In retrospect, she describes herself as a teenager who instead led a life of a thirty-year-old, raising three children. She described her situation in the following words:

I would go to school then come home, spend time with my parents a bit and then with the lifting of the moratorium [of deporting Algerians³¹] my parents began attending meetings with the Action Committee for Non-Status Algerians. . . So then, it started . . . we started to feel my parents' absence. I had to cook, take care of my sisters, I am the eldest. And I didn't have any activities as a . . . I think I was 16–17 years old. [...] I didn't live what a girl between the ages of 15 to 20 should have lived. I lived between home and . . . in fact, I lived like a thirty year old women with three children" (author's translation from French).

(Myriam, twenty-three-years old from Algeria, was working two jobs while pursuing an accounting certificate at the university level. She arrived in Montréal on January 22, 1996. Her status at the time of the interview was Canadian citizen.)

Myriam nonetheless recognized that the contributions made by refugee advocacy networks and organizations like No One Is Illegal³² (NOII) along with the Comité d'Action des Sans Statut are what "saved our lives." During weekly protests in front of the immigration office in downtown Montréal, NOII and CASS members joined Myriam's family. She explained that if they were going to occupy an immigration office in order to speak to an immigration representative, members from these organizations were on the front lines in order to protect those without status. Occupying the space of immigration offices or street space when protesting articulate types of actions within everyday city life which can be viewed as "tactics," which de Certeau distinguishes from "strategies." He sees "strategies" as being the ordering and disciplining processes (or here mechanisms of social exclusion) that make distinctions between normal and deviant (normal being citizens and deviant being refugees), while "tactics" refers to the embodied actions of those who seek to escape these processes, using space to their own advantage.³³

Such initiatives of resistance can ultimately engender a sense of belonging and solidarity throughout the community, which can help reduce hostility and intolerance towards immigrants and refugees, through the collaborative efforts between migrants and citizens. In addition, social activities such as community dinners, concerts, film screenings, and other social activities organized by such grassroots activist groups come to reinforce the bond between citizens and non-status individuals.

Myriam and her family were also active in a local Québécois community centre, which according to her allowed her to better integrate into Montréal life.

My parents had the intelligence to start attending (local) community centres. By attending the community centres, it allowed us to better integrate ourselves, there were organized excursions, going to this place, or that place, apple-picking, all kinds of things ... and at the time, we still had not been rejected by immigration, so we still had that hope in the beginning. [...] It was a community centre that assisted young families, so my mother, she would go three or four times a week to the meetings, and it's by going there that my mother was able to better understand the Québécois accent. At the beginning, it was difficult to understand.

The spatial and temporal in-betweenness brought on by twenty-five-year-old Paola's stay in church sanctuary is extreme. In 2003, Paola and her parents spent over a year and a half, precisely 567 days, living in a Montréal church basement, after receiving a removal order to return to Colombia, where their lives were directly threatened. A local church accepted them and provided a complete network of support, from doctors who checked on the family, to volunteers who did grocery shopping and others who were paid to help them with doing laundry. Despite being spatially confined for such a long period of time, Paola managed to create meaning in her life while it was on hold and even succeeded in contributing to the community through voluntarily tutoring children with their homework. When speaking about her time in sanctuary, she said:

It was hard, it was really hard. I kept up with my mom, my mom was my strength ... my mom ... was like my "bâton". She gave me all the strength. Like sometimes, I had really bad days ... and she told me "No, we are gonna get through this." And I knew in my heart we were going to get through this ... I knew it ... but it was so hard ... to know that you didn't know when you were gonna get out of there ... and sometimes, it just felt terrible ... I just wanted to go to ... you know you just ... can't bear it anymore ... but the people ... we always had a visit ... the people ... who supported us ... so ... I even gave classes ... to little children ... so that helped me a lot ...

(Paola, twenty-five years old, was a student from Colombia. She arrived in Montréal on October 11, 2001. Her status at the time of the interview was permanent resident.)

As the community mobilized around Paola and her family's immobile reality, the weight of sanctuary was appeased as moments of leisure, and social events as well as spiritual comfort were created for them. Among several

activities, a "sugar shacking" day organized for them in the confines of the church, as well as interfaith services, helped break the isolation.

In terms of community involvement, similar to Paola's volunteerism, the other informants had also engaged in volunteer work for local organizations during the indefinite wait for their cases to be processed. Fifty-two-year-old Donna, who fled from Venezuela, recalled how on Sundays, accompanied by her daughter, she would distribute food to the homeless. As a volunteer for the Salvation Army, she found helping others allowed her to cope while in limbo. Steven, a fifty-year-old who fled from Congo Brazzaville, volunteered for Project Genesis, an organization that defends the social and economic rights of the population, located in Côte-des-Neiges, a Montréal neighbourhood with a high immigrant population. Besides social issues such as homelessness and poverty, the interview respondents were naturally also invested in the cause of refugees and immigrants. Carol, a forty-five-year-old woman who fled from Zimbabwe, along with Myriam, who had fled from Algeria, addressed the crowd during the No One Is Illegal march from Montréal to the nation's capital, Ottawa, in 2005.³⁴ Both individuals, in fact, have been outspoken advocates by bringing public awareness to the pressing issue of the precarious situation of non-status individuals living in Canada.

Recognizing non-citizen participation in the city is necessary, seeing as refugee claimants can undertake legitimate political actions, which are constructive and cumulatively constitute modes of alternative citizenship, such as informal citizenship. Otherwise formulated as dissent, acts of refugee resistance must be recognized as collaborative instances of social inclusion and agency rather than simply disruptive action. They are essential to defining new forms and articulations of social and informal citizenship for asylum seekers. As Lucy Williams states, "periods of liminality can presage new cultural formations and the renegotiation of community values and spaces."³⁵ In framing non-status migrant individual and/or collective contributions and resistance through the lens of social inclusion, it becomes possible to understand how expressions and calls for action carried out by refugees can allow for their direct and conscious engagement with public space in the city, as well as with the public at large.

Refugee claimants who wait in the city are not just passive recipients of care, but can be active in finding the help appropriate to their own priorities and objectives, often with a considerable amount of community mobilization that takes shape around them. One of the most striking aspects to surface in the respondents' experiences was how refugees managed to contribute to the community they were a part

of, while striving to simply survive and get by, at times with deportation threats hovering above them.

Social inclusion can therefore emerge out of liminality, both spatial and temporal. During sanctuary or when waiting for a deportation order or just waiting, the refugee claimants' degree of civic engagement in terms of volunteerism and contributions to enrich the community is not what is typically expected of individuals without status. By vocalizing their rights when either occupying space, like in immigration offices or demonstrating in downtown Montréal, or being confined to a space, such as a church basement, refugees manage to establish belonging, carve agency and contribute to the community, while striving for their own self-determination—all crucial when considering the building blocks of civic participation, whether they are granted citizenship eventually or not.

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NOTES

1. The term "refugee claimant" is commonly used in Canadian government parlance. The Canadian Council for Refugees (CCR), a non-profit umbrella group committed to the rights and the protection of refugees, defines the term "refugee claimant" as a person who has made a claim for protection as a refugee. This term is roughly equivalent to "asylum seeker" and is considered standard in Canada, while "asylum seeker" is the term more often used internationally.
2. The use of the hyphen in the term "re-settlement" throughout the paper is intentional. It is meant to emphasize the multiple phases of movement and settlement refugee claimants experience, as their journeys often begin long before arriving in the country of asylum. Forced departure from the homeland and settlement in a new dwelling place are just two of phases of multi-staged and multi-faceted journeys that refugee claimants face.
3. See Anna Pratt and Mariana Valverde, "From Deserving Victims to 'Masters of Confusion': Redefining Refugees in the 1990s," *Canadian Journal of Sociology* 27 (2002): 135–61; Didier Bigo, "Security and Immigration: Toward a Critique of the Governmentality of Unease," *Alternatives* 27 (2002): 63–92; Aihwa Ong, *Buddha Is Hiding: Refugees, Citizenship, the New America* (Oxford: Polity; Malden, MA: Blackwell, 2003).
4. Some authors who address migratory issues and social exclusion are David Ley and Heather Smith, "Even in Canada? The Multiscalar Construction and Experience of Concentrated Immigrant Poverty in Gateway Cities," *Annals of the Association of American Geographers* 98 (2008): 686–713; Robert Miles and Dietrich Thranhardt, *Migration and European Integration: The Dynamics of Inclusion and Exclusion* (London: Pinter, 1995); Jenny Phillimore and Lisa Goodson, "Problem or Opportunity? Asylum Seekers, Refugees, Employment and Social Exclusion in Deprived Urban Areas," *Urban Studies* 43 (2006): 1715–1736; Christopher McAll, "Les murs de la cité: territoires d'exclusion et espaces de citoyenneté," *Lien Social et Politiques* 34 (1995): 189–203; David Ley and Heather Smith, "Relations between Deprivation and Immigrant Groups in Large Canadian Cities," *Urban Studies* 37 (2000): 37–62; Luin Goldring, Carolina Berinstein, and Judith Bernhard, "Institutionalizing Precarious Immigration Status in Canada," *Citizenship Studies* 13 (2009): 239–65.
5. See Annick Germain and Damaris Rose, *Montreal: The Quest for a Metropolis* (Chichester, West Sussex; New York: Wiley, 2000), 235.
6. See Ransford Danso, "From 'There' to 'Here': An Investigation of the Initial Settlement Experiences of Ethiopian and Somali Refugees in Toronto," *GeoJournal* 56 (2002): 3–14.
7. See Hamdi S. Mohamed, "Resistance Strategies: Somali Women's Struggles to Reconstruct Their Lives in Canada," *Canadian Woman Studies / Les cahiers de la femme* 19 (1999): 55.
8. See Martha Kuwee Kumsa, "'No! I'm Not a Refugee!' The Poetics of Be-Longing among Young Oromos in Toronto" *Journal of Refugee Studies* 19 (2006): 230–55.
9. See Doreen Marie Indra, "Resettlement and Gender Differences: A Lethbridge Community Study," *Canadian Woman Studies / Les cahiers de la femme* 10 (1989): 63–66. Also see Neita Kay Israelite, Arelene Herman, Faduma Ahmed Alim, Hawa Abdullahi Mohamed, Yasmin Khan, and Lynn Caruso, "Waiting for 'Sharciga' Resettlement and the Roles of Somali Refugee Women," *Canadian Woman Studies* 19 (1999): 80–88.
10. See Damaris Rose, Pia Carrasco, and Johanne Charbonneau, "The Role of 'Weak Ties' in the Settlement Experiences of Immigrant Women with Young Children: The Case of Central Americans in Montréal" (working paper,

- CERIS–Toronto Centre of Excellence for Research on Immigration and Settlement, Toronto, 1998), <http://ceris.metropolis.net/Virtual%20Library/community/Rose1/rose1.html>; also see Margaret Walton-Roberts, "Weak Ties, Immigrant Women and Neoliberal States: Moving beyond the Public/Private Binary," *Geoforum* 39 (2008): 499–510.
11. Much work has been conducted on social networks. The concept of "weak ties" advanced by Granovetter refers to acquaintances, rather than close family and friends, which are viewed as being "strong ties." Thus, "weak ties" allow individuals "to diversify their social network and serve as a getaway to an array of socio-economic and cultural resources beyond those generally available in the person's ethnic or immigrant community." See Rose, Carrasco, and Charbonneau, "The Role of Weak Ties," and Walton-Roberts, "Weak Ties, Immigrant Women" for more on the dynamics behind strong and weak ties. Also see Karen J. Aroian, "Sources of Social Support and Conflict for Polish Immigrants," *Qualitative Health Research* 2 (1992): 178–207; Mark Granovetter, "The Strength of Weak Ties," *American Journal of Sociology* 78 (1973): 1360–80; and Jacqueline Hagan, "Social Networks, Gender, and Immigrant Incorporation: Resources and Constraints," *American Sociological Review* 63 (1998): 55–67.
 12. See Danso, "From 'There' to 'Here'": 4.
 13. Ley and Smith, "Even in Canada?"
 14. Montréal's cultural geography and history are divided into two sides, the Anglophone West and the Francophone East. As Sherry Simon points out, "today Montréal is a cosmopolitan city, with French as the matrix of its cultural life." See Sherry Simon, *Translating Montreal: Episodes in the Life of a Divided City* (Montréal: McGill-Queen's University Press, 2006), 3.
 15. As cited in Engin Fahri Isin, *Being Political: Genealogies of Citizenship* (Minneapolis: University of Minnesota Press, 2002), 266.
 16. Qualitative research was undertaken in Montréal, Quebec, in the fall of 2008 and ended in early spring of 2009. I conducted semi-structured in-depth interviews with ten individuals who once sought asylum in Montréal. These individuals had fled their countries of origin due to persecution as outlined by the UN Convention relating to the Status of Refugees. Eventually, they were granted refugee status or were accepted on humanitarian and compassionate grounds (H&C). During the time of the interviews, the respondents were either granted permanent resident status or Canadian citizenship. From the ten interviewees, five were male and five were female, belonging to different walks of life, all living in various neighbourhoods on the island of Montréal. The countries of origin of the respondents are Algeria, Congo Brazzaville, Mauritius, Zimbabwe, Pakistan (two individuals), Lebanon, Colombia, Venezuela and Mexico.
 17. Danso elaborates on these barriers. See Danso, "From 'There' to 'Here'": 4.
 18. See Peter Askonas and Angus Stewart, eds., *Social Inclusion: Possibilities and Tensions* (Houndmills, England: Macmillan Press; New York: St. Martin's Press, 2000), 166.
 19. See Jo Beall, "Globalization and Social Exclusion in Cities: Framing the Debate with Lessons from Africa and Asia," *Environment and Urbanization* 14 (2002): 44.
 20. See René Lenoir, *Les exclus: un Français sur dix* (Paris: Seuil, 1974).
 21. Ratna Omidvar and Ted Richmond, "Immigrant Settlement and Social Inclusion in Canada" (Working Paper Series on Social Inclusion, Laidlaw Foundation, Toronto, 2003, p.11), http://www.laidlawfdn.org/sites/default/files/laidlaw_publications/working_papers_social_inclusion/wpsosi_2003_jan_immigrant-settlement.pdf.
 22. Ibid.
 23. Anver Saloojee, "Social Inclusion, Anti-racism and Democratic Citizenship" (Working Paper Series on Social Inclusion, Laidlaw Foundation, Toronto, 2003) http://www.laidlawfdn.org/sites/default/files/laidlaw_publications/working_papers_social_inclusion/wpsosi_2003_jan_social-inclusion-anti-racism.pdf.
 24. See Saskia Sassen, *Territory, Authority, Rights: From Medieval to Global Assemblages* (Princeton: Princeton University Press, 2006), 279.
 25. Jacques Rancière, as cited in Engin Fahri Isin, *Being Political*, 277.
 26. See Sassen, *Territory, Authority, Rights*, 294.
 27. See Isin, *Being Political*, preface, x.
 28. Sassen, *Territory, Authority, Rights*, 294.
 29. The names of all interviewees were changed and replaced by pseudonyms.
 30. Action Committee for Non-Status Algerians (CASS) is a self-organized group of Algerian refugees living in Montréal. Together with their allies, they have extensively campaigned to raise public awareness about their situation and to organize a political and legal response.
 31. Canada lifted the moratorium on deporting Algerians in April 2002. To read more on the experiences of non-status Algerian migrants in light of the decision to lift the moratorium, see Michelle Lowry and Peter Nyers, "Roundtable Report 'No One Is Illegal': The Fight for Refugee and Migrant Rights in Canada," *Refuge* 21 (2003): 66–72.
 32. The No One Is Illegal collective is composed primarily of young anti-globalization activists who are preoccupied with struggles and campaigns associated with migrant and indigenous justice issues in Montréal and across Canada.
 33. See Michel de Certeau, *The Practice of Everyday Life* (Berkeley: University of California Press, 1984).
 34. *Solidarity Across Borders* (a Montréal-based coalition of self-organized refugees) and its allies walked from Montréal to Ottawa to demand the regularization of all non-status persons in Canada, to put an end to detention and deportations; and the abolition of security certificates,

which allow the government to jail and even deport any non-citizen who it deems a security risk. For detailed coverage, photo-essays, and accounts of the march, see <http://solidaritycrossborders.org/en/taxonomy/term/34> (accessed January 31, 2011).

35. Lucy Williams, "Social Networks of Refugees in the United Kingdom: Tradition, Tactics and New Community Spaces," *Journal of Ethnic and Migration Studies* 32 (2006): 876.

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Investigating Integration: The Geographies of the WUSC Student Refugee Program at the University of British Columbia

ROBYN PLASTERER

Abstract

This paper examines the geographies of resettlement and integration with respect to the Student Refugee Program (SRP) of the World University Service of Canada (WUSC). As Canada's only program to link resettlement with post-secondary education, the SRP makes manifest intriguing geographies that intersect international, national, and local scales. This study carried out the first qualitative research of the WUSC SRP at the University of British Columbia (UBC). It draws from good settlement practices, refugees' existing skill sets, and refugees' perspectives to examine how refugee students' human capital can best contribute to Canadian integration.

Résumé

Cet article examine les géographies de la réinstallation et de l'intégration à l'égard du Programme d'étudiants réfugiés (PÉR) de l'Entraide universitaire mondiale du Canada (EUMC). Seul programme au Canada liant la réinstallation et l'éducation postsecondaire, le PÉR rend manifeste des géographies intéressantes qui croisent des échelles internationales, nationales et locales. Cette étude propose la première analyse qualitative du PÉR de l'EUMC à l'université de la Colombie-Britannique (UBC). Elle est guidée par de bonnes pratiques d'établissement, les compétences existantes des réfugiés et les perspectives de ceux-ci afin d'examiner comment le capital humain des réfugiés peut mieux contribuer à l'intégration.

Introduction

The United Nations High Commissioner for Refugees (UNHCR) estimates that over 805,000 refugees will be in need of resettlement over the next three to five years.¹ With 80 per cent of the world's refugees living in countries where local integration is not possible, and voluntary repatriation at its lowest level in twenty years, resettlement to a third country remains the only viable solution for hundreds of thousands of refugees worldwide.² Canada is often regarded as an international leader with respect to its refugee resettlement programs and policies³ and collectively, Canada, the United States, and Australia accept over 90 per cent of refugees resettled each year.⁴

One program in particular has shed light on the immense value of resettlement, not only as means for Canada to contribute to reducing global refugee crises, but also as means to enhance civic engagement and community-building within its national borders. The Student Refugee Program of the World University Service of Canada (WUSC) is the only program of its kind to link resettlement with post-secondary education. In doing so, it sheds light on the value of refugees as a source of human capital and has made it its mission to nurture this capital by providing refugees with access to higher education in Canada. Through its unique resettlement process, the SRP encompasses myriad geographies that intersect international, national, and local scales.

In examining the program and its history at the University of British Columbia (UBC), which is located in Vancouver in the Canadian province of British Columbia, I

will consider how to build an integrative society by drawing from good settlement practices, refugees' existing skill sets and refugee perspectives. My research is framed with the following objectives:

1. to ascertain what recommendations sponsored refugee students have in terms of what should be included or considered in the design and implementation of integration services at the University of British Columbia; and
2. to determine what can be learned from the good practices that are already in place in the operations of immigrant and refugee serving organizations in Vancouver.

The need to examine refugee integration is a pressing issue in both academia and policy making. Citizenship and Immigration Canada (CIC) has called for further research to "accurately assess the resettlement and integration success for Government-Assisted Refugees (GARs) and Privately Sponsored Refugees (PSRs)"⁵ and refugee experts have claimed there is a dearth of "studies on refugee integration" and a lack of refugee perspectives in academic research.⁶ While much work has been done to examine the integration of refugee youth in Canada's elementary and high school systems,⁷ there is a paucity of research on refugees' experiences with higher education. This paper seeks to address that gap by using the SRP at UBC as a reference point for exploring the initial phases of integration for refugee youth within Canada's post-secondary system.

Although the SRP has been active at UBC for over twenty-five years, it has never been evaluated nor has any formal qualitative data been collected from the sponsored students themselves. Moreover, since the local sponsoring group is student-run, it is subject to continual turnover in leadership. For this reason, a qualitative study of sponsored students' recommendations for the program would be immensely constructive. By using this small yet unique sponsorship program as a case study, I hope to contribute to a broader dialogue that uses space and place to better understand where, when, and how initial integration occurs. I believe that such a dialogue is crucial to the development of integration strategies that facilitate "natural processes" of "home-making."

Conceptual Framework

My research process began with an extensive literature review on refugees' needs and best settlement practices while conducting an in-depth reading of CIC and WUSC documents. From this review I built my conceptual framework around the themes of integration and refugee sponsorship.

Integration

The term "integration" is multi-faceted and elusive. Integration indicators found in the literature can include anything from labour market participation, language proficiency, and residential segregation to social networking and cultural consumption patterns. Since the WUSC SRP is founded on principles of reciprocity and mutual respect from both the host society and newcomers, I have positioned my analysis with the following definition: "a dynamic, multi-faceted two-way process which requires adaptation on the part of the newcomers, but also the society of destination."⁸

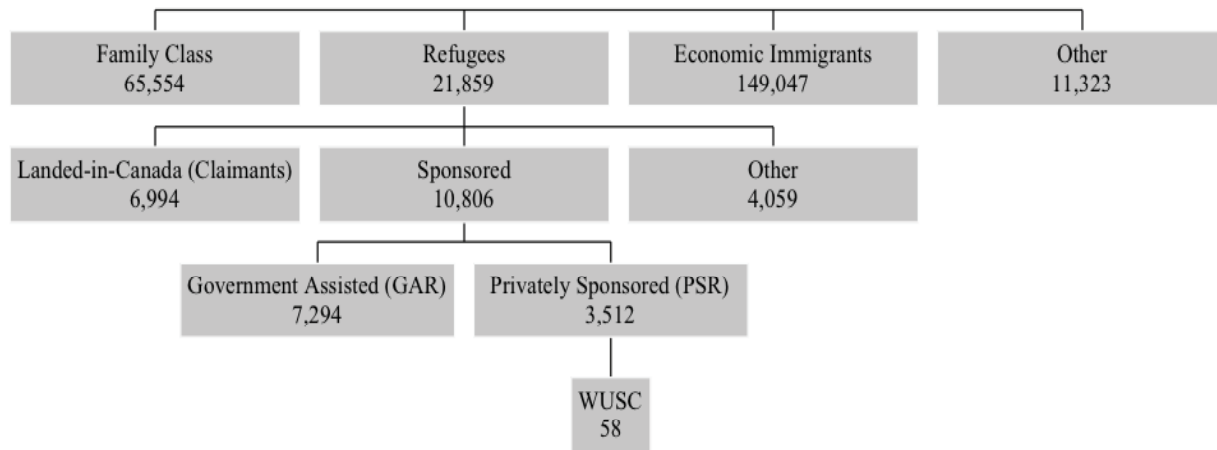
While formal evaluations of refugee sponsorship and support services tend to focus almost exclusively on economic or functional indicators,⁹ WUSC protocol requires the sponsoring group to also provide "moral and emotional support."¹⁰ As such, I felt that the integration model laid out by Kissoon was most appropriate for my research as it gives equal weight to both the functional and social aspects of the integration process.¹¹ Functional integration, according to Kissoon, refers to the indicators such as "language proficiency, labour market participation, civic and political participation, educational performance, and accommodation in adequate housing."¹² Social integration, on the other hand, refers to more affective qualities, such as an individual's sense of identity, belonging, and well-being, as well as the strength of his/her social networks.¹³

Refugee Sponsorship

Functional and social integration are crucial aspects of Canada's long-standing refugee and humanitarian programs, which resettle between 20,000 and 36,000 refugees per year.¹⁴ Of these, the majority fall under two umbrella programs: the Landed-in-Canada Asylum Program (for refugee claimants) and the Refugee and Humanitarian Resettlement Program (for sponsored refugees).¹⁵ The Refugee and Humanitarian Program can be further divided into the Government-Assisted Refugee Program (GARP) and the Private Sponsorship of Refugees Program (PSRP) (see Figure 1). While refugees sponsored under the first are referred by the UNHCR and supported by government-funded settlement services, refugees who are privately sponsored are supported by volunteer organizations.¹⁶ My research focuses primarily on the integration of refugees who have come through the PSRP under WUSC.

Implemented in 1978, the CIC Private Sponsorship of Refugees Program (PSRP) has upheld Canada's humanitarian principles and its international responsibilities.¹⁷ As one of sixteen countries to take part in the UNHCR's resettlement programs, Canada has one of the three largest in the world.¹⁸ Since 1978, the PSRP has contributed

Figure 1. Immigration Trends in 2008 (CIC Facts and Figures)



Source: Citizenship and Immigration Canada. *Facts and Figures 2008*, accessed March 30, 2009, <http://www.cic.gc.ca/english/resources/statistics/facts2008/permanent/01.asp>.

to the resettlement of over 195,000 refugees and persons in refugee-like situations to Canada.¹⁹ The program operates through a partnership between CIC and sponsoring groups, whereby CIC approves and facilitates the refugee's travel to Canada while Sponsorship Agreement Holders (SAHs) and their Constituent Groups (CGs) commit to providing functional and social support for the first year. There are currently eighty-seven SAHs, the majority of which are affiliated with faith-based or ethnocultural groups.²⁰ One of the few exceptions to this trend is the World University Service of Canada—a unique humanitarian organization and the only program in Canada to link resettlement with post-secondary education.

Since its inception in 1978, the WUSC Student Refugee Program (SRP) has brought over one thousand refugees to Canada as permanent residents. The approximately sixty refugee students it currently sponsors each year may seem like an insignificant contribution to the PSRP; however, the SRP is unique in that all refugees resettled through the program are enrolled at a Canadian post-secondary institution on arrival. Moreover, their respective Local Committees provide them with tuition fees for at least their first year, in accordance with CIC guidelines.²¹ With ensured access to education, refugees are able to contribute to the social, economic, and political fabric of their home countries through transnational linkages such as remittances, family sponsorship, and even returning home as professionals.

My research focuses on how the SRP operates at UBC, where it has been active since 1981 and has sponsored fifty-six students as of September 2010.²² The majority of these students have come from Somalia, Sudan, Ethiopia, and

Uganda, reflecting the national SRP trend whereby 53 per cent of sponsored students are East African.²³ This also corresponds to the broader Canadian demographics whereby Africa and the Middle East are the largest source areas for refugees.²⁴

The SRP program works on various scales (the transnational, national, and local) to link stakeholders such as the UNHCR, Windle Trust, CIC, and the Government of Quebec with post-secondary institutions across Canada (see Table 1). Hyndman and Walton argue that any studies of “integration and resettlement require an examination of migrant experience both within and beyond Canadian borders.”²⁵ As such, I intend to map the geographies of the program by examining the various stakeholders operating on different scales in Kenya (in the camps and in Nairobi) and in Canada (in Ottawa and Vancouver). I will also look at the exclusions from WUSC's selection process, the degree of agency refugees have in their relocation, and the way in which space/place is negotiated by WUSC, CIC, the university, and the refugee. Ultimately, I seek to outline the recommendations that would enable sponsored students and experts in the field to better the integration process at all sites.

Methodology

This study is small-scale and qualitative in nature. I conducted seven key-informant interviews and participant observation at a settlement organization to elicit some of the good practices that can be learned from immigrant and refugee-serving organizations in the Lower Mainland (the region surrounding Vancouver). Three separate focus

groups were coordinated in order to get refugees' perspectives on what works, does not work, and should be done to improve support. All research participants were invited to contribute to and revise the research as active participants in this community learning project and were assured that their contributions would be recognized in the final report.

Observation

My research mentor for this project was the Centre of Integration for African Immigrants (CIAI). Located in New Westminster, British Columbia, the centre was founded by Paul Mulangu, himself a refugee from the Congo. The centre currently works to help newcomers enter the labour market while offering socio-cultural support, and is one of only two centres that deal specifically with African newcomers in the Lower Mainland.²⁶ My observation was guided by the principles of reciprocity and reflection,²⁷ allowing me to contextualize my findings, while being critically self-reflexive and reciprocating the knowledge gained by contributing to a funding proposal for CIAI.

Focus Groups

The need to include more "recipient" voices in refugee and resettlement research is increasingly relevant in the designation and implementation of funding and programs.²⁸ As such nineteen SRP students and alumni were invited to participate in focus groups, of which eight students took part in three group sessions. Since many SRPs are full-time students with full-time or part-time jobs and community volunteer commitments, scheduling proved to be a limiting factor. Focus groups were used to elicit respondents' beliefs, attitudes, and experiences in a way that underscored the importance of social networks. This method enabled participants to be valued as experts, give recommendations, and work collaboratively with each other and with me to create a "forum for change."²⁹ Through this process, participants asked questions of each other, and even supported and sometimes challenged one another's claims. Following the work of Anne Grinyer, participants were given the option to (1) remain anonymous under a pseudonym, (2) to be recognized for their narratives with their real name, (3) and/or to take ownership of their stories by being involved in the analysis and dissemination of the findings (and have a byline in the paper).³⁰

The biggest limits to this method were that the groups were difficult to assemble, and were neither fully representative nor fully confidential. However, in accordance with oral African traditions, all participants orally committed to respecting each other within the focus group and respecting confidentiality, which was reinforced by signing the consent form. Food was provided at all sessions to transform the

focus groups into a social space that facilitated open dialogue and encouraged recommendations. My intent was not to be appropriative in theorizing people's lives, but rather to allow the sponsored students to voice their opinions so that their perspectives might guide the future of the program. To that end, I was careful to position the sponsored students as research *participants* rather than *subjects*, by sending out emails throughout the research, asking for feedback.

Key Informant Interviews

I conducted seven key informant interviews with settlement agency professionals and current and former members of the WUSC UBC leadership. These research participants included:

Settlement Services:

- As the current director for settlement services at Immigrant Services Society of British Columbia (ISSofBC)—the largest immigrant-serving agency in western Canada—Chris Friesen is also a former chair of the WUSC UBC Committee. He was instrumental in initiating the Student Refugee Program in 1981 and has experience working with refugees in Kenya with Windle Trust (WUSC's overseas partner).
- Currently the executive director of Multilingual Orientation Service Association for Immigrant Communities (MOSAIC), Eyob Naizghi came to Canada as UBC's first sponsored student through the SRP program in 1981. MOSAIC is one of the largest and oldest organizations in the Lower Mainland that empowers immigrants and refugees, including refugee claimants, through an integrated service delivery model.
- A former refugee from the Congo, Paul Mulangu is the founder and executive director for Centre of Integration for African Immigrants in New Westminster, British Columbia.
- A former UBC SRP student and active WUSC volunteer, Bakumba Gorle now works as an African community settlement counsellor at ISSofBC in their Burnaby and New Westminster offices.

WUSC UBC Leadership:

- In addition to being the UBC SRP faculty advisor since 1994, Glen Peterson has also travelled to Kakuma Refugee Camp in 2008 with the WUSC Refugee Study Seminar.
- The former SRP coordinator at UBC for five years, Rose Higgins has since gone on to help establish the SRP at Ryerson University in Toronto and is currently a WUSC board member.

- A former SRP student and SRP coordinator, Chan Moses has experience working and volunteering with WUSC, community settlement organizations, and CIC.

Through their collective expertise, these participants were able to elucidate the potential avenues for and limits to collaboration between the SRP and settlement services in the Lower Mainland. Furthermore, as many have had experience working with the SRP program both at UBC and in Kenyan refugee camps, they were able to highlight the supports and barriers for SRP students in their integration process on multiple scales.

Data Collection and Analysis

All of the interviews were conducted in English and participation was voluntary and unpaid. Aside from one interview that was conducted online, I recorded all of the interviews in person and transcribed them by hand, verbatim, including slang, non-standard grammar, and dialects. Through a process of initial and focused coding, I examined the barriers, supports and best practices, and transnational linkages discussed by three categories of interviewees: settlement service professionals (key informants), WUSC UBC leadership (key informants), and SRP students (focus group participants).³¹ The responses from these three groups were compared and contrasted, allowing for common critics, recommendations, and subthemes to emerge.

While I examined the transcripts individually and within these three groups, I also considered them collectively as part of larger narrative. It is important to note that the partition between focus group participants and key informants does not correspond to lived realities. In actuality, all participants embody complex social geographies that can be traced across multiple trajectories; almost all have negotiated the categories of “refugee,” “SRP student,” “local,” “citizen,” “activist,” and “professional” at one point or another.

Positionality

My research process was framed by feminist geography’s core belief that all knowledge is partial and situated.³² As such, I began by interrogating my own positionality in relation to the refugee community here at UBC, before delving into the positionality of sponsored students in Vancouver. As an active volunteer within the WUSC organization since 2005, I have come to know many of the sponsored students in a social context. This positionality within the “WUSC system” may have inhibited some of the participants from freely criticizing the program, or discouraged them from attending the focus groups altogether. However, I feel that overall, the deep rapport we had developed prior to the project created an atmosphere of trust that allowed

students to divulge both their personal frustrations and recommendations.

These opinions and suggestions will be tied into the following discussion of my research findings. I begin with a brief background of the WUSC program and an overview of the spatiality of the SRP and its supports, before offering recommendations based on the good practices I have uncovered, and finally providing suggestions for future research.

Background

Historical Context

WUSC’s predecessor, International Student Services (ISS), began to engage with refugee issues in the 1930s and 1940s, as it assisted European refugees from the university community who were affected by war resettle to Canada. This work persisted through the 1950s, when Soviet aggression and the failed Hungarian revolution spurred ISS to support Hungarian and Czechoslovakian refugees to resettle to Canada. In the 1960s, decolonialization in Africa created an outpouring of refugees, and many African students began coming to Canada through WUSC.³³ All of these waves of resettlement paralleled global trends and the priorities of the UNHCR of the time.³⁴ In 1978, when the Canadian government established the PSRP, WUSC became an official SAH and the Student Refugee Program was born.

Since its inception, the SRP has sponsored students from thirty-five countries of origin where there had been political turmoil. While the majority of students are African, the program has sponsored youth from the Middle East, South and Central America, Eastern Europe, and South and East Asia. Some of these sponsorships reflect greater geopolitical trends. For instance, the majority of South Africans were sponsored in the 1980s prior to Nelson Mandela’s election, and those from Bosnia and Herzegovina were sponsored between 1993 and 1997, during and in the aftermath of the Bosnian war. However, it is not solely geopolitics that determines the demographics of the SRP.

As WUSC sponsorship is linked to post-secondary admission, it is paramount that WUSC’s overseas partners in the countries of asylum have the demonstrated capacity to provide students with the language training needed to meet universities’ admission requirements. As a result, demographic shifts in the SRP are more often a reflection on WUSC’s shifting organizational partnerships than on (inter)national resettlement trends. WUSC currently operates out of two main countries of asylum: Malawi and Kenya.³⁵ However, as 80 per cent of the UBC SRP students from 2000 to 2010 were resettled from Kenyan refugee camps (Kakuma and Dadaab), this paper looks specifically

at the overseas integration practices of WUSC's Kenya partner: Windle Trust.

Contemporary Context

The importance of equipping refugee youth to meet the entry requirements for higher education in Canada cannot be overlooked. According to Lori Wilkinson, many refugee youth already resettled to Canada may be ineligible for higher education as a result of Canadian streaming, language barriers, and the nineteen-year age cap on free secondary schooling.³⁶ Moreover, prior to 2003, asylum seekers were unable to access student loans.³⁷

But it is not only the link to higher education that makes the WUSC sponsorship unique; it is also WUSC's peer-to-peer model that allows for more individualized support. This is particularly relevant given that many researchers are calling for more personalized, culturally orientated, and needs-based approaches to resettlement that acknowledge the specific challenges of groups such as refugee youth.³⁸ With over 50 per cent of GARs in 2006 being under twenty-two years old, and refugees being generally younger than other newcomer groups in Canada, there is a pressing need to better understand the experiences of refugee youth in Canada.³⁹ Many immigrant and refugee serving organizations in the Lower Mainland have responded to this need by developing youth-specific programming.⁴⁰

The WUSC program is advantaged by the fact that is designed for and deals solely with, a young adult demographic.⁴¹ In addition to all SRP students being between the ages of seventeen and twenty-five, the sponsoring Local Committees (active on post-secondary campuses across Canada) are comprised almost entirely of student volunteers. Many focus group participants perceived that this model provided them with more individualized support than GARs receive through government-funded settlement services:

Settlement [services] are good, but because of the amount of clients they have, they can not help people so much.—Amara

They [settlement services] really have their clients there, for other clients coming in its hard ... If your not part of that, its gonna take forever for someone to help you.—Eve

You come as a government sponsored refugee you don't have anything like WUSC sponsorship, which is very well organized.—Hakim

SRP students can seek peer support not only from their Local Committee, but also from fellow refugee youth. Since the UBC Local Committee currently sponsors up to four

students per year, these youth are able to access the invaluable support of a growing network of SRP students and alumni. Simich, Beiser, and Mawani claim that such peers aid the integration process by providing "personal affirmation of common experiences of both origin and transition."⁴² As previously stated, many of these students have lived in Kakuma and Dadaab and therefore often have personal connections that transcend the spatial and temporal boundaries of their university lives.

The Spatiality of WUSC and Geographies of Integration

Overseas: Sites, Stakeholders and Integration Practices in Kenya

The camps

Throughout the Global South, the development of "safe spaces" (like refugee camps) is facilitated by transnational relations of power exerted by international stakeholders.⁴³ This is exemplified in both Kakuma and Dadaab refugee camps where international humanitarian and political organizations strive to provide for, and spatially contain, approximately 46,000 refugees in Kakuma and 290,000 in Dadaab.⁴⁴ Kenya has the precarious geography of sharing borders with five other nations, all of which (aside from Tanzania) have produced a substantial outflow of refugee persons. With 413,000 refugees (352,000 of whom are Somali) and 16,700 asylum seekers as of January 2010, Kenya is one of the world's top ten countries of asylum for protracted refugees, and one of the top five in Africa.⁴⁵ Once in these protracted refugee situations, the chance to resettle abroad remains the sole option for many, who are unable to repatriate due to continued violence and are deterred from local integration by the Kenyan government.⁴⁶

As such, programs like WUSC provide a highly sought-after opportunity to construct a new home in a country free of persecution. To do this, WUSC works collaboratively with numerous stakeholders overseas, the most reputable being the UNHCR, which has ultimate authority over the camps and all the organizations operating within its borders. WUSC must also operate in accordance with Canadian federal mandates; according to CIC protocol it is up to the SAH to "make a preliminary assessment as to whether or not the applicant may meet the refugee eligibility criteria."⁴⁷ From there, WUSC liaises with its overseas partner Windle Trust, the Canadian High Commission, and the International Organization for Migration (IOM) to select qualified candidates and arrange their language, medical, and security tests as well as their travel documentation (see Table 1).⁴⁸ Because all of the official documentation for Canadian residency is done prior to departing from

Kenya, the geographies of integration, both functional and emotive, actually begin *in* the refugee camps.

Pre-departure orientation

When I say that integration begins overseas, I am referring not simply to the process of filling out papers, but also to the more complex emotional geographies that accompany this process: how expectations are set and how notions of home, family unity, and sense of well-being may begin to shift. Pre-departure orientations are integral to this entire process, both functionally and socially. In general, WUSC-sponsored students participate in two pre-departure orientations. The first is an IOM orientation for refugees of all ages who are resettling to sponsoring countries in the Global North. This orientation gives a basic overview of Canada's geography, socio-political structures, food, and housing, as well as how to use electricity and send remittances. This orientation is immensely valuable, given that IOM officials understand how transnational links are enacted by refugees in Canada:

The IOM one is important; they tell you how to send money back home. But the UBC students will not tell you, they don't do it so they don't know it. But when I come here I have to know it ... Things a Canadian student cannot understand because it doesn't make sense to him, like "oh you're already sponsored why are you paying money to family? What does that mean?" But when IOM officials talk to you they know that you are going to send money home, so they tell you what are the procedures, where to send your money, if your money gets lost how to follow up, all those legal things, they deal with it.—Ali

While the IOM is able to prepare students for functional integration by introducing Canada's legal, institutional, and financial structures, the WUSC orientation provides insight into social and academic integration.⁴⁹ All SRP participants found the cultural aspect of both orientations was the most important, as it helped them become active participants in the integration process and minimized the impacts of culture shock:

We were told about life in Canada, and how we handle ourselves, encountering different cultures and how you can adapt to different cultures ... You know its different here from the way Africans do it, here they say you have to contact people, people will not come to you, you have to go to people. In Africa it is different ... So those things we were taught, and that was the part of the culture we came to know and I think it was helpful.—Joseph

Three of the focus group participants had received orientations from Canadian students overseas and all concurred

that these workshops were "much more meaningful" and "very helpful." The student-to-student interaction allowed sponsored refugees to access university-specific information and, in some cases, contact information of individuals in their future host locale, thus accelerating social integration. Paul Mulangu, executive director of CIAI, also suggested that a one-month holistic pre-departure orientation program led by a former sponsored student or Canadian student could greatly aid the integration process upon arrival.

While the pre-departure orientation should be comprehensive, it is also important to, "consider the relevance of [information given], in that moment, in that space" (Ali). Some participants suggested that all orientation materials should be destination-specific (i.e. not informing a refugee of Dalhousie's admission policies if they're going to UBC), in order to avoid overwhelming students with information.

One of the primary functions of the pre-departure orientation is to ensure participants' expectations of Canada are accurate. This is a pressing issue, as the lack of information and unrealistic expectations prior to arrival in Canada can be a primary barrier for African newcomers according to both Paul Mulangu and Bakumba Gorle (former SRP student and current African community settlement counsellor at ISSofBC):

Some of them they don't know where they're going, they are just told they are going to Canada and that's it ... Some have this crazy imagination about this country you know. They come here thinking they're gonna find a 5 bedroom house, find a car parked outside, all these crazy things, but they don't realize all these crazy things require lots and lots of work.—Bakumba

However, unrealistic expectations were not a concern for SRP students, largely because of the comprehensive orientation programming they received. Particularly with respect to accommodation and financial supports, everyone's expectations were met or exceeded:

I kind of found it the way I wanted it to be. The reality is what I expected.—Eve

I didn't expect it was going to be this much.—Amara

For me it is more than I expected it!—Hakim

Bakumba Gorle believes that SRP students are advantaged because they "don't have that crazy expectation, that's one thing, and secondly they know the language, so the barriers are a little bit different. The only barrier that comes to you is maybe a lot of cultural adjustments."

National: The Role of the WUSC National Office

The WUSC National Office, based in Ottawa, is largely responsible for initiating this integration process overseas by linking SRP students in the camps with resources from their sponsoring institutions (such as course catalogues, etc.) and working with overseas stakeholders to provide comprehensive programming. As the official SAH, the WUSC National Office must liaise with the CIC in Ottawa, Windle Trust, and the Canadian High Commission in Kenya and the CGs at various institutions across Canada. Though its responsibilities are geographically dispersed, the WUSC National Office is the central authority as to who may or may not participate in the program.

Since WUSC links resettlement with post-secondary education, the primary determinants for participation are access to secondary education and academic performance. Even though access to primary school education is disproportionately high in Kakuma and Dadaab as compared to other camps in Africa,⁵⁰ the availability and quality of secondary education is highly problematic. For instance, in 2009, approximately 2,050 students sat their final primary school exams in Dadaab, even though the secondary

school system could absorb only 450 of them.⁵¹ Congestion, dilapidated and under-resourced facilities, and a teaching staff that is roughly 90 per cent untrained are just some of the challenges faced by refugees who must compete with Kenyan nationals on their final examinations in order to pursue post-secondary education.

The WUSC process is highly competitive and all candidates must be between seventeen and twenty-five years of age,⁵² have completed secondary school, be recognized as a refugee in the country of asylum, exhibit proficiency in English or French, and meet the minimum academic requirements outlined on the call for application. To be admitted to the SRP, “candidates must be recognized by the UNHCR (or by the office authorized to give refugee status in the county of asylum) and be accepted by WUSC, the Canadian immigration authorities, the Registrar’s Office at the college or university, and by a sponsoring Local Committee”.⁵³

WUSC generally requires that the applicant be single without dependents. This is the case for two primary reasons: first, it eases integration into university life, and second, it is extremely difficult for student-based Local

Table 1. Scales, Sites, and Stakeholders of WUSC SRP

	Overseas	Nationally	Locally
Site	Kenya: Dadaab, Kakuma, Nairobi	Ottawa	Vancouver, UBC
Stake-holder	UNHCR: Has ultimate authority over camp; verifies the refugee status of the SRP candidate; observes the interview process IOM: Facilitates all travel arrangements; provides the pre-departure orientation for refugees Canadian High Commission (Overseas CIC staff): Interviews candidate to determine eligibility and admissibility for resettlement; conducts medical & security checks WUSC National Office: Selects qualified candidates; facilitates university placements Windle Trust Kenya: Posts call for application in the camp; conducts the pre-interview test and posts the final interview list; participates in the interview panel; provides language proficiency tests and pre-departure orientations Local Committee members: Send pre-departure materials.	CIC and Quebec Immigration Offices: Liaises with the Canadian High Commission; manages the re-payment of travel loans, provides information regarding immigration & settlement processes WUSC National Office: SAH with the Government of Canada & Quebec; responsible for the selection and placement of candidates; provides training to the Local Committees (CGs); Overseas all official documentation and facilitates immigration process; monitors the program.	WUSC Local Committee: Provides financial, social and emotional support for at least 12 months The University: Processes admission, waives tuition for 5 years UBC Housing and Conferences: Guarantees housing for first year Alma Mater Society: Provides stable recurrent funding UBC Faculty Fund: Additional donor

Committees to provide the necessary financial and moral support for a dependent—especially with respect to the cost of child care in Canada. However, in the event that Local Committees are able to commit to such financial and social responsibility, WUSC has supported refugees with dependents, such as single mothers, through the program. UBC is among the select committees that have been able to make such a commitment.

The support of single mothers is particularly relevant given the gender disparity within the program. Between 1978 and 2008, only 269 of the 1,058 students—or roughly 25 per cent—sponsored through the WUSC SRP were women. This in direct correlation to the fact that in the refugee camp schools, boys outnumber girls four to one.⁵⁴ In response to such inequity, many universities (including UBC) have lowered their entrance averages for young women coming through the SRP. In 2009, WUSC responded to this alarming gender gap by launching a new in-camp strategy, Shine A Light—a fundraising campaign to provide refugee girls with solar lamps to study at night, remedial training and school supplies, and scholarships for secondary schools in Kenya. This campaign aims to ultimately enable more young women to qualify for the WUSC sponsorship program.

Candidates must display personal agency at their interviews with WUSC and CIC to demonstrate their “ability to establish.” Once the candidate has been admitted to the WUSC program and passed CIC’s admissibly interview and security clearance, the WUSC National Office has the final say on where she or he is placed in Canada. When the candidate accepts the sponsorship, she or he enters into a legal agreement with WUSC (the SAH), their Local Committee (the CG), and the Canadian government, to live in the town or city where the CG is located and to remain in school for the first twelve months.⁵⁵ As such the refugees have a degree of agency over the transnational and national scales of their resettlement (as they have applied to a Canadian SAH), but may not choose the locality or university for relocation.

The interlocking relationships between the stakeholders shown in Table 1 give rise to complex and mutually constitutive geographies. There are times when national, and even local, actors operate in Kenya on a global scale; for instance, when WUSC and Local Committee members provide refugee students with pre-departure materials. At other times we see global stakeholders passing off responsibilities to national and local actors, such as when the IOM transfers a travel loan (for the cost of the flight to Canada) to CIC, which then passes it to the sponsored student and/or Local Committee. These actors operate in a geographical symbiosis that allows the program to abide by a multitude of site-specific protocol and regulations.

Local: The Actors and Processes Impacting Integration in Vancouver

While the sponsored student is legally obligated to remain within the spatial locale of the CG for their first year, the CG is likewise obligated to “provide the sponsored student with financial, moral and emotional support for at least 12 months.”⁵⁶ The moral and emotional aspects cannot be overstated. When asked what the word “integration” means to them, all participants referred to the affect qualities of feeling respected by the host community: “integration is how you relate to the people you meet,” “it’s people coming together and staying together.”⁵⁷ It is clear from these responses that social support is a pressing issue for sponsored students. I will therefore begin by looking at aspects of social integration, from orientation to the ongoing development of social networks with the host and ethnocultural communities. I will then turn to the functional integration of labour market participation, and finally the implications of transnational networks on both social and functional integration

Local orientation

In order to minimize the effects of culture shock, the local orientation must be as comprehensive as the pre-departure one. Furthermore, it is important to *show* refugee students how to navigate the geographies of the campus and city as well as how to negotiate various social systems such as banking and university administration. This includes providing an orientation of physical way-finding (how to get to one’s classes, how to find the bank) but also virtual way-finding (how to register for courses, how to use online banking). Paul Mulangu suggests that the best way to do this is by relying on the “traditional way”: “What I call traditional way is first to show somebody. After that, he is going to know how to do himself, rather than giving someone a map and saying go, they are not used to that.”

This concept was reiterated by many of the students, who expressed a desire to be guided first and then shown the corresponding information online. It was repeatedly brought to my attention that paperwork such as cellphone contracts should be discussed in detail with the sponsored students, so that they can make informed decisions and exercise their personal agency.

Another fundamental challenge is the expediency needed to provide an orientation within the two-week period between the student’s arrival and the beginning of school. Sponsored student Ali explains:

... well the thing was we expected a smooth transition from our camp life to our campus life within that time frame, we expect a lot which realistically is not possible because you need them to do

the work of a couple months integration within that small frame period.—Ali

As such, orientation should be seen as a long-term process, rather than just an initial reception. This was the case five years ago when, according to Deng—a sponsored student at the time—various activities such as hiking, potluck dinners, and library tours were organized throughout the semester, provided overall consistency to the integration process.

Socio-cultural integration

While functional integration is often evaluated with a checklist of settlement supports and guidelines, social integration is difficult to measure. The emotional geographies of how a newcomer connects to a given place are shaped by the evolution of their social networks and how they reposition themselves in society. But as stated earlier, integration is a two-way process, and thus the sponsoring group must work to enhance social interaction between refugee students and their local peers. Deng reflects on how such interactions can foster a sense of belonging and well-being:

In my time I was even given a birthday party! ... Its not necessary of course, but if the committee can actually make it happen, you feel good ... For me I would appreciate something like that happening for someone.—Deng

However, his gratitude for past gestures is matched by the dismay that currently

Social integration is lacking so bad, and that is really what new students need. Because coming here can be really overwhelming, if you are coming from a small town, and then you are being dropped in Vancouver, even the simplest thing can be really overwhelming for a new student, so they really need a close guide.—Deng

Multiple students claimed that in the past few years, while the functional integration supports have improved, they were disappointed by the level of emotional support they received:

I was not finding what I had expected like getting to chat with people, and coming to people when they're really in bad situations and thinking about different things, and thinking about different people, but nobody is there to help you, to calm you down. I did not feel good about that.—Joseph

I didn't get enough support from the interactions with the people. I got to know only very few people from the Local Committee. Otherwise, in terms of academic and getting UBC cards all these

things, I got enough support ... I didn't receive all my expectations here. That's it.—Jal

The importance of Local Committee support was emphasized by other research participants who concurred: "You're big enough to be on your own, but you still need that connection" (Dedi).

Glen Peterson, faculty advisor to the SRP, has reiterated the need for more community interaction on the "basis of something like a mentoring relationship, where we pair Canadian students with incoming SRP students." The CIC considers mentoring as a critical piece of settlement programming, and invests nearly three million dollars annually in the Host program. This "local community-based service delivery" program is administered by immigrant and refugee serving agencies like ISSofBC and MOSAIC, to match Canadian volunteers with newcomers on the premise that local volunteers are best positioned to "respond to local needs."⁵⁸ To enhance socio-cultural integration, such a mentoring program could be developed by the Local Committee, with the guidance of Vancouver-based immigrant and refugee serving agencies.

Ethnocultural connections

Community networking can be further empowered by connecting sponsored students to their ethnocultural groups within the host locale. According to the literature, "the impact of co-ethnic networks on refugee integration outcomes needs to be clarified."⁵⁹ However, throughout my research, participants overwhelmingly perceived such networks as integration supports. All of the key informants discussed the importance of connecting new SRP students to their ethnocultural groups in Vancouver; in particular, Bakumba Gorle, Paul Mulangu, and Eyob Naizghi (executive director of MOSAIC) suggested that immigrant and refugee serving agencies could play a key role in facilitating this:

The [immigrant and refugee serving] organizations are better suited to meet the socio-cultural needs of the students, I believe. This may include connecting the students with their own communities and other communities of interest ... [if] they are connected to these groups, the stressors may be lessened ... [and it may make a] ... significant difference in their initial settlement, and long term integration.—Eyob

SPR students agree that connections to their ethnocultural community and former sponsored students significantly ease socio-cultural barriers: "Culture shock was not so huge for me because I had people I could talk to if I had questions about it. It helped me fit into the community" (Dedi).

Most participants expressed a desire to be connected to their local ethnocultural groups, and many cited UBC-based organizations such as Africa Awareness and the Muslim Student Association as key integration supports. Faculty advisor Glen Peterson notes, “There’s a small but very dedicated group of African students and other community members here [at UBC] who, my sense is, very much rely on each other and help each other out. So that’s a great source of support [for SRP students].”

However, it may be presumptuous to assume that one’s social needs necessarily correlate to one’s place of origin. While the majority of participants wanted to connect with their co-ethnic groups, this may not always be the case due to personal, political, or religious divisions. We must remember that the complexity of one’s embodied geography is not necessarily reflected in his/her country of origin. As one student articulated, “I sometimes don’t feel comfortable, because they all have their own agendas. I don’t feel safe, I don’t know who to trust” (Amara). This was echoed by SRP coordinators, who suggested that the initial orientation should include a discussion with sponsored students regarding which local communities they would like to engage with.

Because integration is a two way process, it is important not only to connect students to their ethnocultural community (if they so choose), but to encourage students to share their cultural heritage with the host society. A primary means to facilitate such cultural exchanges is through volunteerism, both within a student’s co-ethnic community and with Canadian students through the WUSC Local Committee and other humanitarian groups. Eyob Naizghi suggests that one of the best integration practices is to support “refugee students to stay actively involved with the extra-curricular activities of university life, volunteering for community organizations, etc.”

Integration is not always about receiving social services and supports. The ability to work and volunteer in one’s community promotes a sense of personal agency, validation and belonging, as well as extends one’s social networks. Participants agreed that volunteering was a fundamental support for social integration:

I didn’t get help from the [Sudanese] community but I give help to the community. I feel, I don’t know how to call it, I feel like I have something, being a student you gain so much from the knowledge, even up to now, I help the community because it’s very important. Just helping and not getting help.—Dedi

Certain students also felt that it was important for the SRP students to volunteer with the WUSC Local Committee in order to validate refugees as positive agents of change

within the community, while building their own skill sets and connections:

I try to be involved as much as I can, and I think it’s very good because at the same time it will help us, and it will help others to know us. Because it’s not always them helping us but maybe we can contribute too ... at the same time you find networks, you find friends, you know other things.—Amara

I think one thing that is very important is to get SRP students more involved in the WUSC club ... And I’m really grateful I did that because it changed my life totally ... my mind is kind of global now.—Chan

Volunteerism can also assist sponsored students to progress on the labour market trajectory, by acquiring Canadian experience and references for their resumé.

Labour market participation

Labour market participation is particularly relevant given that the deskilling of overseas (African and Middle Eastern) work experience by Canadian employers has been an initial barrier for SRP students in finding employment: “The barrier was lack of Canadian experience. That was the barrier in getting your first job, it was hard to get that first job. But after getting it, the second was easier, the third was easier” (Deng).

All focus group participants have suggested the Local Committee could do more under the CIC protocol to “help refugees find employment” by assisting them in attaining Canadian job experience and references.⁶⁰ Although SRP students are receiving a world-class education, this must be supplemented by additional skill sets such as resumé writing, interview clinics, and so forth. Relevant workshops are available at an institutional level through UBC Career Services; however, most focus group participants were unaware of them, and suggested that they be included in the initial orientation. This reflects a national trend, whereby refugees may be underutilizing human services due to a lack of information.⁶¹ Key informants further suggested that an employment mentorship program, perhaps modelled on the Host program, could enhance labour market participation and even strengthen community life.

However, while employment may be an initial barrier for SRP students, ultimately WUSC sponsored youth have better labour market trajectories than most PSRs. A 2007 CIC survey identified employment as one of the two largest resettlement challenges for PSRs.⁶² As a result of deskilling, 60 per cent of PSRP respondents in the survey indicated a desire to attain skills training in a wide range of

employment areas.⁶³ In contrast, a 2007 WUSC Executive Summary that found that 97 per cent of WUSC students have completed or are in the process of completing their post-secondary education, and 85 per cent have found work in their chosen field after graduation.⁶⁴ According to the report, “an overwhelming majority agreed that enrollment in a college or university and support of the WUSC sponsoring group were the key factors in their successful integration into Canadian society.”⁶⁵

This successful employment rate comes at a time when refugees are experiencing “downward occupational mobility” and “achieving lower economic outcomes than in the past.”⁶⁶ In particular, newcomers from sub-Saharan Africa are experiencing lower employment rates than other groups, and African refugee youth are among the least likely to find employment in Canada.⁶⁷ In a 2008 study mapping the labour market transitions of immigrant-born, refugee-born, and Canadian-born youth, Lori Wilkinson found that refugee youth experienced the highest levels of unemployment, with nearly one-third of her sample (aged twenty to twenty-four) being unemployed.⁶⁸

As education is considered to be the “major pathway” to access economic advancement in Canada,⁶⁹ it follows that SRP students who have completed their post-secondary education find themselves in a position to contribute to and benefit from the Canadian labour market.

Not only does post-secondary education provide skills training and knowledge to advance one’s human capital, but it also advances one’s social capital through a network of professors, professional mentors, and future colleagues. According to Navjot Lamba, the networks many refugees employ “may not be sufficient to overcome their downward occupational mobility.”⁷⁰ This is not the case for SRP students whose access to post-secondary resources and contacts can help them achieve occupational success. Through the university, SRP students are able to overcome the major barriers to economic integration outlined by Usha George: lack of Canadian credentials, language barriers, competition from increasingly educated Canadians, and lack of Canadian networks.⁷¹

Not only is employment an indicator of functional integration, but as SRP student Hakim points out, it contributes to social integration as well:

In terms of the Vancouver community, you can learn it through your work places. Like for me I work at [a grocery store]. I get to know about the people working with me, those people, the customers in that store, so you can learn through working.

Transnational links

The reason labour market participation is so crucial is because of the immense pressures students have to remit money home. As such, these transnational links are rooted in and dependent on the students’ functional integration. Yet conversely, this need to send remittances can implicate refugees’ ability to integrate as well as impede their academic performance.⁷² Students mentioned that there had been occasions where SRP students at other universities had to drop out of school to pay off the transportation loan or support family members overseas. All key informants agreed that this pressure begins immediately once the refugee has arrived in Canada: “When you land here you gotta support somebody and it can add a lot of stress, because nobody can support everybody in the community, we are not the UN, the UN can’t anyway” (Bakumba).

Chris Friesen, ISSofBC director of settlement services, agrees that “the intense pressure placed on refugee immigrants when they first arrive in Canada to contribute to the well being of friends, family, extended family, and community members back home” can impede their integration as it keeps them on the margins, “living on income support, welfare, on or most likely below the poverty line.”

The transnational implications of sending remittance are complex; while it acts as a barrier for the sponsored refugees, it is simultaneously a support for overseas networks. The ability of students to remit money home, combined with the knowledge and skill sets they acquire in Canada, reposition them as agents who can strengthen their communities in Africa (by supporting their siblings’ education, etc.), through transnational efforts. Sponsored students articulated that the transnational benefits of the WUSC SRP were a primary motive for joining the program:

... it is a program that is helping a lot of people. Not only to those students that are sponsored, but also their families, relatives back in Africa. It’s very helpful and I really appreciate for those who initiated this program.—Siyad

As the first UBC SRP student and current executive director of MOSAIC, Eyob Naizghi knows the challenges refugee students face in maintaining their transnational networks while negotiating their own multi-faceted identities within the host society. He claims,

Connecting with overseas is not good enough on its own. They have to find a means of airing their background locally. So it is equally important that they have a local connection that supports their overseas network. Some of them have the burden of supporting their overseas networks (relatives, family members) ...

It is important that these factors are acknowledged by the local community.—Eyob

Again the Host program is a good model for this supportive local connection. Not only does it aid newcomers in finding employment to support their overseas networks, but it is premised on the idea that everyone is a teacher and everyone a learner. The Canadian volunteer introduces the newcomer to available services, contacts in their field of work, and community activities while learning about their cultural heritage, world view, and geopolitical history.

Hyndman and Walton claim that “transnationalism is about identities that traverse multiple places.”⁷³ This is certainly true for SRP students who have traversed not only multiple places, but also multiple social and institutional categories: “African,” “refugee,” “permanent resident,” “Canadian,” “local.” The negotiation of these transnational identities is complex and not easily understood, but what is clear is that the Local Committee must work to validate all of these embodied geographies and their corresponding networks, through initiatives such as cultural nights, online forums, and fundraisers for community projects in the refugee camps, etc. As faculty advisor Glen Peterson articulates:

I think that the more students can come here and adapt here and build lives here without rupturing their previous lives is a good thing. They're able to develop multiple identities which I think is a good thing. They don't see themselves as either Canadian or African, they see themselves as both. And I think they can flourish in both of those contexts, and things like internet communication make that much more possible.

The importance of preserving overseas links is matched by a need to maintain a network of past, current, and future UBC-sponsored students. These students are bonded by their common geographies of dislocation and resettlement, as well as their experiences integrating into the University of British Columbia. In this respect, the “SRP is very different [from settlement agencies]—it is like a family” (Bakumba). Sponsored students Eve and Dedi agree that transnational communication must be maintained because:

We have a nice community that we can always look up to ... we should keep the big group, even if they graduate keep them involved, so that it grows, grows, grows.—Eve

... The SRP is a community of people ... I know that in 20 years from today we're still going to be useful to each other.—Dedi

Areas for Further Research

This paper has sought to provide the first formal report on the Student Refugee Program at UBC with respect to the geographies of resettlement and integration overseas, nationally, and locally. The importance of continual, holistic orientation programming and social networking within one's ethnocultural group and host locale has been elucidated. However, the pursuit of the following umbrella topics for further research could be immensely beneficial:

1. an in-depth study of what settlement services SRP students are eligible for in Vancouver, highlighting the possible avenues for, and limits to, collaboration with immigrant and refugee serving organizations;
2. the distinctions between SRP students and other African newcomers with respect to the barriers they face and their perceived level of personal agency; and
3. An investigation of post-WUSC sponsorship repatriation trends to better understand what contributions former SRP students are making in their home countries.

The WUSC SRP is a small sponsorship program; however, its significance lies not in its size, but in its uncompromising belief in the human capital of refugee students. The program is increasingly relevant in an ever-globalizing world. As Chris Friesen states, the expansion of the program “has come at a time when UBC is continually looking abroad, trying to position itself as a global institution of excellence, so this program fits quite nicely into the direction that the university is moving towards.” Not only does it help position UBC as a global leader, but it also reflects well upon Canada's position as an international leader for refugee resettlement. The SRP instigates nation-building not through economic migration, but through the principles of collectivism, multiculturalism, and reciprocal knowledge that uphold Canada's humanitarian traditions and international responsibilities. Sponsored student Ali articulates it best:

I hope people will realize that this is a program that has helped over 1,000; it's helped them change their life. And when you think about changing the life it's not a change for just a person, it's change for a whole family, a community, a whole tribe, it goes beyond, beyond, beyond. I hope to see this bigger, better and more pronounced that it is.

NOTES

1. United Nations High Commissioner for Refugees, *News from the Field*, 2010, accessed July 5, 2010, <http://www.unhcr.org/pages/49c3646c23f.html>.
2. Ibid.
3. Peter Li, *Destination Canada: Immigration Debates and Issues* (Toronto: Oxford University Press, 2003).
4. United Nations High Commissioner for Refugees, *News from the Field*, 2010.
5. Citizenship and Immigration Canada, *Summative Evaluation of the Private Sponsorship of Refugees Program: Final Report*, 2007, accessed February 20, 2009, <http://www.cic.gc.ca/English/resources/evaluation/psrp/psrp-summary.asp>.
6. Soojin Yu, Estelle Oullet, and Angelyn Warmington, "Refugee Integration in Canada: A Survey of Empirical Evidence and Existing Services," *Refuge* 24, no. 2 (2007): 17–34; Langan Jane Courtney, "Voices of Education in Protracted Refugee Situations: Reflections and Recommendations of Sudanese Refugees" (master's thesis, Stanford University, 2007).
7. Lori Wilkinson, "Factors Influencing the Academic Success of Refugee Youth in Canada," *Journal of Youth Studies* 5, no. 2 (2002): 173–93; Lana Stermac et al., "Educational Experiences and Achievements of War-Zone Immigrant Students in Canada," *Vulnerable Children and Youth Studies* 5, no. 2 (2010): 97–107; Isabel Kaprielian-Churchill, "Refugees and Education in Canadian Schools," *International Review of Education* 42, no. 4 (1996): 349–65; Cécile Rousseau, Aline Drapeau, and Ellen Corin, "School Performance and Emotional Problems in Refugee Children," *American Journal of Orthopsychiatry* 66, no. 2 (1996): 239–51; Ahearn et al., "The Experience of Refugee Children," in *Refugees: Perspectives on the Experience of Forced Migration*, ed. A. Ager (London: Pinter, 1999).
8. Yu, Oullet, and Warmington, "Refugee Integration in Canada."
9. Citizenship and Immigration Canada, *Summative Evaluation*; Yu, Oullet, and Warmington, "Refugee Integration in Canada."
10. World University Service of Canada, *Local Committee Handbook Model 1: An Overview of WUSC & Local Committees* (Ottawa: World University Service of Canada, 2008).
11. Priya Kissoon, "Home/lessness as an Indicator of Integration: Interviewing Refugees about the Meaning of Home and Accommodation," in *Doing Research with Refugees*, ed. B. Temple and R. Moran (Great Britain: Policy Press, 2006).
12. Ibid.
13. Ibid.
14. There were 32,687 refugees in 2004; 35,776 in 2005; 32,499 in 2006; 27,955 in 2007. Citizenship and Immigration Canada. *Facts and Figures 2008*, accessed March 30, 2009, <http://www.cic.gc.ca/english/resources/statistics/facts2008/permanent/01.asp>.
15. Yu, Oullet, and Warmington, "Refugee Integration in Canada."
16. Ibid.
17. Citizenship and Immigration Canada, *Summative Evaluation*.
18. Ibid.
19. Citizenship and Immigration Canada, *Guide to the Private Sponsorship of Refugees Program* (Ottawa: Minister of Public Works and Government Services Canada, 2003).
20. Citizenship and Immigration Canada, *Summative Evaluation*.
21. The majority of the supports mandated by the CIC are functional, "providing the cost of food, rent, household utilities, and other day-to-day living expenses; providing clothing, furniture and other household goods; locating interpreters; selecting a family physician and dentist; assisting with applying for provincial health-care coverage and Interim Federal Health Program; enrolling children in school and adults in language training; introducing newcomers to people with similar personal interests [social]; providing orientation with regard to banking services, transportation, etc. ; and helping in the search for employment." See Citizenship and Immigration Canada, *Guide to the Private Sponsorship of Refugees Program*.
22. In addition to the SRP students that UBC sponsors through the WUSC National Office, the WUSC UBC Local Committee has also financially supported several Convention refugees, who were already in Canada, to pursue their post-secondary education at UBC.
23. There is also a significant number of students who come from Malawi, Rwanda, Burundi, and the DRC. World University Service of Canada, *The Student Refugee Program: A Guide for Local Committees* (Ottawa: World University Service of Canada, 2009).
24. Yu, Oullet, and Warmington, "Refugee Integration in Canada."
25. Jennifer Hyndman and Margaret Walton-Roberts, "Interrogating Borders: A Transnational Approach to Refugee Research in Vancouver," *Canadian Geographer* 44, no. 3 (2000): 244–58.
26. I also spent a day volunteering with the African Refugee Youth Program through the Immigrant Services Society of British Columbia (ISSofBC), and visited the ISSofBC office on Drake Street and the MOSAIC office on Commercial Drive.
27. Alison Mountz, Eli B. Moore, and Lori Brown, "Participatory Action Research as Pedagogy: Boundaries in Syracuse," *ACME: An International E-Journal for Critical Geographies* 7, no. 2 (2008): 214–38.
28. Courtney, "Voices of education in protracted refugee situations."
29. Ibid.
30. A. Grinyer, "The Anonymity of Research Participants: Assumptions, Ethics and Practicalities," *Social Research*

- Update, University of Surrey (2002), 36, accessed March 9, 2009, <http://sru.soc.surrey.ac.uk/SRU36.html>.
31. Under the umbrella of *barriers and challenges* the following subtopics emerged: discrimination, cultural shock, academic life, labour market participation, unmet/unrealistic expectations, and bureaucracy. Within *supports and best practices*, the subtopics were: orientation and reception, counselling, co-ethnic and co-religious support, community engagement, finances, and needs-based approaches. Under the topic of *transnational linkages*, the focus was on remittances, family, diasporic networks, and identity.
 32. Gillian Rose, "Situating Knowledges: Positionality, Reflexivities and Other Tactics," *Progress in Human Geography* 21, no. 3 (1997).
 33. World University Service of Canada, *The Student Refugee Program* accessed July 20, 2010, <http://www.wusc.ca/en/campus/students/SRP>.
 34. United Nations High Commissioner for Refugees, *History of the UNHCR*, 2010, accessed July 20, 2010, <http://www.unhcr.org/pages/49c3646cbc.html>.
 35. However, WUSC has not sponsored from Thailand in the past three years, and currently only operates from Kenya and Malawi.
 36. Wilkinson, "Factors Influencing the Academic Success of Refugee Youth in Canada."
 37. Lori Wilkinson, "Labor Market Transitions of Immigrant-born, Refugee-born, and Canadian-born Youth," *Canadian Review of Sociology/Revue canadienne de sociologie* 45, no. 2 (2008): 152–76.
 38. Usha George, "Immigration to Canada," in *Immigration Worldwide: Policies, Practices and Trends*, ed. U. Segal, D. Elliot, and N. Mayadas (Oxford: Oxford University Press, 2010); Wilkinson, "Labor Market Transitions."
 39. Debra Pressé and Jessie Thomson, "The Resettlement Challenge: Integration of Refugees from Protracted Refugee Situations," *Refuge* 25, no.1 (2008): 94–99; Wilkinson, "Factors Influencing the Academic Success of Refugee Youth in Canada."
 40. Such programs include: ISSofBC's *Multicultural Youth Circle Program for Newcomer Youth (MY Circle Program)* and *African Child and Youth Program* and MOSAIC's *FreeRunning for Older Refugee Youth, Newcomer Youth (NuYu) Theatre Project* and *Separated Children Intervention and Orientation Network (SCION project)*. CIAI and Umoja Operation Compassion Society also offer various integration supports for newcomer youth.
 41. Moreover, unlike immigrant and refugee serving organizations, WUSC deals with small numbers of PSRs annually—the vast majority of whom have no dependents and can speak English and/or French fluently.
 42. Laura Simich, Morton Beiser, and Farah Mawani, "Social Support and the Significance of Shared Experience in Refugee Migration and Resettlement," *Western Journal of Nursing Research* 25, no. 7 (2003): 872–91.
 43. Jennifer Hyndman, "A Post-Cold War Geography of Forced Migration in Kenya and Somalia," *Professional Geographer* 51, no. 1 (1999): 104–14.
 44. Briefing Kit, UNHCR Sub-office Kakuma Operations, 2009; .Briefing Kit, UNHCR Sub-office Dadaab Operations, 2009.
 45. One must also take note that sub-Saharan Africa has more protracted refugee situations than any other region of the world. UNHCR, *2010 UNHCR Country Operations Profile—Kenya*, 2010, accessed July 22, 2010, <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e483a16>; UNHCR, *The State of the World's Refugees, Humanitarian Displacement in the New Millennium*, 2009, accessed April 23, 2009, <http://www.unhcr.org/publ/PUBL/4444d3c81a.html>.
 46. UNHCR, *2010 UNHCR Country Operations Profile—Kenya*, 2010.
 47. Citizenship and Immigration Canada, *Guide to the Private Sponsorship of Refugees Program*.
 48. The WUSC National Office and its overseas partner, Windle Trust, evaluate the SRP applications and conduct the initial selection interviews. Next, candidates undergo a CIC interview with the Canadian High Commission and conduct their TOEFL language tests with Windle Trust. The WUSC office then selects qualified candidates and refers them to the Canadian High Commission (while liaising with the CGs in Canada to facilitate their post-secondary placements). The Canadian High Commission then conducts medical and security checks and issues the visas and travel documents while the International Organization for Migration (IOM) facilitates all travel arrangements.
 49. WUSC also provides the students with a pre-departure book that they can take with them to their future host locales.
 50. Sixty per cent of children have access to primary education in Kakuma and 36 per cent in Dadaab. Courtney, "Voices of Education in Protracted Refugee Situations."
 51. Atieno Otieno, Monitoring and Evaluation Officer, CARE Dadaab, interview, conducted in Dadaab, August 2009.
 52. WUSC has mandated an age limit to uphold the program's idea of "youth sponsoring youth." World University Service of Canada, *The Student Refugee Program*.
 53. Ibid.
 54. World University Service of Canada, *Shine A Light*, 2010, accessed July 6, 2010, www.shinealight.ca.
 55. World University Service of Canada, *Local Committee Handbook Model 1*.
 56. World University Service of Canada, *The Student Refugee Program*.
 57. Only one participant made reference to functional support by mentioning the broader societal structures: "It's how you fit into the system. It could be the community, government, the education system."
 58. Citizenship and Immigration Canada. *An Evaluation of Host*, 2004, accessed April 2, 2009, <http://www.cic.gc.ca/ENGLISH/resources/evaluation/host/intro.asp>.

59. Yu, Oullet, and Warmington, "Refugee Integration in Canada."
60. Citizenship and Immigration Canada, *Guide to the Private Sponsorship of Refugees Program*.
61. George, "Immigration to Canada."
62. The other being language. Citizenship and Immigration Canada, *Summative Evaluation*.
63. Ibid.
64. World University Service of Canada, *Fostering Tomorrow's Global Leaders: Executive Summary* (Ottawa: World University Service of Canada, 2007).
65. Ibid.
66. Navjot Lamba, "The Employment Experiences of Canadian Refugees: Measuring the Impact of Human and Social Capital on the Quality of Employment," *Canadian Review of Sociology/Revue canadienne de sociologie* 40, no. 1 (2003): 46–64; Pressé and Thomson, "The Resettlement Challenge."
67. George, "Immigration to Canada"; Wilkinson, "Labor Market Transitions."
68. Wilkinson, "Labor Market Transitions."
69. Each year of additional schooling for a young female refugee increases her chances of employment by 1.7 times. Wilkinson, "Labor Market Transitions."
70. Lamba, "The Employment Experiences of Canadian Refugees."
71. George, "Immigration to Canada."
72. This finding is corroborated by Lori Wilkinson's 2008 study that found that the need for many students maintain jobs while pursuing vocational training or post-secondary education often negatively impacts their studies and may prevent completion. Wilkinson, "Labor Market Transitions."
73. Hyndman and Walton-Roberts, "Interrogating Borders."

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It Takes a Village: Perspectives from a Multidisciplinary Team Addressing the Needs of HIV+ Refugees in Canada

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Abstract

This study explored the perspectives of a multidisciplinary team at an HIV clinic in Canada mandated with addressing the diverse needs experienced by their HIV+ refugee clients. Specifically, the study sought to identify barriers and facilitators to effective service provision for refugee persons living with HIV/AIDS (PHAs) in the context of a multidisciplinary team. Data were acquired using qualitative methods. Individual interviews were conducted with a sample of seven service providers who work directly with HIV+ refugees on a multidisciplinary team at an HIV clinic in Canada. Respondents identified a need for improved community services for HIV+ refugees, specifically legal aid and service from immigration doctors and pharmacies. Cultural and linguistic issues also shaped respondents' work with refugees; suggestions for addressing these issues included HIV-related and culturally competent training. Implications for policy, practice, and research are included.

Résumé

Cette étude a exploré les points de vue d'une équipe multidisciplinaire dans une clinique du VIH au Canada ayant pour mandat de répondre aux divers besoins de leurs clients séropositifs. Plus précisément, l'étude a cherché à identifier les obstacles et les possibilités à l'égard de la prestation de services efficaces pour les personnes réfugiées vivant avec le VIH/sida (PVVIH) dans le cadre d'une équipe multidisciplinaire. Les données ont été recueillies en utilisant des méthodes qualitatives. Des entretiens individuels ont été menés auprès d'un échantillon de sept intervenants travaillant directement avec des réfugiés séropositifs au sein

d'une équipe multidisciplinaire dans une clinique du VIH au Canada. Les répondants ont identifié un besoin d'amélioration des services communautaires pour réfugiés séropositifs, en particulier de l'aide juridique et des services de médecins et de pharmacies à l'immigration. Les questions culturelles et linguistiques agissent aussi sur le travail des répondants avec les réfugiés; une formation culturellement compétente liée au VIH figure parmi les suggestions pour traiter de ces questions. Les incidences pour la politique, la pratique et la recherche sont aussi discutées.

Introduction

Refugee¹ persons living with HIV/AIDS (PHAs) in Canada are a vulnerable population who experience multiple challenges. These challenges include navigating immigration and settlement processes,² in addition to dealing with an HIV diagnosis. In 2007, there were an estimated 33.2 million people worldwide with HIV; approximately 58,000 live in Canada.³ Persons who were born in an HIV-endemic country are overrepresented in Canada's current HIV epidemic.⁴ In 2007, approximately 13 per cent of newly reported HIV cases were refugees who arrived in Canada and tested positive for HIV, the largest proportion of people being born in Africa and the Middle East (59 per cent), followed by the Americas, Asia, and Europe, respectively.⁵ Of the 1,050 HIV+ applicants for Canadian permanent residency in 2006 and 2007, 994 were refugees, refugee claimants, or family class members.⁶

The majority of recent research conducted in the area of refugees living with HIV in Canada has been primarily quantitative, based on statistical prevalence, sociodemographics, or HIV policy.⁷ There is limited research on the

experiences of professionals whose services are bound by policies, who interact daily with HIV+ refugees, and who observe first-hand refugees' resettlement challenges in Canada.⁸ Multidisciplinary teams have existed within the health care field as a means to address the multiple needs of diverse communities and populations for decades in the realm of HIV care.⁹ "Multidisciplinary" characterizes a team where each individual discipline brings its profession to the group while maintaining its own identity within interactions with other disciplines.¹⁰ In many settings, this approach has been focused on utilizing multiple service providers from different disciplines in order to provide integrated services to persons with HIV, primarily in the context of co-occurring physical and mental health issues and substance abuse.¹¹ Multidisciplinarity has also been described as a situation where each member of the team provides distinct knowledge and expertise as a means to optimize the "efficiency of decision making and meeting clients' needs in a more holistic fashion."¹² Studies have found that multidisciplinary approaches can improve compliance with HIV primary care visits, which is associated with increased retention in care and improved treatment adherence.¹³

There is limited research available regarding the perspectives of a multidisciplinary team mandated to address the myriad needs of persons living with HIV, and, more specifically, how a multidisciplinary team could contribute to effectively addressing the diverse needs and experiences of HIV+ refugees.¹⁴ One recent study described its approach to primary health care service provision for refugees in general as "multidisciplinary," but did not describe the mechanisms of the multidisciplinary team beyond listing the disciplines connected with the clinic.¹⁵ A multidisciplinary team approach can be beneficial to HIV+ refugees by utilizing a holistic framework that addresses not only medical needs, but psychological, psychosocial, spiritual, legal, and nutritional challenges as well. For this study, the term "multidisciplinary" was adopted to reflect that the study site (an HIV clinic) existed within a hospital setting with distinct roles and disciplines. The purpose of the study was to explore the perspectives of a multidisciplinary team at an HIV clinic in Canada tasked with addressing the diverse needs experienced by their HIV+ refugee clients. Specifically, the study sought to identify barriers and facilitators to effective service provision for refugee PHAs within the context of a multidisciplinary team, addressing this gap in the literature.

Immigration and Health Contexts of HIV+ Refugees in Canada

Immigration and HIV are both areas that are strongly influenced by policies that are continually changing, requiring

health professionals and other service providers to keep up to date in order to provide clients with the best possible service. In November 2001, the Immigration Act of 1976 was replaced by the Immigration and Refugee Protection Act (IRPA). In January 2002, Citizenship and Immigration Canada (CIC) added routine HIV testing to the Immigration Medical Exam (IME) for all immigrants and persons seeking refugee status arriving in Canada aged fifteen years and over. One section of IRPA, Article 38, does not specifically mention HIV as a criterion for exclusion but could consider PHAs "medically inadmissible." This could prevent immigrants from being granted permanent residency if it were deemed that their health condition would place excessive burden on public health services.¹⁶ Officially, however, refugees are exempt from Article 38, as they are "eligible by law to remain in Canada independent of their health status."¹⁷ This highlights, in theory, the humanitarian nature of refugee admissions.

Currently, HIV is considered a "notifiable" disease rather than a "reportable" disease like tuberculosis or syphilis. This means that there are no mandatory conditions for follow-up for refugees who test HIV positive when arriving in Canada. Testing can ensure new cases of HIV entering Canada are treated and monitored, helping to reduce new infections. Little attention is paid, however, to the stigma that still exists surrounding HIV status. The IME's implementation of mandatory testing has caused an increase in the detection of HIV cases among immigrants and refugees coming to Canada, resulting in the essential need to research services available to this population.

Addressing only HIV diagnoses for refugee populations in Canada is not enough to meet all of their multiple needs. Addressing the physical health needs of refugees with HIV is of course critical, but their cultural, psychological, and resettlement needs should be addressed as well. Krentz and Gill emphasized the need for specific services for immigrants who possess distinct demographic and clinical characteristics requiring focused and different resources.¹⁸ Refugees are not a monolithic group as they possess different experiences and expectations of health and health care.¹⁹ Refugees may have experienced previous trauma in their home country and/or trauma from the migration journey, and are now facing a complex immigration system, experiencing challenges with adapting to a new culture and lifestyle, securing housing and employment, and facing systemic discrimination in addition to accessing medical treatment.²⁰ These challenges combined make it difficult for refugees to negotiate the extremely complex immigration, welfare, and health care systems.

A qualitative study conducted in Toronto's African and Caribbean communities on their experience with

stigma, denial, fear, and discrimination associated with HIV/AIDS found the “need to raise awareness about HIV, combat stigma and tackle systemic issues such as racism and unemployment which impact on the overall health of their communities.”²¹ Ruppenthal explored HIV+ refugees’ adjustment in Montreal and described their realities as experiences of trauma, complicated immigration negotiations, challenges accessing care, discrimination, family separation, isolation, cultural adaptation, uncertainty, and poverty.²² Additionally, Simich, Beiser, Stewart, and Mwakarimba identified financial insecurity, intergenerational strains, and gender role changes as further sources of stress for newcomers to Canada.²³ Combining these factors with the realities of an HIV diagnosis that could include stigma, shock, denial, lack of information, new care regime, mental health issues, depression, and fear can be overwhelming.²⁴ One study of mental health services for refugee PHAs in Toronto found that critical service needs included improved coordination and quality of services with HIV-awareness training to reduce AIDS-related stigma and fear, language services, and increased mental health services.²⁵ Respondents in a study of policy changes on refugee health in Toronto identified “an urgent need for interpretation services, case management and culturally appropriate food bank services.”²⁶ Health outcomes are thus shaped by legal interventions as well as “social support, pre-migration experiences, citizenship and social status, access to education, employment, adequate housing and health services, personal coping resources, community connections and social inclusion.”²⁷ Further, discrimination and social inequities experienced by PHAs of colour contribute to an increase of HIV risks by poor management of the disease, higher rates of depression, and other psychiatric problems.²⁸ As a suggestion for an integrated HIV-prevention approach, Veinot emphasized that the concept of HIV/AIDS treatment should be implemented as a “continuum” to also include complementary therapies that address mental, spiritual, and emotional needs.²⁹

Multidisciplinary Teams Working with Refugee PHAs

To address living with HIV/AIDS, it is critical to be able to treat the individual’s needs on all levels: psychological, emotional, social, and spiritual, in addition to physical. This involves focusing more on the person than on the virus,³⁰ which can often occur in a hospital and medical setting with health professionals. The study chose an ecological perspective to study multidisciplinary teams serving refugee PHAs.³¹ An ecological perspective explores the interconnectedness among the different layers of an individual’s environment and how these influence one’s development.

When employing an ecological perspective, it is critical to “understand how varying models of collaboration play out in differing ecological contexts”³² in order to address the myriad needs of refugee PHAs. The nature of an HIV diagnosis and the subsequent “interacting biological, psychological, and social needs [of the person with HIV] should be addressed simultaneously rather than as separate, isolated dimensions” and thus necessitates the use of a multidisciplinary approach to care.³³ One profession or area of expertise alone cannot address all the needs an HIV infection demands. In addition to combining knowledge from diverse disciplines, multidisciplinary also means “ultimately expanding one’s own repertoire and gaining an appreciation of other disciplines’ perspectives.”³⁴

A multidisciplinary approach requires many considerations, including within-team communication, community collaboration, role definition, and protection of client confidentiality. Most importantly, a client-centred approach should guide the multidisciplinary process.³⁵ Key components to multidisciplinary collaboration include understanding multiple perspectives involved, willingness to share one’s expertise, flexibility, acknowledging work of support staff, involvement of financial, managerial and administrative staff, implementation of staff support systems such as counselling, and knowing one’s role within the team, as well as understanding the roles of team members.³⁶ Professionals on an HIV multidisciplinary team are required to combine knowledge from their own discipline with an expertise on HIV/AIDS as well as be in regular, direct communication to prevent fragmentation and duplication of services. It is also important to share experiences to gain meaning from their work in a compassionate, trusting environment which can help to address the effects of job-related stress.³⁷ This is essential when such stress includes work with refugee populations who have had traumatic life experiences and, in addition, the inevitable loss of patients from AIDS.

There are specific processes that are essential for multidisciplinary teams to function effectively including their organization (training, resources, and preparation), knowledge, communication, and interaction.³⁸ Previous studies have described how there are challenges with defining roles within the team, distribution of power, division of labour, and establishing a standardized approach to care including executing services, evaluation, and monitoring systems.³⁹ There are no known guidelines or standards for multidisciplinary care for PHAs in North America.⁴⁰ The difficulty with establishing such guidelines also exists in the variance of HIV experience among individuals, especially those with complex needs. In a review of integrated HIV care for co-occurring substance abuse disorders and mental disorders, Soto et al. found that of the integrated HIV programs, “few

described the mechanisms they developed to facilitate and support this type of collaboration.⁴¹ There is no consensus within the literature on the collaborative structures and processes that are most effective. Working in collaboration amongst professions also challenges the long tradition of specialization, and subsequent fragmentation, of services in the health care field.⁴² HIV treatment originated within a medical model, however, a holistic model is more inclusive of the social, psychosocial, and psychological needs of patients.

Methods

The method of inquiry into the experiences of a multidisciplinary team's work with refugee PHAs was a qualitative case study, specifically a within-site study of a single program.⁴³ This approach was selected as the most relevant to depict the complexities of one unique case. The specific case studied was an HIV clinic multidisciplinary team. Through intensive analysis of a single case, researchers studied "a bounded system (a case) [...] through detailed, in-depth data collection [...] and [reported] a case description and case-based themes."⁴⁴ As the unit of analysis, the multidisciplinary team was explored within its real-life context through interviews with individual team members.⁴⁵ Qualitative methods were chosen to allow participants to give voice to their perceptions of the team's functioning, providing insight into the complex processes of working with refugee PHAs.⁴⁶ As little is known about multidisciplinary teams' work with refugee PHAs, qualitative methods were appropriate for the study's exploratory nature, allowing for creation of categories to emerge from the data.⁴⁷

This case of the clinic's multidisciplinary team is unique in that the clinic specializes in both HIV and refugee populations; other multidisciplinary teams in Canada focus either only on HIV (e.g., John Ruedy Immunodeficiency Clinic in Vancouver) or only on refugee health more broadly (e.g., Access Alliance Multicultural Community Health Centre in Toronto). By analyzing a unique case, the study sought to (a) document the functioning of a distinctive team—they represent front-line health and social service delivery for refugee PHAs; and (b) explore team members' perspectives on work with refugee PHAs, not only to determine the nature of a multidisciplinary team but also how additional members not always found on multidisciplinary teams add to the expertise of the group.⁴⁸

HIV Clinic Background

The multidisciplinary team at the HIV clinic is comprised of thirty-three team members representing medicine (nurses and medical doctors), social work, psychiatry, psychology, pharmacy, nutrition, law, theology (chaplain),

and administration. Additionally, the clinic has a clinical research team and operates an AIDS consultation phone line. Several of the professions were represented by one position, and some of these positions were part-time. The team provided care and treatment in English, French, and Spanish to HIV+ adults, a significant proportion of whom were HIV-infected refugees. In 2009, the clinic served between 1,300 and 1,400 patients, coming from eighty-five different countries. Over 20 per cent of the clinic's patients, approximately 300 to 400, were refugees. Most of the clinic's refugee population originated from Africa, Latin America, and the Caribbean. Refugees were referred to the HIV clinic by immigration doctors after they arrived in Canada and had undergone the Immigration Medical Examination. Immigration doctors are designated by CIC to conduct the IMEs.

Sample

To recruit participants, a letter was sent to each team member and the study was presented at a psychosocial round meeting to all team members. The total sample consisted of seven HIV-clinic multidisciplinary team members, three women and four men. Due to team members' availability, only six of the nine disciplines were covered, although the six (Participant 1, social work; Participant 2, law; Participant 3, medicine-nursing; Participant 4, pharmacy; Participant 5, medicine-physician; Participant 6, medicine-physician; and Participant 7, psychology) were the members with the most active involvement with patients. The sample contained a combined total of seventy-nine years experience of working with PHAs. While all members were invited to participate, researchers targeted members to ensure the distribution of key variables in terms of discipline represented, length of team involvement, and level of participation on the team.

Data Sources

The primary data source was an in-depth individual interview of members of a multidisciplinary team that works with refugee PHAs. Open-ended, semi-structured interviews lasting 60 to 120 minutes were audiorecorded and transcribed verbatim. The interview guide asked the same questions to all participants, regardless of profession. The guide was composed of explanatory, interpretative, and evaluative questions that focused on multidisciplinary team role, perceptions of refugee clients' needs and how the team addresses them, dynamics of working on a multidisciplinary team, improvements that can be made to the team, and how they could be implemented. Some of the questions were adapted from an interview schedule developed by Sargeant and Jones used in their research on barriers young women with HIV experience when accessing primary health care in

Vancouver.⁴⁹ This guide provided consistency to the questions while allowing respondents the flexibility to digress on their own experiences. The secondary data source was a document review of information provided by the clinic including annual reports, studies conducted at the clinic, and statistics of client demographics. Researchers took notes on these materials, highlighting themes which had emerged from the interviews for triangulation.

Data Analysis

Data were analyzed using a “holistic analysis,” employing a thematic analysis across the entire case to present descriptions, themes, and interpretations that were connected to the whole case.⁵⁰ In order to identify similar themes, codes and themes that emerged from team members’ interviews were compared to each other. Transcribed interviews were read for codes created to reflect the research questions as well as areas which emerged from the data and reread and recoded for more specific codes and subcodes. NVivo, a qualitative software program, was used to assist with data analysis. Member checking was conducted by sharing data and interpretations with participants. Individual interview transcriptions and generated themes were provided to each participant for verification, feedback and further input.

Study Findings

Perspectives provided by members from the multidisciplinary team illustrate how a multidisciplinary approach supports refugee PHAs in meeting their multiple complex and urgent needs. Team members identified various challenges and strengths associated with working on a multidisciplinary team, working with HIV+ refugee patients, and collaborating with professionals in the community connected to refugee PHA populations.

Challenges

Bringing different disciplines together to produce the best outcome for clients is a challenge with any client population. Not everyone will agree with the practice approaches and opinions that each member contributes due to varying backgrounds and expertise. However, this collaboration is critical when working with client groups such as refugee PHAs who have complex medical, psychosocial, spiritual, legal, and nutritional needs. Participants described challenges pertaining to working on a multidisciplinary team with HIV+ refugees, specifically: (a) addressing differences between team members, (b) linguistic and cultural issues, (c) need for HIV-related and culturally competent training, and (d) need for improved community services.

Addressing differences among team members

Differences in values, perspectives, and approaches to practice can naturally arise within a team, especially when there are numerous professions and backgrounds involved. How these differences are addressed is an important aspect of maintaining effective multidisciplinary team functioning and development. Different expertise and standpoints each team member contributes can create varied and conflicting views on how best to meet patients’ needs. Moreover, while individual styles and personalities can offer diversity to a team, they can also cause disagreements. Several participants highlighted the challenges that arose from negotiating different styles among team members but noted that, in the end, as described by one participant, differences are worked out,

extremely diplomatically because one of the advantages of why we work well here is we’re a small town. You cannot be anything but respectful and patient because [otherwise] it’s going to backfire. You cannot live in a small community and work in conflict.

Some participants remarked on differences regarding how much effort team members are expected and willing to offer to refugee patients. As Participant 2 commented, “In terms of the multidisciplinary thing ... there’s a broad difference in how willing people are to go the extra mile.” For example, Participant 1 expressed frustration with another team member who was felt to be uncooperative with assisting with paperwork to help increase a patient’s monthly support, noting:

Now it doesn’t matter how much you’re saving their life for HIV, this person is starving. This person doesn’t have a life. This is horrific what is going on with this person, this is not a way to live. But if you just fill this [form] out I will get \$300 more for this person. \$300 when you’re poor will make you want to come to your medical appointment. You’ll digest your medication better, you’ll be less lonely, maybe less depressed. There’s just constantly [asking], “Please fill out this form.”

On the other hand, this team member acknowledged the additional work team members are willing to do that receives no extra recognition or compensation: “People on the team go the extra mile, they write these letters, etc ... but they’re not compensated for it. It’s not recognized as an expertise, it’s not recognized as a field that requires extra on-going training.” Strategies members used to facilitate healthy team functioning included addressing differences directly by using diplomacy, flexibility, and willingness to compromise with each other.

Linguistic and cultural issues

Refugees arriving in Canada who cannot speak English or French can experience language barriers, which affect their access to and understanding of health care and social services. Team members stated how the availability of translation services at the HIV clinic improved patients' support and interaction. However, even with support, members still described patients who were illiterate in English and/or French as well as cultural differences and misunderstandings created by language barriers, which could be problematic when communicating information regarding HIV treatment, prevention, and policy.

One's cultural beliefs can shape perceptions of HIV, including the denial of an HIV diagnosis, approaches to treatment, and misinformation about HIV transmission and "cures." Team members described how some of their African patients still have strong beliefs in "black magic" as a form of HIV treatment, while others accept sexual relationships with multiple partners and are against the use of condoms for protection from HIV. Team members discussed how some patients arrived at the clinic believing that an HIV diagnosis was a death sentence; had they remained in their home country where treatment is not readily available, that belief could hold some truth.

Participant 4 communicated with some patients in Spanish or with a translator and stated how these patients were sometimes reluctant to learn English or French after arriving in Canada. Without acquiring a new language, this can be problematic for patients in their everyday life, particularly obtaining employment and accessing services when interpreters are not available. With the highest proportion of refugees at the clinic from Haiti (12 per cent), team members expressed challenges with communication in Creole. Following the earthquake in Haiti in January 2010, Canada may receive an increase in Haitians coming as refugees or through the family reunification program. Participant 6 stated:

If we see more [refugees] coming for instance from Haiti which has about 2% of the population infected [with HIV] ... we could expect a few more patients coming in, but they're going to be coming in probably only speaking Creole, or maybe Creole and French and they're going to be unaware of how our system works ... coming from a very impoverished background. It's a big job.

Despite language barriers, team members described having the ability to convey the necessary information to patients and an appreciation for patients' experiences with having to communicate in a language that is not their native tongue. Participant 2 encountered a woman who had "become an expert at hiding her illiteracy" in French

and English despite living in the United States for 20 years. Participant 7 described an example of providing information to patients and the less-than-ideal communication strategies sometimes employed to work across language barriers:

The most remarkable case I had was a woman who spoke not a word of English or French and we couldn't find a translator who spoke her language, so we have to work a lot through her husband and through her third language which was Arabic ... we needed to tell her, your husband's seropositive, we need to test you and you need to protect yourself and use condoms for sexual intercourse ... taboo topics to talk about with a Muslim woman [who] never used condoms before ...

Some participants discussed gaining cultural understanding by learning from personal experiences that inform interactions with patients. Participant 4 explained how spending time travelling in Africa helped to understand the strong cultural importance of the role of motherhood for patients and stated:

A women has to have children, that's her role in the community and often when they get here and learn that they are HIV+, they're afraid that they won't be able to have kids anymore and often this affects them more than the fact of knowing that they're HIV+. I see that a lot so what I do is the first time I see them I always tell them, do you know it's possible still to have kids? And often I see their eyes light up because I feel I touched something that's important for them.

Participants described cultural differences with some of their patients from Africa who are not used to the custom of appointments and approach the concept of time differently. Culturally, the concept and role of medication can vary and refugee PHAs need to adapt to taking pills at the same time every day, experiencing various side effects, making appointments, and refilling prescriptions. Addressing communication challenges with patients enhances their understanding of their situation and available services and treatments. Building on personal experience and working with patients can strengthen workers' recognition of cultural diversity between patients and provision of culturally relevant support.

Need for HIV-related and culturally competent training

Despite the existence of HIV for almost three decades, there are still some misinformed and uninformed professionals working in the HIV community. Participants emphasized the need for further training for both team members and health professionals with whom they collaborate.

Participants identified the following topics requiring further training: HIV policy, approaches to informing patients of positive HIV test results, client confidentiality, and HIV prejudices. In a field where policies are continually changing and new research and treatments are being updated and introduced, ongoing training and workshops for team members are essential. Team members were concerned as to how to logistically provide training for new members and replace members when they leave, particularly those who have been with the team for numerous years and have developed relationships with the patients, knowledge about community resources, and relevant policies. Participant 5 discussed how within-team mentoring is used for training:

There's no formal training programs for anybody in HIV. There are a lot of training programs like mentoring programs for doctors out there, mentorship programs and stuff but there's not really a formal "I'm going to become an AIDS-ologist."

Participant 2 described how government officials who make decisions on refugee claimant applications and lawyers who are supporting refugees also require HIV training, especially if personal values conflict with their work. Participant 1 discussed how some members of the team also needed training to be more empathetic towards patients:

It would just be nice if somehow along the way [team members] could get that training so they could come to really, truly get to understand what that other side is about and in doing so see the whole person. I think that until they understand, if somebody's in front of them who hasn't eaten since 7:00 this morning and maybe they're nauseous and they took medication ... until there is a capacity to empathize, they'll never see the whole person.

Participant 2 further assessed that the current form of training at the clinic is insufficient, as "people have had to learn on their own or on their own as a group in the clinic and get up to speed, and that's regrettable. That's regrettable that it had to be done that way." Participant 5 discussed formal training required for professions working outside the HIV environment, and the overload of information there can be from all the various health concerns that currently exist. This participant also questioned whether there should be a formal qualification or certification process for HIV care:

There's really no proper way to teach medical people, doctors, to be qualified in dealing with HIV and the reason is there's no qualification exams, there's no certification process, there's no formal course work that they have to do.

Training can also provide consistency and a strategy to monitor workers' performances and patients' outcomes, though a team member questioned how feasible such a practice would be in addition the current heavy workload.

Need for improved community services

A common theme several team members referenced was a concern for the quality of service patients disclosed they received, in particular the quality of legal representation. Team members recounted patients who have paid to have a Personal Information Form (PIF) completed by lawyers, a document required to establish that a refugee's claim is credible. A PIF is supposed to encompass an individual's last ten years, including family members, previous jobs, and addresses. One member recalled seeing ones which were only a few lines long, incomprehensible, and inaccurate. Participant 2 criticized the quality and integrity of poor legal services given by lawyers:

The legal services people are getting is of such poor quality, it's absolutely discouraging, it makes you extremely cynical ... You know, if law was practiced properly, many, many more people would win [their cases].

This team member emphasized the importance of deadlines and how without proper legal support, missing deadlines can cause serious implications for refugees:

Law is a dangerous business in the sense that you cannot miss deadlines ... In the case of the woman who came to me recently, she told me her lawyer had gone into revision and I said to her repeatedly, "As soon as you hear from the decision the revision is negative you come running to me and we put stuff together in a package and send you off to your lawyer." As it turned out he never contacted her and she came to see me when she had a letter for deportation.

Participant 3 described refugees experiencing discrimination from pharmacists in the community, based on their immigration status, and being refused service so the pharmacists could avoid the reimbursement process, as it is lengthy and "bothersome" for them:

Some pharmacists told me that it could take months for [the Federal Interim Health Program] to get reimbursed and on a management or accountability side it can be bothersome for some pharmacists ... I've even seen pharmacists that refuse to serve a patient who was a refugee because of that and that's discrimination.

Another service challenge team members expressed was concerning immigration doctors, the first point of service contact for many refugees arriving in Canada. One participant described the poor quality and lack of post-test counselling, resulting in patients being uninformed about their referral. As a consequence, patients arrive at the HIV clinic without understanding the nature of the referral received from the immigration doctor. Additionally, there can be a time gap from when patients have received their diagnosis and referral to when they actually reach the clinic. Timing is critical for refugee patients to receive support to address their immigration and HIV health and related needs. One participant stated how refugees can be overwhelmed with information when they first arrive and may not fully appreciate the HIV testing they undergo.

Strengths

Regardless of challenges encountered, team members described particular strengths they experienced through a multidisciplinary team working with refugee PHAs. These strengths included a commitment to a multidisciplinary approach that shares knowledge and expertise—critical for work with refugee PHAs—and collaboration with the broader community that is connected to refugee PHAs.

Commitment to multidisciplinary

Across respondents, there was a theme of commitment to a multidisciplinary approach to care for refugees with HIV. They expressed a common focus on the necessity of all the different professions working together to meet patients' needs. Team members described feeling supported by other members, especially through effective communication, at the weekly psychosocial round meeting, by giving and receiving referrals, advice and feedback from colleagues, respecting each other's roles, knowing what to expect, and learning from each other. The basic elements of using each team member's knowledge and expertise to collaborate for the benefit of patients was evident. As Participant 1 described:

[Multidisciplinary] means [the] possibility of actually meeting the many needs of our clients. It means not being in isolation, it's knowing that whatever you can't do, another specialist takes over. It's a little bit the notion of the village that takes care of something.

Furthermore, Participant 2 stated how the different expertises combine as a team: "And the multidisciplinary is true, I mean none of us feels that we alone can do anything. People have all their different experiences and expertise; no one person can do anything."

Participants spoke positively about the team's knowledge and expertise with patients, not only in the field of HIV but particularly with refugees. This knowledge and expertise has been developed by the longevity of workers at the clinic and their experience with refugee PHAs. Such a distinct clientele demands that workers maintain continuous, up-to-date knowledge on pertinent information related to research, policy, services, treatment, medication, and immigration throughout changing disease trends and legislation. Participant 1 described how refugee PHAs are their most vulnerable patients and how the team's knowledge has developed through experience: "We have other very vulnerable clients but [refugees with HIV] are considered by far to be the most vulnerable clients, so many come here from the time that we developed this expertise."

Participant 7 described how a multidisciplinary approach can benefit patients, noting, "The more I think you have different disciplines treated as an integral part of the team, the better the patient can benefit and the greater the voice the patient has. In HIV it's just the ideal field to bring all those together." Similarly, Participant 5 stated how collaboration increased efficiency by helping to reduce the workload, because "the work is done better because everybody's good in doing its own thing so we leave what's to the other to be done and we do what we can do best."

Within a team environment, roles can overlap, as members are required to go beyond their position to meet patients' needs. Essentially, team members may need to become knowledgeable in other backgrounds in addition to their own, such as a physician being informed about available community services or a social worker about new medications.

Community collaboration

A fundamental aspect of a multidisciplinary team approach is collaboration. When working with HIV+ refugee patients, collaboration also needs to be conducted with the greater community to ensure all of the patients' needs are met. Another strength respondents highlighted was the team's ability to utilize all of its resources and referring patients to other members, as well as community resources, when necessary. Participant 7 commented how the trusting relationships among team members enabled patients to consent to working with team members who represented professions with which patients had little familiarity or trust:

I've worked a lot cross culturally and worked a lot on multidisciplinary teams. The fact that people from some of the cultural backgrounds we're working with, even agree to go to a [particular professional] at all is an amazing thing, so it has a lot to do with

the team and the team approach, the fact that I'm ... working next to a trusted team member.

Participants described how the clinic developed broad community contacts over the years, which assisted with resolving problems efficiently. They partner with pharmacists, immigration lawyers and law firms, immigration doctors, immigrant welcome centres, organizations for immigrants and asylum seekers, women's centres, hospices, HIV social housing, psychologists, obstetricians/gynecologists, food banks, HIV/AIDS organizations, private clinics, hospitals, and community health centres. Other participants discussed various connections with relevant institutions, such as the United Nations High Commissioner for Refugees (UNHCR), that have been developed with the clinic, contributing to a "cross pollination" across the community.

Discussion

Employing a Multidisciplinary Approach to Care for HIV+ Refugees

Providing HIV care to refugees can be demanding. A multidisciplinary practice is an approach that considers their multiple needs as a collective team, to provide service as a continuum and reduce fragmentation.⁴² A multidisciplinary team enables patients to access essential resources efficiently but also facilitates their health professionals' case collaboration, contributing to continuity of service.

All participants spoke positively of a multidisciplinary team approach and how the collaboration of different disciplines, expertise, and knowledge benefits patients. These findings are congruent with the definition of "multidisciplinary" in the literature.⁵¹ However, team members found that defining and differentiating between the various roles on the team could become more problematic due to overlapping of roles demanded by patients' needs. Although the literature⁵² stated that overlap of roles can create barriers between team members, in some instances this overlap should not be viewed as a barrier, but rather as enhancing team functioning. Crossing boundaries between professions lends to the negotiation and evolution of roles,⁵³ evidenced by participants' description of a desired new member—a health educator, a position that combines the expertise of a physician, nurse, social worker, and pharmacist.

Questions arose regarding differences in effort team members are expected and willing to provide for patients. How can team members establish boundaries and differentiate between what they are mandated to do and the support refugee PHAs actually require? How can team members maintain a high standard of service while managing high caseloads? What monitoring and evaluation systems can be implemented to ensure that refugees are receiving

the best service possible? These concerns are connected to a high caseload that participants expressed managing daily. While there are numerous professions represented on the multidisciplinary team, several of these positions are filled by only one individual, some of whom work only part time. Team members' suggestions of additional positions on the team not currently represented (such as a community liaison to collaborate with community organizations, immigration doctors and lawyers, a health educator to improve HIV education and identify early vulnerabilities providing more prevention services, and an occupational therapist to address patients' physical and mobility needs) would contribute to more comprehensive coverage of patients' needs and a better distribution of the mandate to meet those needs through the team.

Improving Refugee Services and Reducing Barriers

Multidisciplinary team members highlighted the challenges that both they and their refugee clients encounter with community collaboration, specifically with legal aid, immigration doctors, and pharmacies. Efforts are needed to improve standards and reduce barriers to service accessibility and delivery.

Canada's immigration system can be extremely complicated and difficult to navigate, especially understanding legal language which can make forms and processes inaccessible to refugees. There are significant costs that can result from missing deadlines, including risks of deportation. A concern expressed by participants was the quality of legal service patients disclosed receiving. This reflects the findings by Li on the scarcity of immigration lawyers who are experienced in HIV and able to provide culturally relevant services.⁵⁴

A health service challenge raised by participants was with immigration doctors who they felt were not obtaining informed consent properly, or not providing pre- and post-test HIV counselling. When undertaking HIV testing, doctors are required to obtain informed consent and to provide pre- and post-test counselling to patients. There have been discrepancies in the literature as to whether this occurs consistently in practice.⁵⁵ Several participants confirmed that HIV counselling is not always being conducted with refugees. With immigration doctors being one of the first points of service contact for refugees, this is a valuable opportunity to provide them with information and support instead of contributing to a fall through the cracks of the system. A comprehensive health settlement program and surveillance system in addition to service monitoring and evaluation can better ensure follow-up is timely.⁵⁶ The findings also revealed that refugees are being refused services, in particular from pharmacies, based on their health coverage. This

reflects findings in the literature as well as popular media where physicians refused service to refugees because they are not familiar with the Interim Federal Health Program (IFHP), the paperwork is too laborious, and the reimbursement process is slow and lengthy.⁵⁷ Researchers have advocated for the federal government to revise the IFHP to make the reimbursement process “transparent, smooth and accessible.”⁵⁸ Revision to the program can reduce discrimination by service providers and make them more willing and able to assist refugees regardless of their health coverage.

Providing a practice that is informed by a theoretical framework that centres a refugee’s ecological context and is integrated with an “understanding of the cultural norms, values, and beliefs of their home countries”⁵⁹ is essential for refugee PHAs who experience discrimination due to being a refugee, having HIV, or their sexual orientation. Participants expressed concern for patients who experienced discrimination from service providers, in particular, being refused service from pharmacies on the basis of being a refugee. This is similar to findings by Lawson et al. where focus group participants reported doctors who displayed “judgmental attitudes” towards patients requesting HIV testing.⁶⁰ Cobos and Jones’s study of providing health care to undocumented immigrant PHAs in the United States underscores the need to address discriminatory practices and call for health care providers to offer care regardless of immigration status.⁶¹

Implications for Practice, Policy, and Research

There are considerable benefits to utilizing a multidisciplinary approach with vulnerable populations such as refugee PHAs, including providing more congruity and less fragmentation in service delivery, the ability to address multiple clients’ needs by combining expertise, and collaboration as a team. There is also a great need for improved HIV education services for service providers and the broader community connected to this population.

Service improvement could be achieved by providing targeted training opportunities for health and social service professionals working in the HIV community, from government officials to immigration doctors and new staff at the HIV clinic. Training could involve areas that should theoretically already be service standards but are not being implemented or monitored in practice. Formal, ongoing HIV training is essential to ensure current knowledge about the disease. Ongoing training is also essential to address homophobic and discriminatory attitudes and practice. It is important to highlight that while a multidisciplinary approach may improve access to services and resources for refugee PHAs, it does not guarantee that the content of

those services is necessarily culturally relevant for them.⁶² Not only must interventions be culturally relevant for service users but the members who provide those services must be culturally competent as well. Team members must take into account a service user’s cultural context, that is, his or her attitudes, beliefs, traditions, religion, perspectives on health, and so forth. They must also consider their own cultural contexts and explore how their contexts intersect with those of their clients. At the same time, one must remember that cultural context is not static, and that culture is “relative to time and social context.”⁶³ Providing ongoing training underscores the idea that seeking cultural competency is a continual process—each new client has his or her own unique context which can become the space for cultural dialogue.

Cultural competency training can also help workers confront their own fears, opinions, and value judgments that arise when working with refugee PHAs. As participants identified, the HIV virus, its treatment, and affected populations are continually changing. Therefore, services also require the initiative and flexibility to adapt to these changes, such as an influx of refugee PHAs from Haiti presenting at the HIV clinic. Such service accommodation will continue to be challenging amidst budget, funding, staff, and resource constraints. However, there are demands for programs to offer employment assistance, specifically aiding refugees to have their previous education, credentials, and skills recognized in Canada. Collaboration is also needed internationally with refugee treatment and care for those who have been deported, to transfer patients’ health information. Additionally, what are the opportunities for multidisciplinary teams to progress towards an interdisciplinary approach, where disciplines work together to create new innovations, perhaps in program and policy development and delivery?

Team members highlighted the need to improve the ways in which refugee claimant PHAs received health care coverage through the IFHP. Enrolling in and renewing coverage in the IFHP requires considerable systems literacy; participants stressed the challenges their clients have in maintaining coverage and navigating IFHP systems. From a policy perspective, the IFHP needs to become more accessible and understandable for patients in order to prevent expiry of health insurance and running out of HIV medication. An increase in social assistance entitlement, housing benefits, accessibility to transportation reimbursement, and scope and duration of legal aid services will greatly improve standards of living to refugees who may arrive in this country with minimal resources. Citizenship and Immigration Canada needs to improve its efforts to tackle the backlog of existing refugee claims so refugee claimants do not have

to live in immigration limbo for years. Ending the limbo would bring certainty to their legal status and future life in Canada, enabling them to begin the process of family reunification and permanent resettlement.

Further research is warranted. Experiences of refugee PHAs who receive services at an HIV clinic would provide valuable insight from the service users' perspectives. Focus groups with refugee PHAs at an HIV clinic with a multidisciplinary team can explore multidisciplinary service provision from the clients' points of view and the extent to which they feel supported holistically. In particular, in-depth research on vulnerable refugee PHA populations such as elders, women, queer, disabled, youth and children, and "non-status" can further inform current policies and practice. An examination of cultural competency with organizations working with refugees can further identify cultural needs. Experiences of refugee PHAs living in rural communities and their accessibility to services should also be explored.

Study Limitations and Strengths

The small size of the multidisciplinary team overall coupled with the demanding schedules of team members resulted in a relatively small sample size. However, the study's purpose was to explore experiences of professionals who are on the front lines of service delivery for HIV+ refugees through their narratives. A qualitative case study approach facilitated this. The study sought to illuminate the complexities of working on a multidisciplinary team "based on a more intimate knowledge of a smaller 'slice' of reality."⁶⁴ The goal was not to generalize, but to explore the experiences of the multidisciplinary team members who work with refugee PHAs and provide insights into service delivery for local, national, or international programs working with refugee PHAs. For example, providing integrated services, found to be effective in HIV care provision,⁶⁵ can reduce fragmentation, but study findings support placing that approach in a holistic context that acknowledges the multiple ecological spheres shaping refugees' resettlement experiences. Study findings underscore the need to have those services provided by disciplines that represent those spheres, that is, by a multidisciplinary team.

NOTES

1. The most widely accepted definition for "refugee" is based on the 1951 United Nations Convention relating to the Status of Refugees (United Nations General Assembly, 1951) as a person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group, or political opinion, is

outside the country of his nationality, and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country. For this study, "refugee" was used to refer to refugees, asylum seekers (in Canada, refugee claimants), and "non status" individuals in refugee-like situations, but the authors acknowledge the differences among these definitions. When distinct differences between the terms exist, for example when concerned with policy and eligibility, terms are used separately.

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Environmental Migrants and Canada's Refugee Policy

SHEILA MURRAY

Abstract

Canada is among the world's foremost refugee resettlement countries and is signatory to international agreements that affirm its commitment to the protection of refugee rights. Asylum seekers come to Canada from around the globe. But as climate change continues to affect growing regions of the world—threatening to create as many as 200 million environmental migrants by the year 2050—Canada has not yet begun to address the issue of climate change migration. In an era defined by a neo-liberal approach to migration issues, and until international actors determine the status of environmental migrants, Canada's policy response to the looming crisis may be conjectured from an historical review of its refugee policy. This provides an understanding of the various factors, both domestic and international, that may have the greatest influence on Canada's future refugee policy.

Résumé

Le Canada est aux premières loges dans le domaine de la réinstallation des réfugiés et est signataire de conventions internationales qui confirment son engagement envers la protection des droits des réfugiés. Des demandeurs d'asile viennent au Canada de partout dans le monde. Mais alors que le changement climatique continue d'affecter les régions viticoles du monde, menaçant de créer non moins de 200 millions de migrants climatiques d'ici l'an 2050, le Canada n'a pas encore commencé à aborder la question des migrations dues aux changements climatiques. Dans une époque caractérisée par une approche néolibérale envers la question de la migration, et jusqu'à ce que le statut des migrants climatiques soit déterminé par les acteurs internationaux, on peut deviner la réponse politique canadienne à la crise

imminente à partir d'un examen historique de sa politique envers les réfugiés. Cette approche éclaire les différents facteurs, tant internes qu'internationaux, qui peuvent avoir le plus d'influence sur l'avenir de la politique canadienne envers les réfugiés.

Nature may be viewed parochially from the perspective of the nation-state's territory and the ability of the ecology to support the existing population. Nature may also be viewed globally from the perspective of world ecology and the right of all individuals, including future generations to have access to the essentials of life. In either case, the pre-eminent value in determining justice claims is the preservation of an ecological balance. The goal sought is survival.¹

When Canadian philosopher Howard Adelman wrote the above in 1992 he was asking what rights and justice principles should be considered for those who "have fled in order to survive."² In 2011, migration forced by climate change represents an evolving humanitarian crisis where survival is paramount, yet the nations of the world have so far failed to agree on establishing formal protections for environmental migrants. In countries where climate change has already triggered environmental migrations the situation is escalating and urgent. For example, in Bangladesh the sea comes ever closer for the roughly 75 million people who live less than twelve metres above sea level. Environmental migrants typically make their way to urban centres and Bangladesh is no exception. Its capital, Dhaka, is already full up. By the middle of this century as many as 25 million Bangladeshis are at risk of displacement because of climate change. Migration within the country could stress the social, economic, and political structures to such a degree that regional security would be compromised.³

In 2009 Bangladesh's finance minister asked the world's industrialized countries to take millions of climate

refugees. His plea was supported by the chairman of the Intergovernmental Panel on Climate Change (IPCC), who said that the developed world will need to take “legislative action” in order to process and settle up to 40 million people.⁴

When veteran Canadian Liberal MP Maria Mina visited Bangladesh in 2010 she was asked whether Canada would accept “Bangladeshi climate refugees.” Mina told reporters, “It’s not impossible. And of course Canada would look out a new policy that would address the crisis of climate change and obviously Bangladesh will be included there.”⁵ While Minna’s public remarks are not Liberal Party policy, they are indicative of increasing international pressure to respond to environmental migrants.

By the year 2050 the world could have as many as 200 million environmental migrants whose forced displacement from their homelands would be definitively linked to climate change.⁶ If these projections are to be believed, Canada will become a manifestly desirable destination for a large diversity of people from around the globe.⁷ Although most climate migration will be within state borders or shared among neighbouring states, those with financial and social capacity will follow established migration routes to traditional refugee receiving countries or forge new ones.⁸

Despite the “outward manifestation of profound deprivation and despair”⁹ that populations displaced as a result of persistent ecological change represent, the international community has failed to deliver any adequate response to their needs. In the meantime, industrialized and emerging states continue to build regional networks of security between themselves and the asylum seekers who make increasingly risky journeys between their countries of origin and their destinations. For example, India is building an eight-foot high, 2,500-mile long, barbed wire fence between itself and Bangladesh.¹⁰

There is a profound lack of capacity in the developing world to deal with the social, economic, and political problems associated with climate change and forced migrations. Developing states are demanding more funding for climate adaptation and mitigation strategies as well as aid for hosting regional migrant populations.

While the international community negotiates these issues, including the continuing debate on the status of environmental migrants, Canada’s political parties have neither begun their own deliberations nor attempted to engage Canadians in any discussion. At its annual conference in August 2008 the Institute of Public Administration of Canada (IPAC) made the following spare recommendation: “The Canadian government should collaborate [with regional and international actors] on developing a policy to deal with anticipated ‘climate change refugees.’”¹¹ This

paper moves beyond IPAC’s recommendation and asks: Given the absence of any formal law, regulation, government statement, or policy that directly articulates a position on environmental migrants, do any international or domestic factors have the potential to produce either a formal or ad hoc change in Canadian refugee policy that recognizes any special status for people whose migration and permanent displacement is directly linked to climate change?

Method

My study endeavours to evaluate factors that may influence Canada’s future response to an emerging issue. At the same time, it is directly informed by Canada’s past response to refugees, changes in national political and public discourse, and/or concrete changes in refugee policy. Therefore I conceptualize and hypothesize based on learning from Canada’s actions in response to past events. My observations emerge from both scholarly and grey documents as well as media reports. I explore five factors that could lead to the inclusion of environmental migrants in the political and public discussion of refugee policy and produce specific policy on environmental migrants: (1) an international agreement on the status of environmental migrants; (2) international moral pressure led by the United Nations High Commissioner on Refugees (UNHCR); (3) the influence of Australia’s historical record of immigration and refugee acceptance on Canadian policy; (4) strong domestic pressure; and (5) a rejection of the emerging conflation between humanitarianism and national security.

I begin this study with an assessment of the evolving debate on the status of environmental refugees. An historical account of Canadian refugee policy and its relationship to Australian refugee policy and influence on both countries from the UNHCR follows. I then look at the current discourse that informs humanitarian practices and frames the current era. Finally I assess the level of awareness in Canada of environmental refugees and compare this to the awareness abroad—particularly in Australia, the UN and international agencies, and the EU. Specifically, this paper provides a context with which to assess the influence of the UNHCR on the evolution of Canadian refugee policy. A discussion of Australia is included since it provides a valuable context with which to forecast the progression of Canada’s future policy.

The policy of a national government can be influenced by domestic factors, but also by its relationship with other states and international organizations. For example, in her study of how national interests are learned from international actors, Martha Finnemore notes, “[T]he definition of the ‘problem’ and the strategies for solving it came from international organizations and the individuals who created

and ran them.”¹² This parallels the work of other scholars in the area of policy convergence and diffusion who note that international imposition, as well as emulation, are often important drivers of domestic policy actions.¹³ This paper reflects on the experiences and influence on Canada of the UNHCR, the world's principal international refugee organization.

The influence of international norms on domestic policy, however, is not unidirectional, and international organizations are also vulnerable to domestic pressures for change as promoted by their members. In recent decades, the UNHCR has adjusted its emphasis from protection to repatriation. Member states have used earmarked funding¹⁴ to steer the UNHCR's mandate.

Canada's refugee response has also been informed by, and has informed, Australia's refugee regime. Rebecca Hamlin finds that “[both] nations tend to oscillate between moments of crisis and calm in extremely reactive fashion, never able to anticipate potential pitfalls until they are occurring.”¹⁵ These two states are similar in their post-colonial relationships, their patterns of settlement, and the evolution of immigration policies that initially excluded non-Europeans but went on to foster multicultural policies.

Constructivists theorize that states are embedded in transnational and international social relations that shape their role in the world. They are socialized to want certain things, and power and wealth are means, not ends. Internationally held or communicated norms also influence citizens, who, in turn, influence states.¹⁶ Likewise, policy diffusion occurs when national policy makers voluntarily adopt policy models that are communicated internationally.¹⁷ For example, the diffusion of international norms promoted by the UNHCR in Canada and Australia was an important reason for both countries dropping immigration and refugee policies that discriminated on the basis of race. If Australia and Canada were to take their place among the leading developed nations and become participants in the international regime of refugee protection, they needed to be seen to subscribe to the new ideologies that were grounded in human rights and celebrated the spirit of decolonization.

Both countries have since contracted to a number of similar international and supranational agreements. But domestic events also influence policy makers. In my study I will show how comparable refugee events in a domestic setting of both Australia and Canada tend to have similar policy outcomes. In recent years, domestic state interests have also influenced the UNHCR which in turn has set new international norms. Hence, the influence of international norms on domestic policy is not unidirectional, and international organizations are also vulnerable to domestic pressures for change as promoted by their members.

Climate Change and Its Relationship to Migration

Any Canadian refugee policy that recognizes environmental migrants will have acknowledged the direct link between climate change and migration. International obligations would form around the responsibility of the industrialized world—which has benefited from carbon emissions—to the developing world, which is least able to adapt to new climate environments. Much of the prevailing political reluctance is justified using the work of scholars such as Richard Black who say that no pristine cause of migration can be identified.

Even if the world manages to slow climate change to arguably manageable levels¹⁸ by reductions in greenhouse gas emissions or through geoengineering,¹⁹ there will continue to be those who are displaced or who have their daily access to sustenance threatened by climate change. Emissions that exist in the atmosphere today can persist for decades and will continue to affect the global climate. According to the UNHCR, “Nine out of every ten natural disasters today are climate-related [and] ... as many as 20 million people may have been displaced by climate-induced sudden-onset natural disasters in 2008 alone.”²⁰

In May 2009, a United Nations University report made several fundamental observations that are supported by a variety of studies worldwide: It found that migration due to climate change is already under way, and that climate change can cause the “collapse of social safety nets,” which in turn fuels conflict and violence. It also observed that people who migrate because of “gradually deteriorating living conditions” are regarded as economic migrants, and as such have no recourse to any of the international instruments that differentially protect the rights of internally displaced people, asylum seekers, and refugees.²¹ In addition, migrant populations place enormous strain on the environments in which they settle. This in turn can accelerate degradation already precipitated by climate change.

Although all the nations of the globe will experience climate change effects, states most affected by rising sea levels will be Bangladesh, Egypt, China, India, and, to a lesser degree, Indonesia, Thailand, Pakistan, Mozambique, Gambia, Senegal, and Suriname. Certain island states in the Pacific and Indian oceans face the prospect of elimination. Storms will force permanent displacement within the Caribbean. Drought will affect northern Mexico and parts of South America including some of its cities. Water scarcity and drought will also afflict parts of Africa, tropical Asia, southern Europe, Australia, the U, and southern Canada. Although most climate migration will be contained within state borders or among neighbouring states, forecasts anticipate environmental migrant flows from sub-Saharan Africa to Europe and the Middle East.²² Migrations to the United

States are expected to come from Mexico, Central America, and the Caribbean.²³

While terms such as “climate refugee” and “environmental refugee” appear throughout this paper, Koko Warner et al. offer the following definition, which is also used by the International Organization for Migration (IOM). There are no international norms or obligations attached to this definition.

Environmental migrants are persons or groups of persons who, for compelling reasons of sudden or progressive changes in the environment that adversely affect their lives or living conditions, are obliged to leave their habitual homes, or choose to do so, either temporarily or permanently, and who move either within their country or abroad.²⁴

Scholars have been struggling to find a definitive term to express the plight of people who are forced to migrate from their home territories due to environmental degradation since the mid-1980s.²⁵ Most climate scholars claim that there is indisputable evidence of a direct link between climate change and human migration.²⁶ Richard Black, however, argues that despite the large number of climate refugee typologies used it is not possible to separate climate causes of migration from causes such as poverty, overpopulation, political instability, land disputes, or a multitude of other factors that have historically caused people to migrate. He argues that scholars who recognize climate refugees do so based on lack of concrete evidence to support their methodology. According to Black, “despite the breadth of examples provided in the literature, the strength of the academic case put forward is often depressingly weak.”²⁷ Black’s findings, however, de-emphasize the climate change science that shows direct links between global warming, rising sea levels, desertification, and environmental conflict that cause human migration. Black places the term “environmental refugees” in quotation marks, implying a lack of veracity.

Current protections for refugees exist under the restrictive terms of the 1951 United Nations Convention relating to the Status of Refugees. (The 1967 Protocol expanded the Convention to include refugee events that occurred outside of Europe and after 1951.) Those who meet the terms of the definition trigger an international agreement on the part of signatory states to guarantee their protection. It also obliges those states not to return Convention refugees to their country of origin—the principle of *non-refoulement*. A Convention refugee is:

[A]ny person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his

origin and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or ... owing to such fear, is unwilling to return to it.²⁸

While some scholars²⁹ argue that the Convention could be interpreted to include environmental refugees as a “social group,” or that “government-induced environmental degradation” is a form of persecution,³⁰ there appears to be growing scholarly agreement that an expansion of the Convention definition not only might overwhelm the mandate of the UNHCR but also would undermine the protections currently offered to Convention refugees.³¹ The United Nations 2009 annual report advises that the UNHCR and the IOM would not expand the Convention and that the term “refugee” should be avoided in relation to environmental migrants.³²

In his examination of findings from both Black’s and Myers’s studies, Castles³³ agrees that environmental refugees are created by a multitude of causalities where environmental factors such as rising water levels and floods, persistent and severe drought, growing numbers of extreme weather events, desertification, and so on may be linked to social, political, and economic factors such as poverty, ineffectual governance, development projects, poor agricultural techniques, civil war, and struggle over the control of land resources.³⁴ As a result, the challenge of identifying a pristine “well founded fear of persecution” as required by the Convention becomes very difficult, and mixed migrations forced by the consequences of climate change often continue to be counted largely as economic migrations.

The political reluctance to resolve the definition debate is characterized by the absence of discourse on environmental refugees at the highest levels of the United Nations. A study by Karen McNamara³⁵ suggests that the work of scholars such as Black, whose critiques emphasize multi-causalities and challenge the term “environmental refugees,” have allowed political actors and others to exclude the environmental from refugee research and policy. Her examination of the discourse of policy making used by UN ambassadors and senior diplomats revealed a growing trend toward unilateralism among the most powerful nations whose focus is currently on issues of national security. Increasing xenophobia among the public in their home states tends to support this thinking.³⁶ As long as the ambiguity of multi-causalities holds credence, Canada may choose to prioritize security rather than develop any rights-based policy on environmental migrants.

Any resolution of this debate is likely to be steered by the UNHCR, which has established itself as both an expert and moral authority on refugee flows by systematically extending its jurisdiction. Over time, and despite a general

lag in support for the reinterpretation and expansion of the UNHCR's mandate by its member states, the UNHCR has achieved many of its ambitious objectives.³⁷ This has been accomplished through a process of diffusion by which member states eventually came to agree with, and to support, the objectives of the UNHCR—ultimately incorporating them into their own domestic policies. Thus the humanitarian motivations, objectives, and actions of the UNHCR eventually became normalized in both the national and international discourse. Once any one of these is accepted and articulated by one state, other states may follow, led by the pressure of discourse in their own states or from other state actors in the international arena.

In 2010 it seems probable that environmental migrants may eventually be protected through an extension of the UN regulations governing Internally Displaced Persons (IDPs). This provides protections but is not legally binding on any party. It is categorized as soft-law. Indeed, soft-law is considered by many to be inadequate to the task of protecting as many as 23 million IDPs, and as such is considered an inappropriate model for climate refugees.³⁸

The UNHCR and Its Influence on Canadian and Australian Refugee Policies: Historic and Comparative Perspective

The UNHCR was created to provide legal determinants for the passage of refugees with an emphasis on protection and resettlement. By the 1980s it had begun to emphasize repatriation and now prioritizes repatriation and human security. Some charge that this emphasis comes at the expense of refugee protection and the right to asylum.³⁹ Canada and Australia have had a fluctuating relationship with the UNHCR and its predecessors. Key events demonstrate meaningful periods of convergence or divergence of policy among Canada, Australia, and the UNHCR and provide context for the evolution of Canadian refugee determination. What then has been the history of change to Canadian refugee policy and does it offer any guidance on factors that might drive change that would recognize environmental refugees?

The UNHCR is the most influential international agency on refugee matters. While the world waits for its guidance on the status of environmental migrants, it is useful to look at the ways in which Canada and Australia have accepted, or rejected, its guidance in the past. Established in 1950, the UNHCR was never intended to be an operational agency concerned with material matters such as supplies of food and shelter.⁴⁰ Its first job was to establish a legal framework for the protection of refugees, which it accomplished with the 1951 Geneva Convention on the Status of Refugees. The strict terms of the Convention referred only to European

refugees whose displacement could be traced to events occurring before 1951. Western European nations recognized the value of an ostensibly non-partisan agency that could represent their interests and expedite the settlement of masses of displaced persons.⁴¹ As the industrialized nations aligned in opposition to the Communist East, the UNHCR's resettlement of refugees from East to West lent legitimacy to the ideologies of the liberal democracies.⁴²

In spite of resistance from developed states which were not inclined to support action on behalf of non-Europeans, the UNHCR began a process by which it would become the expert authority on refugees from anywhere in the world. "Ambitious high commissioners seized on various crises and global developments to campaign for a broader mandate."⁴³ In time, the UNHCR became the moral authority on refugee rights and refugee rights.

The successes of the UNHCR provided a model of engagement with refugees from which Canada and Australia drew norms and policy. Their involvement with the UNHCR developed in stages. Initially reluctant, they eventually took pride in adopting the UNHCR's humanitarian principles with regard to refugees. Canada's and Australia's participation in the international structure lent legitimacy to their newly emerged modern industrial democracies.

Canada's evident ability to shift policy positions suggests that future policy that might address environmental migrants is possible.

Canada signed both the Convention and the Protocol in 1969, during a period of prosperity and economic growth. Like Australia, its traditional sources of immigration had dwindled, and an immediate need for labour prompted it to explore new immigrant resources. Prior to 1967, Canada's immigration policy formally discriminated against non-white migrants.⁴⁴ Australia acceded to the Convention in 1954, but it did not sign the 1967 Protocol until 1973. Up until then it had maintained a "White Australia Policy," established in 1901, which restricted non-white immigration. Hamlin suggests that had the countries been able to envisage today's refugee challenges, they might not have signed at all. The Convention committed both states to the *non-refoulement* of Convention refugees. "In most circumstances, this commitment means that refugees acquire indirectly a right to remain in the state where they have claimed refugee status."⁴⁵

Refugee flows in the decades before the Second World War demonstrate that the successive small groups of bureaucrats who were responsible for Canada's ad hoc immigration and refugee policy held to their principal task—keeping racialized non-Europeans out. They established legislation that demanded all asylum seekers to Canada should come in a continuous journey from source to destination. The

continuous journey requirement was designed “to deter immigrants from Asia and other alien parts of the world”⁴⁶ and foreshadowed the Safe Third Country agreement that would come into force some nine decades later. It was used effectively against all newcomers, refugees as well as would-be immigrants.

In 1938 Canada participated in the Evian Conference on Refugees,⁴⁷ convened by the US to discuss the growing plight of Jewish refugees fleeing the widening Nazi regime. Canada argued against the creation of any international body that would be responsible for refugees and was adamantly opposed to the imposition of refugee quotas for receiving countries. Australia’s position was much like Canada’s. Its representative told the conference, “we have no racial problem [and] we are not desirous of importing one by encouraging any scheme of large-scale foreign migration.”⁴⁸

In 1947 Canada finally accepted displaced persons (DPs) who did not have relatives in Canada. Returning war veterans brought back to Canada a new respect for the ethnic soldiers who had fought alongside them, as well as revulsion at the atrocities that had occurred in Europe based on notions of racial superiority. This, combined with new pressure from domestic ethnic communities who had made their own contribution to the war, meant that the Canadian public was now more tolerant of a multi-ethnic society.⁴⁹ Despite this, refugees remained subject to criteria that were in Canada’s self-interest. The Canadian Department of Labour’s involvement in the selection process highlighted the priority of a refugee claimant’s economic potential and social suitability. Communists and Jews were still routinely rejected. “An external affairs representative said that Canada ‘selected refugees ‘like good beef cattle.’”⁵⁰

In 1948 both Canada and Australia began to change their refugee regimes. British immigration to both countries had dwindled and it suited them to relax their restrictive policies and adopt a more generous stance framed by the new post-war environment. In part, this was a response to international pressure exercised by Britain, the United Nations, and the United States. But, as well, an unanticipated post-war boom meant a great need for more people, and the first decade after the war saw massive immigration to Canada of 1.25 million people, many from new source countries. That number included 100,000 displaced persons: “A new, more generous, more humanitarian policy towards refugees had captured Ottawa.”⁵¹ Australia competed with Canada and other New World countries for a hierarchy of desirable, white, European DPs. By 1953 it had resettled 180,000 refugees.⁵²

In 2011, an increasing number and diversity of immigrants from new source countries live in Canada. Over time,

they may begin to influence government policy on environmental migrants since many come from countries already affected by climate change, such as Bangladesh.

The UNHCR shaped an era for refugees in which modern, industrialized democracies needed and desired to be construed as humanitarian. In response to a series of refugee producing events that were outside of the original strictures of the Convention, the UNHCR expanded its reach and its mandate. It established itself as an operational agency by providing material assistance to 200,000 Hungarian refugees who were readily accepted by both Australia and Canada. Both countries quickly appreciated that the Hungarians, who were white, healthy, and educated, would contribute to their economies.

Now the UNHCR began to receive requests for help from outside Europe. It developed a Good Offices formula that provided “legal and political justification” for initiating assistance and raising funds for refugee flows outside of its mandate.⁵³ By 1965 the UNHCR had abandoned the distinction between Good Offices and Statutory refugees and endeavoured to protect all refugees. If Australia and Canada were to take their place among the leading developed nations and become participants in the international regime of refugee protection, they needed to be seen to subscribe to the new ideologies that were grounded in human rights.

Canada dropped its explicitly racist immigration policy in 1969, under the “Just Society” government of Liberal prime minister Pierre Trudeau. Despite the absence of a formal domestic refugee policy Canada was one of the first countries to respond to requests from Britain to accept Ugandan Asians and took 6,000 people. According to Irving Abella, these were the “cream of the crop” who most closely met immigration criteria.⁵⁴ Australia was less forthcoming, and even though its White Australia policy was drawing to a close, it only issued about 200 visas. It did, however, make an additional contribution to the UNHCR to help resettle the Asians.⁵⁵ But Canada had now established a precedent that would allow it to respond to international calls for help in the case of specifically identified environmental migrants.

Canada was now providing lessons for Australia’s policy makers to draw on. By 1973, Australia’s White Australia policy was considered a “dangerous anachronism,” and following much public and political pressure the government made discrimination based on race illegal.⁵⁶ Australia signed the 1967 Protocol, the UNHCR document that removed formal Convention limitations to non-Europeans, and following Canada’s lead, began to move toward a multicultural policy.⁵⁷ The signing of the 1967 Protocol seems to have come at a pivotal moment for both countries and signaled change to the world. Under the Trudeau government,

Canada signed the Protocol in 1969 and Multiculturalism was implemented as policy in 1971.⁵⁸

Canada affirmed its commitment to refugees in the 1976 Immigration Act, recognizing their need for distinct, humanitarian consideration, and moving beyond the Convention definition to include “displaced and persecuted” people who could be processed as part of a “designated class.” Five years later Australia expanded its view of eligible refugees in its Global Special Humanitarian Program, which allowed it to accept “people who hold a fear of gross discrimination amounting to substantial violation of their human rights but not persecution.”⁵⁹ These two policy changes meant that both Canada and Australia could act outside the constraints of the Convention to bring in additional people whose fundamental human rights were compromised. Although not intended to address rights such as adequate food and clean water, now, both states had established the sort of policy that, in 2011, would potentially allow them to accept environmental migrants.

From Boat People to Boat Invasions

The sympathy of the developed nations for refugees fleeing communism was highlighted in the response to the needs of the Vietnamese boat people beginning in 1978. Public sentiment in both Australia and Canada encouraged their governments to generous action. In Canada, refugees arrived through the mechanisms of private sponsorship established by the 1976 Act. Eventually, including the additional numbers who arrived through family reunification programs, each country accepted about 137,000 people.⁶⁰

While the Vietnamese remain perhaps the foremost contemporary success story of the absorption of non-European refugees into Canadian and Australian societies, they marked the end of an era for the UNHCR.⁶¹ The refusal of neighbouring Southeast Asian states to give the Vietnamese refuge was exemplary of a growing discomfort in the developing world. Developing nations that struggled with the political implications of absorbing their neighbours' displaced populations, as well as the environmental and social pressures of refugee movements, made increasing conditional demands on the UNHCR, NGOs, and developed states to support them in their efforts to provide refuge.⁶²

Two concepts left behind from the Indochinese experience—international burden-sharing and temporary asylum—proved a mixed legacy, both capable of being applied either to great humanitarian advantage or as an easy excuse to shift the responsibility and avoid the blame.⁶³

Developed states no longer saw resettlement as a durable solution. Donations to the UNHCR, on which it depended,

were not keeping pace with its spiralling costs. In the 1980s the UNHCR began to de-emphasize protection and to address the root causes of flight and the potential for repatriation.⁶⁴ Over the next few years budgetary problems led to cuts to the UNHCR's staff by 15 per cent and its programs by 25 per cent. According to Barnett and Finnemore, “[W]hile in the 1970s UNHCR seemed able to confront and work with governments simultaneously, during the 1980s its relationship became more adversarial and it worried that it was angering the very states on whom it was dependent to sustain its activities.”⁶⁵ The doors were closing.

By the mid-1980s, the number of asylum seekers seeking refuge in the West had skyrocketed.⁶⁶ The increased financial cost of refugee flows overseas was reflected in increased requests from the UNHCR to donor nations for more help. As well, the already high cost of processing domestic asylum applications was climbing: “Jet age refugees were no longer confined to their region of origin and now travelled directly to Western countries by air transport ... The asylum crisis put Western governments into direct conflict with the UNHCR.”⁶⁷

A degree of Canada's international reputation relates to the influence of the 1982 Charter of Rights and Freedoms. It established a measure of justice that was extended to refugees in the Singh decision and won Canada international commendations. (Its provisions would give environmental migrants the right to a refugee hearing in Canada. But without any defined status, they would likely be removed.) The Singh decision increased Canada's reputation as an asylum destination and Canadians quickly became concerned that too many potential asylum seekers viewed entry to Canada as easy. Those concerns eventually coalesced in a vigorous antipathy toward new boat arrivals. Fears about “opening the floodgates” dominated the discourse. Boat arrivals from Sri Lanka and India in the 1980s led to “tumultuous and acrimonious political and public debates.”⁶⁸

Policy and legislation were designed to deal with asylum seekers who it was feared were drawn by the perceived welcome that Canada had conveyed to all asylum seekers with its perceived amnesty in 1986.⁶⁹ Bill C-55, which established the Immigration Review Board in 1988, also made provisions for Safe Third Country⁷⁰ legislation whereby asylum seekers would be returned to the country through which they had travelled on their journey to asylum, so long as that country was signatory to international laws of protection. It would not, however, be implemented until 2004. This legislation would allow Canada to effectively avoid internal or external pressure to extend protections to environmental migrants since they would be unable to claim asylum in Canada.

Canada began to impose visa restrictions on source countries. Refugee claimants travelling from the US were barred from entry pending a hearing date. By 1989, under the Conservative government of Prime Minister Brian Mulroney, Bill C-84 allowed for the detention of asylum seekers until they had been proved credible by the authorities. Asylum seekers were now subject to immediate deportation (with judicial approval) and to increased search and seizure provisions. In 1992, subsequent legislation, Bill C-86, provided carrier sanctions, limits on rejected asylum seekers' right to appeal, fingerprinting, and rigorous entry interviews.⁷¹ In the same period, Australia responded to boatloads of Cambodians with legislation that, in 1992, led to mandatory detention and deportations for arrivals without visas.⁷²

Significant penalties were provided for people smugglers who had become an identified enemy delivering an illegal means of entry for those who would take advantage of generous legal protections and exploit domestic social welfare benefits. Janet Dench and Francois Crépeau argue that past refugees who used smugglers to escape oppressive and violent regimes such as Nazi Germany would be effectively kept out in today's environment.⁷³

In 2001, Australia established draconian legislation that came to be known as the Pacific Solution, which virtually stopped asylum seekers from reaching its shores. Among its exclusionary tactics was the excision of outlying territories from its migration zone, thus eliding the obligations attached to hearing refugee claims on Australian soil.⁷⁴ The UNHCR played a supporting role in the Pacific Solution. With the IOM, it processed asylum seekers to Australia in third countries such as Nauru and Papua New Guinea. "States increasingly view refugee rights and non-refoulement as inconvenient obstacles when they have decided that it is time for refugees to go home."⁷⁵ Scott Watson argues that Australia's refugee humanitarianism is now characterized by "refugee resettlement and non-violation of international obligations."⁷⁶ Developed states may take their lessons from Australia: The number of asylum seekers who reached its borders dropped by 75 per cent between 2000 and 2005.⁷⁷ Canada finally implemented its contentious Safe Third Country legislation in 2004.

The National/Human Security Discourse

An analysis of the current discourse around asylum seekers that occurs both in Canada and internationally does not suggest that any Canadian refugee policy that would protect environmental migrants is at all foreseeable. The debate over environmental migrants has become more urgent in the current era of security and containment. The emerging discourse of states that portrays refugee migrations

as political matters of national security is evolving at the same time as the UNHCR's attempt to maintain state support for refugee protections with the discursive reframing of protection as "human security." "Uprooted populations,' 'displaced people,' and 'involuntary migrants' are new terms which tend to replace the concept of refugee; this slippage in the terminology is indicative of UNHCR's response to the new demands of its member states."⁷⁸

In the meantime, developed states, including Canada, co-operate in regional and intraregional migration controls such as interdiction and detention. The security dimension of these practices allows government agents to justify a degree of secrecy and a growing list of Regional Consultative Processes (RCPs) take place behind closed doors.⁷⁹ In the 2000s, the developed nations of the world have containment as an early objective and the infrastructure to accomplish this is becoming more sophisticated. In the meantime, states that are signatory to the Convention continue to affirm the right of refugees to *non-refoulement*. Current measures are not articulated as exclusionary.

Until such time as international agencies such as the UN—and/or a collective of developing states—publicly and forcibly challenge this dominant and emerging regime, the UNHCR and the IOM will endeavour to keep refugee flows within the confines of their state. If asylum seekers cross borders they will be contained in neighbouring states. Funding for their stay will be processed through the UNHCR and the IOM. If they try to leave by plane they will need visas that prove nearly impossible to obtain. If they leave by boat they will face consequences that may include interdiction by state authorities. For example, a rarely documented case in 1999 revealed the complicity of an IOM official with the Canadian government in the forced "voluntary" repatriation of a boatload of Sri Lankan Tamils.⁸⁰ (Asylum seekers may die at sea since smugglers and traffickers have responded to the universal crackdown by putting their clients in boats that are unseaworthy—so reducing the smuggler's material and financial risk. Indeed, some asylum seekers are sent to sea in inflatable boats that they are responsible for sailing themselves.)⁸¹

The asylum seekers who do reach destinations in the developed states face the increased possibility of detention, sometimes in isolated, offshore locations. The UNHCR does not publish a list of all of the detention centres in all of the states.⁸² Asylum seekers might find their applications "fast-tracked" (often leading to repatriation). If they do stay they may receive very little social support, or their protection will hinge on a temporary visa that can mean their status in country remains precarious, paving the way for a host of social problems.

Asylum applications to the developed countries rose from 200,000 in the early 1980s, to a record high of 850,000 in 1992, then dropped. Numbers peaked again in 2001 at 600,000.⁸³ Over those years, 68 per cent of the asylum applications were made in the countries of the European Union. Overall, between 1987 and 2006, Australia has experienced a 61.7 per cent decline in asylum applications, and Canada was down 8.6 per cent. In the EU countries the trends are extremely diverse. For example, applications to the Netherlands decreased by more than 60 per cent while France experienced an increase of more than 50 per cent. Despite this inequity, the EU moves steadily toward harmonization of refugee policy.

Citizenship and Immigration Canada (CIC) reports that, under a Liberal government, its international network of Migration Integrity Officers stationed in the countries most likely to generate asylum seekers successfully interdicted at least 40,000 people en route to Canada between 1996 and late 2002.⁸⁴ According to Brouwer and Kumin, Migration Integrity Officers “do not appear to have any mandate to examine the intercepted person’s motivation for migration or to address any need for international protection.”⁸⁵ In effect, they may be guilty of *refoulement* according to the Convention. Catherine Dauvergne argues that the various ways in which jurisdictions circumvent refugee law shows that they are engaged in a “race to the bottom to harmonize refugee law.”⁸⁶

Humanitarianism and Security

Sovereignty is premised upon the legitimate authority to control borders in order to protect the interests of those who have legal status within them. According to Watson, states have fostered humanitarianism in their citizens and this has paved the way for formal refugee resettlement in states such as Canada.⁸⁷ But scholars argue that once humanitarianism has been internalized and normalized as part of a state’s identity, it can also become securitized. This leads to justifications of exclusion on the basis of humanitarianism.⁸⁸

Canada, Australia, and the EU have all used humanitarianism as a justification for keeping asylum seekers away from their borders. This is based on the pre-eminent and humanitarian necessity of protecting the social stability and safety of their citizens, while also stopping the activities of “people traffickers” who endanger the lives of the migrants who use them. B. S. Chimni argues, “Humanitarianism is the ideology of hegemonic states in the era of globalization marked by the end of the Cold War and a growing North-South divide.”⁸⁹

Dauvergne contends that countries that claim to accept a “just” number of asylum seekers, or assert that their acceptance decisions are based on humanitarian principles, do so

in a moral vacuum. There is no agreement among states as to what number is “just,” or of how humanitarianism may be judged. These terms exist free of international norms, regulations, or laws. Decisions by developed states, therefore, take place in an “amoral realm.”⁹⁰ Today, “those who apply for asylum in the West are routinely assumed to be illegitimate.”⁹¹ States lean heavily on past “humanitarian” actions, such as previous rates of refugee acceptance, while employing a discourse that redefines asylum seekers and refugees as “economic migrants,” “queue jumpers,” “illegals,” “gate crashers,” and “undocumented.” Once renamed, forced migrants are subject to a variety of strategies that thwart their entry or criminalize them once they have entered. This security-oriented concept of humanitarianism does not hold out a great deal of optimism for the potential recognition and protection of environmental migrants.

All refugees and asylum seekers must count on a perceived humanitarianism that transcends politics, sovereign interests and public sentiment. Instead, Nessel shows that forced migrants find themselves “floating between a humanitarian-based international protection regime and a restrictionist immigration regime.”⁹²

Environmental Migrants: Contemporary Discourse in Canada, Australia, and the EU

The historical development of refugee law and policy has evolved based on “geopolitical considerations” rather than humanitarian principles. According to Williams, the geopolitical nature of environmental migrant flows is now apparent to many developing countries and organizations such as the UNHCR, but has not yet been afforded “political priority” by the developed states.⁹³ An exploration of the evolving discourse of developed states is useful, since in the absence of moral and expert leadership from the UNHCR it is from these that Canada is likely to draw its lessons.

A search of the major Canadian media finds fewer than forty references to climate refugees or environmental migrants in the last three years.⁹⁴ The major NGOs such as the Suzuki Foundation make only cursory references to climate change refugees. A search of Canada’s four political parties’ platforms or policy statements finds that only the Green Party makes a reference to environmental refugees. It states that it will “advocate for the inclusion of environmental refugees as a refugee category in Canada and accept an appropriate share of the world’s environmental refugees into Canada.”⁹⁵

Environmental refugees are very far from Prime Minister Stephen Harper’s stated concerns. His Conservative government, however, is currently engaged in a discursive reframing of immigration and refugee policies and he has recently called Canada’s immigration system “broken,”

thereby justifying the imposition of visa requirements on two additional refugee-generating countries.⁹⁶ CIC reports that the number of asylum seekers accepted to Canada has plummeted by 56 per cent in the three years between 2005 and 2008.⁹⁷ During the same period the number of people allowed into Canada as temporary workers, a strategic, economic category, jumped from 90,000 to 192,000.⁹⁸ Canadians guard and maintain their enormous privilege. An opinion poll conducted in July 2009 found that 56 per cent of Canadians felt that the refugee determination system should be changed to make it more difficult for people to make “false claims.”⁹⁹

In 2007, a new prime minister was elected in Australia. The government of Kevin Rudd¹⁰⁰ acted to remove some of the previous government’s more contentious practices, but failed to signal that it might recognize environmental migrants. In August 2009, Australia announced a new policy to support Pacific islanders who continue to abandon their villages and farmland to rising waters; Australia would help with the internal relocation of refugees on the islands. Tuvalu is one of the Pacific islands off the coast of Australia that may well be submerged by the sea in the next few decades. Many islanders have already migrated to New Zealand. While New Zealand has a Pacific Access Category (PAC) agreement with Tuvalu, critics argue that its emphasis on labour qualifications means it is more concerned with economics than with environmental migrants.¹⁰¹ Hoadley¹⁰² argues that Australia’s concerns about Pacific migrants using New Zealand as a stepping stone to Australia’s social security system led to the trans-Tasman compromise, which resulted in a near convergence of Australian and New Zealand immigration and refugee policies.

The debate as to the eventual status of environmental refugees in Australia remains vigorous. In October 2009, the Australian Green Party called for a new visa category for climate change refugees, and Australian lawyers are promoting a Convention for People Displaced by Climate Change.¹⁰³ Meanwhile, a government MP has warned Australians that if they don’t populate Australia’s underdeveloped north, they will “face invasion by Asian refugees driven south by climate change.”¹⁰⁴ In June 2010 Prime Minister Julia Gillard assumed office, and by July the Australian press had declared a swing to the right on refugee policies.¹⁰⁵

The states most immediately at threat from sea level rises caused by climate change are lobbying vigorously for action. Tuvalu’s President Tong wants other countries to train his people for the jobs that they will need when they migrate. His people don’t want to be treated as refugees—they will be ready to fit in.¹⁰⁶ The president of the Maldives warns that his people face the prospect of life in a “climate refugee camp.”¹⁰⁷

The EU’s geographical relationship to the countries of Africa is similar to that of Australia’s to the Pacific Islands and Asia. It is an obvious destination. In the absence of policy from the UN, the EU will arguably have the greatest influence on the international refugee regime as it attempts to form a position on environmental migrants. In 2007, the Belgian government voted in favour of promoting international recognition of environmental refugee status at the United Nations.¹⁰⁸ While there is differential response among various member states, the formal EU bodies are tackling the issue. In 2008, the European Parliament adopted a declaration to “organize legal protection for the victims of climate events.”¹⁰⁹ And in 2009, the Council of Europe stated that “the protection of people compelled to move due to climate and environmental factors is of paramount importance.”¹¹⁰

In 2011 only Sweden and Finland have allowed for both temporary and permanent status to individual migrants already resident in their countries who are unable to return to their countries of origin because of environmental disaster. Canada made temporary allowances for people already resident in Canada at the time of the 2004 Indian Ocean tsunami and following the Haitian earthquake in 2010.¹¹¹

Conclusion

In 2011, the question of what policy Canada might develop in response to environmental migrants is characterized by many unknowns. These persist because no developed state or international agency has committed to formulating rights and protections for environmental refugees who live outside of their borders. Canada has not even begun to address the issue. Other unknowns have been absent from the discussion presented in this paper, such as the degree of influence the US may have on Canada once it determines its own policy on environmental migrants. In the absence of policy from any developed state I have attempted to show the policy paths Canada may choose from by studying its historical record, reviewing the current trajectory of the international refugee regime, and revealing the nature of the developed world’s humanitarian response.

Does the existence of national and international debate on environmental migrants signal that there is a potential for change in Canada? In 2011, the Canadian public is racially and ethnically diverse and, as the historical record suggests, it will increasingly come to influence refugee policy. Globalization and transnationalism have created complex social, political, and economic international relationships. If the UNHCR is able to communicate a vision of a world in which the suffering of environmental migrants can be redressed, Canada, Australia, and other developed states might be convinced to fund and participate in international

programs. If the EU and the UNHCR agree on a designation for environmental migrants that obliges EU member states to engage in proactive and protective measures on their behalf, Canada might find pressure from political allies and trading partners, coupled with the concern of Canadian citizens about their former fellow nationals, difficult to resist. Canada would be able to draw its policy lessons from those formulated by the EU and communicated and diffused by international agencies and organizations. However, given its relationship to the US (affirmed by the Safe Third Country agreement), Canada is likely to follow once the US determines its own domestic policy on environmental migrants.

There now appears to be a high level of convergence in refugee policy between Australia, the EU, and, to a lesser extent, Canada. All have engaged in systematic efforts to secure their state's borders against asylum seekers and to contain refugee flows at their origin. Dauvergne argues that the various ways in which these jurisdictions circumvent refugee law shows that they continue to accept that they have an international obligation to refugee protection or they would have simply abandoned it altogether.¹¹² They are, however, complicit in a process that excludes an increasing number of bona fide refugees.

Canada's lack of commitment to Kyoto objectives, its absence from the debate on environmental refugees, its prioritizing of neo-liberal economic goals, and its shared place in the hegemony of globalization and the new humanitarianism would suggest that it will not change its refugee policy to recognize any special status for people whose forced migration and permanent displacement is directly linked to climate change. Given the foregoing contextualization, Canada may choose to draw its policy lessons from Australia, the state whose overseas refugee selection process most closely mirrors its own. If so, policy will be revised to effectively eliminate the right of migrants to claim refugee status in Canadian jurisdictions. Canada, however, would risk its international reputation—certainly among developing nations—for taking such a position and would no doubt be admonished by the UNHCR with whom it has had a successful relationship for decades.

By 2010, Canada's current Conservative government had managed a 56 per cent drop in asylum acceptance rates and was in the process of a discursive reframing of Canada's refugee regime. It has called the refugee determination system broken and allowed a backlog of claims that will (perhaps) eventually need to be addressed with emergency measures. No formal exclusionary policy has been announced. Harper's government will be aware that Australia's Hawke government collapsed in part because of extreme formal and informal¹¹³ measures it used against asylum seekers. Nevertheless, the Harper government capitalized on the

arrival of 492 Tamil refugee claimants by boat to the West Coast in the summer of 2010 and introduced Bill C-49. The Canadian Council on Refugees warns that this proposed legislation, ostensibly aimed at people smugglers, would curtail refugees' freedom of movement, extend detentions, and deny family reunification.¹¹⁴

In the early months of 2011, it appears that the Conservative government is on a policy path closer to that of Australia. The negligible level of domestic public debate about environmental refugees and the increasingly security-oriented internal and external immigration and refugee apparatus is not encouraging. Canada's absence from the international debate on environmental refugees, its prioritizing of neo-liberal economic goals, and its shared place in the hegemony of globalization and the new humanitarianism would suggest that it will not change its refugee policy to recognize any special status for people whose forced migration and permanent displacement is directly linked to climate change. Canada's past refugee policy record shows that it rarely acts independently, but draws lessons from states with similar profiles and from international bodies, in particular the UNHCR.

The UNHCR has asked that states focus on international cooperation and human rights as they consider environmental migrants, since "it may take some time to reach agreement on the appropriate way forward."¹¹⁵ The Canadian public is perhaps unaware of the many ways in which its government has evolved a regime of exclusion. Canada's reputation rests on its past record. It has received international recognition for its generous and progressive interpretation of the Convention to include gender persecution. Canada could yet choose to take a leading role, in hand with the UNHCR, on negotiations toward a new framework for environmental refugees.

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Ministerial Influence at the Canadian Immigration and Refugee Board: The Case for Institutional Bias

JACQUELINE BONISTEEL

Abstract

This paper explores the implications of Canada's Immigration Minister Jason Kenney's July 2009 comments on Mexican and Czech refugee claimants that accompanied the imposition of visas for these two countries. I argue that the Minister's comments, in concert with his control over the tenure of Immigration and Refugee Board members, substantiate a claim that the Board is institutionally biased. While allegations of institutional bias have not fared particularly well in Canadian courts, I contend that the applicability of section 7 Charter rights distinguishes the immigration and refugee context, and makes success more probable. Specifically, I posit that the Minister's comments have opened a window of opportunity to bring an end to the executive's unfettered discretion over IRB reappointments, since the most effective remedy to address institutional bias would be amendment of the reappointment process.

Résumé

Cet article étudie les incidences de commentaires faits par le ministre canadien de l'Immigration, Jason Kenney, en juillet 2009 au sujet des demandeurs d'asile mexicains et tchèques entourant l'imposition du visa pour ces deux pays. L'auteur soutient que les commentaires du ministre, de concert avec son contrôle sur la durée des mandats des membres de la Commission de l'immigration et du statut de réfugié, étayent une allégation de partialité institutionnelle contre la Commission. Malgré l'insuccès de telles démarches devant les tribunaux canadiens, l'auteur soutient que l'applicabilité de l'article 7 de la Charte distingue

le contexte de l'immigration et des réfugiés et rend le succès plus probable. Plus précisément, l'auteur propose que les commentaires du ministre ont ouvert une « fenêtre d'opportunité » pour mettre un terme à la libre discrétion de l'exécutif sur le renouvellement des mandats des membres de la CISR, puisque le remède le plus efficace pour traiter la partialité institutionnelle serait une modification du processus de renouvellement.

Introduction

On July 13, 2009, Canada's Minister of Citizenship, Immigration and Multiculturalism, Jason Kenney, announced that Canada would be imposing visas on citizens from Mexico and the Czech Republic. The aim was to stem the tide of refugee claimants from what were respectively the number one and number two source countries for claims made in Canada. In a press release, Minister Kenney explained that the delay and costs associated with processing this high claim volume was "undermining our ability to help people fleeing real persecution."¹ His implication was clear: most Mexican and Czech claimants were not genuine refugees.

The Minister's comments to various media outlets over the following days confirmed his outlook. He argued that "the vast majority of Mexico's refugee claimants are economic migrants from the middle class,"² and that "[i]t's an insult to the important concept of refugee protection to allow it be systematically violated by people who are overwhelmingly economic migrants."³ Regarding Czech Roma, who represent the vast majority of claimants from the Czech Republic, Minister Kenney argued that they are free to move elsewhere in Europe and therefore are not real refugees.⁴ He also referenced an Immigration and Refugee

Board (IRB) fact-finding report which found no evidence of state-sponsored persecution of Czech Roma, stating, “[i]f someone comes in and says the police have been beating the crap out of them, the IRB panelist can then go to their report and say, ‘Well, actually, there’s been no evidence of police brutality.’”⁵

These statements were met with condemnation from both academic and advocacy circles. While some focused upon the lack of supporting evidence for the Minister’s claims,⁶ the predominant concern was a perceived encroachment upon IRB legislative authority. The Canadian Council for Refugees and the Refugee Lawyers’ Association of Ontario agreed that the comments constituted political interference with the independence of the IRB, which retains sole authority to decide individual refugee claims.⁷ Former IRB chairperson Peter Showler said, “I think [the Minister] has overstepped the line, and I think the courts are going to tell him that he’s overstepped the line.”⁸ Rocco Galati, a Toronto immigration lawyer, announced plans to bring a lawsuit on behalf of Czech Roma refugees, based on alleged IRB institutional bias.⁹

This paper will explore the feasibility of such a lawsuit and suggest a litigation strategy for presenting an argument that the IRB is institutionally biased. I contend that the Minister’s comments following the visa impositions, in concert with his control over the tenure of IRB members, substantiate a claim of institutional bias. While such arguments have not fared particularly well in Canadian courts, I will argue that the applicability of rights under section 7 of the *Canadian Charter of Rights and Freedoms* distinguishes the immigration and refugee context and makes success more probable. Specifically, I posit that the Minister’s comments have opened a window of opportunity to bring an end to the executive’s unfettered discretion over IRB reappointments, since the most effective remedy to address institutional bias would be amendment of the reappointment process.

High Degree of Independence Required in the Refugee Determination Context

The *Immigration and Refugee Protection Act (IRPA)* provides all divisions of the IRB with “sole and exclusive jurisdiction to hear and determine all questions of law and fact, including questions of jurisdiction.”¹⁰ This language conveys a legislative intent to bestow on the Board full and unqualified decision-making authority. The existence of this intent is further substantiated by the *IRPA*’s objectives, which include the granting of “fair consideration to those who come to Canada claiming persecution,”¹¹ and the establishment of “fair and efficient procedures that will maintain the integrity of the Canadian refugee protection system, while upholding Canada’s respect for the human rights and fundamental freedoms of all human beings.”¹² Impartial

decision making is central to maintaining a fair process that accounts for the unique situation of each claimant.

While the Supreme Court of Canada (SCC) held in *Ocean Port Hotel Ltd. v British Columbia (Liquor Control and Licensing Branch, General Manager)* that administrative tribunals, as a general rule, are not held to the level of independence required of the judiciary under section 11(d) of the *Charter*, McLachlin CJ acknowledged that exceptions may exist where *Charter* rights are implicated.¹³ In the refugee determination context, it has been accepted that IRB decision makers have the potential to exercise power over claimants’ section 7 rights to life, liberty, and security of the person. Wilson J’s decision in *Singh* can be cited for the proposition that section 7 is engaged in the refugee determination process.¹⁴ While Wilson J’s reasons were endorsed by only Dickson CJ and Lamer J, the other three participating justices made no contrary conclusions on the applicability of section 7.¹⁵ Subsequent courts applying *Singh* have accepted that section 7 is engaged in the refugee determination process.¹⁶ It is also notable that a unanimous SCC later ruled in *Suresh* that “[t]he greater the effect on the life of the individual by the decision, the greater the need for procedural protections to meet the common law duty of fairness and the requirements of fundamental justice under s. 7 of the *Charter*.”¹⁷ In that case, the Court concluded that deportation of a refugee to face a substantial risk of torture would generally violate section 7.¹⁸

Thus, given that section 7 of the *Charter* is engaged in the refugee determination context, a more stringent standard of decision-maker independence is warranted. As Gerald Heckman and Lorne Sossin put it, “[s]urely if a party has the right to claim the protection of the *Charter*, they have a corresponding right to an independent and impartial resolution of that claim.”¹⁹ The Federal Court of Appeal endorsed this conclusion in the 2006 *Kozak* case. Evans CJ stated that “[t]he independence of the [IRB], its adjudicative procedure and functions, and the fact that its decisions affect the *Charter* rights of claimants, indicate that the content of the duty of fairness owed by the Board, including the duty of impartiality, falls at the high end of the continuum of procedural fairness.”²⁰ The IRB is therefore among those exceptional tribunals for which rigorous procedural fairness, including the right to an independent and impartial decision maker, appears to be required.

Valente established three indicia of judicial independence: security of tenure, security of remuneration, and administrative control.²¹ These principles were found to be applicable to administrative tribunals in *Canadian Pacific Ltd. v Matsqui Indian Band*, but Lamer CJ noted that the requisite level of independence is more flexible in the administrative context, and depends upon “the nature of the tribunal, the

interests at stake, and other indices of independence such as oaths of office.²² As established above, IRB members are to be afforded a high degree of independence. Thus, each of the three indicia ought to be assured. Security of remuneration and administrative control are not controversial in this context: security of tenure is the factor at issue.

Insufficient Security of Tenure at the IRB: The Reappointments Process

IRB members are Governor-in-Council (GIC) appointees who, within any given term, may only be removed for cause.²³ The *IRPA* provides for good behaviour terms of up to seven years but, following the 2007 recommendation of the Public Appointments Commission Secretariat, initial terms have consistently been set at three years.²⁴ Regarding reappointment, the *IRPA* states that members “are eligible for reappointment in the same or another capacity.”²⁵ The legislation offers no further guidelines on how the reappointments process is to be carried out.

The IRB appointment and reappointment process has been a subject of controversy for some time. In December 1997, the Auditor General expressed concern with member recruitment methods, candidate evaluation, and reappointment recommendations.²⁶ The appointments process was eventually amended—first in 2004, and again in July 2007—to incorporate these and other expert recommendations. The changes included measures to increase transparency and fairness and to ensure that appointments were merit-based.²⁷

Though these improvements to appointment practices are laudable, changes to the reappointments process have not been on an equivalent scale. In 1997, Board members told the Auditor General that exemplary performance provided no guarantee of reappointment.²⁸ In response, a new performance appraisal system was implemented in 1999. Responsibility for recommending renewals was transferred from a Ministerial Advisory Committee to an internal IRB Performance Review Committee.²⁹ The Committee was charged with overseeing the appraisal process and providing a report to the Minister “at the end of a member’s term as advice on reappointment.”³⁰ The Minister is not obligated to take the recommendation into account, but the IRB website states that the reappointment process “will continue to reflect a performance evaluation consistent with the merit-based competency criteria.”³¹

In March 2009, the Auditor General report revealed that, while the performance review evaluation process was being carried out well, its impact was less pronounced than expected. A review that took place between 1 January 2006 and 31 March 2008 found that, of the eighty-nine members who were recommended to the Minister by the

Performance Review Committee, the Governor-in-Council reappointed thirty-seven (42 per cent). In roughly the same period (September 2006 to March 2008), forty-three new appointments were made.³² These numbers are surprising, given the Board’s estimate that it takes between six and twelve months and \$100,000 to fully train a new member.³³ If an existing member’s performance review is positive, why would the Minister choose to bear the expense of hiring and training a new member, rather than recommending reappointment? An explanation is not available, but it may be reasonable to infer that the performance review is not a determinative factor in reappointment decision making.

Concern surrounding the failure to reappoint qualified and competent members was conveyed by a representative of the Canadian Council for Refugees in a May 2007 report of the House of Commons Standing Committee on Citizenship and Immigration.³⁴ In that same report, Jean-Guy Fleury, the IRB chairperson at the time, and Nick Summers, a former member of the IRB advisory panel, both suggested that the Minister’s discretion over reappointments created a politicized process. Mr. Fleury was of the opinion that the process ought to be amended to allow the chairperson to control reappointments.³⁵

Valente established that the basic requirement for security of tenure for the purposes of section 11(d) is “a tenure, whether until an age of retirement, for a fixed term, or for a specific adjudicative task, that is secure against interference by the Executive or other appointing authority in a discretionary or arbitrary manner.”³⁶ The SCC has not ruled clearly on the meaning of security of tenure in the administrative context,³⁷ but existing case law suggests that the requirements are relatively lenient. In *2747–3174 Québec Inc. v Québec (Régie des permis d’alcool)*, a fixed-term appointment of up to five years, with reappointment decisions informed by a performance evaluation, was found to be acceptable for a liquor licensing body to which the Quebec *Charter of Human Rights and Freedoms* applied.³⁸ In *Bell Canada v Canadian Telephone Employees Association*, the chairperson’s discretionary power to extend appointments to the Canadian Human Rights Commission was not deemed to compromise independence.³⁹

Given that IRB members enjoy fixed terms of similar duration to those in *Régie*, with dismissal only for cause and discretionary reappointments, it would appear that the case law contradicts an argument that security of tenure at the IRB is inadequate. However, in both *Régie* and *Bell*, section 7 *Charter* rights were not implicated. *Régie*, it should be acknowledged, did concern the right to a public and fair hearing before an independent and impartial tribunal under section 23 of Quebec’s *Charter of Human Rights and Freedoms*.⁴⁰ However, the refugee determination

context can be distinguished from that of liquor licensing. While the right of a permit holder to operate a business is an important economic right, refugee claimants face potential deportation to situations where their life, liberty, and security of the person will be denied. An argument can be made that, given these circumstances, the independence requirements for the IRB ought to be among the most stringent for administrative tribunals, and closer to the standard required of courts, where an unwritten constitutional principle of judicial independence applies.⁴¹

While *Valente* does not specify the length of a “fixed term” that would be sufficient in the judicial context, it would certainly be more than three years. The standard would likely be much closer to that specified for section 96 courts, which is the age of retirement. Of course, holding an administrative tribunal to the same standard as a court would be unreasonable given that tribunals play a different societal function. However, for a tribunal with a court-like character and the potential to impinge upon section 7 *Charter* rights, the standard arguably ought to be higher than a three-year term with entirely discretionary possibility of reappointment. This context is also distinguished by the fact that IRB members are generally reappointed for seven-year terms.⁴² As the renewal term is substantially longer than the initial appointment, there is a strong incentive for members to do whatever they perceive to be necessary to secure reappointment.

Institutional Bias

The test for institutional bias, introduced in *R v Lippé*, asks whether a well-informed person would have a reasonable apprehension of bias in a substantial number of cases.⁴³ To be valid, an apprehension of bias must be “a reasonable one, held by reasonable and right-minded persons, applying themselves to the question and obtaining thereon the required information.”⁴⁴ In the context of administrative tribunals, a more flexible test is usually acceptable.⁴⁵ However, as detailed above, a lesser degree of flexibility is warranted in this context, given the IRB’s quasi-judicial character and impact on *Charter* rights.

The argument that ministerial discretion over reappointments encroaches upon security of tenure may be sufficient on its own to ground a case for IRB institutional bias. However, the case is strengthened significantly by Minister Kenney’s recent media comments. These comments, combined with ministerial discretion over the reappointments process, lead to a reasonable apprehension of bias in all refugee determination proceedings for claimants from Mexico and the Czech Republic. The logic is straightforward: the Minister has publicly displayed a glaring negative bias towards claimants from these two countries. Board

members, who rely on this same Minister to be reappointed to their position, may very well be predisposed to reject Mexican and Czech claimants in order to secure ministerial favour and avoid potential reprisal in the form of non-reappointment. In the words of University of Toronto law professor Audrey Macklin, “[t]hey might be fearful when their time comes up for reappointment that he will examine their acceptance rates from the countries where he has deemed refugee claimants to be bogus, and penalize them.”⁴⁶ Macklin’s contention is valid: the Minister does, in fact, have access to data on how each individual Board member decides on claims originating from specific countries. The name of the presiding Board member is included in the reasons of each Refugee Protection Division decision, and these reasons are publicly available online.

Whether individual IRB members are *in fact* biased is irrelevant to the determination of a potential lawsuit. Sara Blake points out that a minister’s bias does not necessarily imply that an adjudicator employed by his or her ministry is biased.⁴⁷ A decision to reject a Mexican or Czech claim could still be made based on impartial reasoning with regard to the individual circumstances and a well-reasoned evaluation of the wider context, with no consideration of the Minister’s views. In fact, the Minister’s statements may merely have been unprofessional, but not legally problematic, if IRB members were more insulated from ministerial influence. It is the combination of the comments, the discretionary reappointment process, and the significance of the rights affected that substantiates a legal challenge. The appearance of fairness is as essential to maintaining the integrity of the refugee determination process as actual lack of prejudice. Thus, if a reasonable apprehension of bias can be established based on the Minister’s comments and his control over reappointments, all decisions concerning Mexican and Czech claims will be invalid, regardless of their individual quality.

In *Sethi v Canada*, the Federal Court of Appeal held that members of the antecedent refugee determination body who faced potential appointment to the new IRB could not have felt pressure to render negative decisions, as the government had no interest in seeing refugee claims defeated.⁴⁸ However, Judith McCormack writes that the judgment displayed “a certain myopia”⁴⁹ and, as we now have persuasive evidence that Minister Kenney did, in fact, have an interest in stemming the tide of Mexican and Czech refugees, there is a strong possibility that a court would decide differently at present.

International norms and jurisprudence can be applied to bolster the institutional bias argument. The European Court of Human Rights, for instance, has placed more emphasis than Canadian courts on “guarantees against outside pressure” and

the appearance of independence.⁵⁰ Institutional bias has also been argued along a similar line in the context of Australia's Refugee Review Tribunal.⁵¹ If the lack of Canadian precedent poses any hurdles, international jurisprudence provides additional justification for judicial scrutiny of the Minister's interference with Board decision making.

Bringing the Challenge to Court

As mentioned above, the case for IRB institutional bias does not hang upon Minister Kenney's comments—the inadequacy of the discretionary reappointments process is sufficient on its own. However, Minister Kenney's comments add significant weight to an attempt to have the process amended. The best way to bring the challenge would be in the context of one or several refugee claim(s) from a country about which the Minister has made biased comments. Unfortunately, this may prove difficult in the context of Mexican and Czech claims given that almost two years have now passed since the comments were made and, if institutional bias is not raised from the outset of proceedings, parties are not normally able to complain.⁵² Furthermore, the visa imposition has brought Mexican and Czech claims to a near halt. Still, the Minister has not revoked or qualified his comments, so they can still be cited as an accurate expression of his views. Thus, at this stage, an argument for institutional bias based in part upon these comments could still be raised for Mexican and Czech cases at a preliminary stage. Additionally, it may be possible to bring a similar challenge based on the Minister's more recent comments implying that asylum seekers who have arrived in Canada via human smugglers are queue jumpers "taking up space and resources in our immigration and refugee systems that should be focused on those who are legitimately and lawfully waiting their turn to come to Canada."⁵³

Institutional bias arguments were raised in a series of 2010 Federal Court cases involving Czech refugee claimants.⁵⁴ In each of these cases, the Court rejected the applicant's contention that Minister Kenney's comments led to a reasonable apprehension of bias against Czech claimants. However, the arguments in these cases were presented in an incomplete manner. In *Gabor*, Zinn J refused to attach much weight to the media comments by Peter Showler, Audrey Macklin, and others because they were not presented in the form of sworn affidavits and were speculative and unsupported.⁵⁵ In *Cervenakova*, the applicant merely stated that the reappointments process contributes to a reasonable apprehension of bias, and did not adduce evidence of "attenuated independence on the part of the Board or any of its members."⁵⁶ In *Zupko*, Snider J stated, "I have no evidence, beyond bare speculation, that appointments are made on the basis of prospective members' views of the

Minister's speeches or that the renewal of Board member appointments is made on the basis of, or influenced by, their refugee claim acceptance rates."⁵⁷ Thus, in each of these cases, the institutional bias argument does not appear to have been presented fully and coherently, and the evidentiary basis for key assertions was lacking. A more carefully formed argument may well fare better.

A court finding institutional bias would likely set aside a Board decision to which the bias applied and call for it to be reheard before a properly constituted panel. Forming a properly constituted panel would require legislative changes to the reappointment process, which would take time, and could cause nightmarish delays to an already overburdened and backlogged refugee determination system. This concern is not insignificant—increased delays would have significant consequences for claimants and taxpayers alike. However, this difficulty must be balanced against Canada's need for a fair and unbiased refugee determination system that meets our human rights obligations at the national and international levels. Furthermore, the required changes would be relatively simple. The IRB already has a high-quality performance evaluation process in place. A sound policy would simply require that the Minister adopt the Performance Review Committee recommendations in the absence of clear and valid reasons to do otherwise. The potentially serious impact of delays would provide an incentive to the legislature to act quickly, thus ensuring that the delay would be minimally disruptive.

A brief comment on Bill C-11, the *Balanced Refugee Reform Act*, is warranted at this stage. The Bill has received royal assent, and its reforms are due to come into effect in late 2011. The appointment and reappointment processes for the new Refugee Appeal Division (RAD) are to remain unchanged from the current system applicable to IRB members. As such, it would appear that the argument made in this paper will remain applicable in that the RAD reappointments process will raise the same institutional bias concerns.

Conclusion

Minister Kenney's comments on Mexican and Czech refugee claimants overstepped his legislative authority and highlighted the Minister's current power to compromise independent decision making at the IRB. This situation is worrisome given the immense importance of having a fair and balanced refugee determination process in place in Canada. I submit that the case for institutional bias is strong and that amendment of the IRB reappointments process is the proper way to remedy this issue and maintain the integrity of our system. While Canadian courts have not been overly receptive to institutional bias arguments in other

contexts, the applicability of section 7 *Charter* rights in the refugee determination context makes the argument more persuasive. The time is ripe for bringing a legal challenge on this basis.

NOTES

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39. 2003 SCC 36, [2003] SCR 884, at para 53 [*Bell Canada*].
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42. In *Bell Canada*, the appointment renewal was only valid until the completion of an ongoing hearing.
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Reforming the Canadian Refugee Determination System

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Abstract

If Canadian refugee policy is to serve interests of Canadians as well as those of genuine refugees in an effective manner, far more radical changes will be needed than have been attempted to date. They must include the introduction of robust safe third country designations, a review of the 1985 Singh decision of the Supreme Court of Canada, and possible withdrawal by Canada of its accession to the 1951 UN Refugee Convention. Other measures should also be considered such as placing an annual limit on the intake of refugees from overseas combined with that of successful in-country asylum seekers as well as establishing provision for temporary refugee status in Canada in addition to permanent resettlement. Measures should be taken to return Canada to its role primarily as a resettlement country for refugees selected abroad and not one that accommodates large numbers of asylum seekers making claims on our territory. With strong public backing for major changes, political parties that oppose such reforms will do so at the risk of losing electoral support.

Résumé

Si la politique envers les réfugiés au Canada doit servir les intérêts des Canadiens ainsi que ceux des réfugiés de bonne foi d'une manière efficace, des changements bien plus radicaux seront nécessaires que ceux qui ont été tentés jusqu'ici. Ces changements doivent comprendre l'introduction de désignations robustes de pays tiers sûrs, un examen de la décision Singh de la Cour suprême du Canada de 1985 et le retrait éventuel par le Canada de son adhésion à la Convention du 28 juillet 1951 relative au statut des réfugiés de l'ONU. D'autres mesures devraient également être considérées comme la mise en place d'un plafond annuel à

l'accueil des réfugiés d'outre-mer combiné à l'acceptation de demandes d'asile sur le territoire ainsi que l'établissement de dispositions pour le statut de réfugié temporaire au Canada et la réinstallation permanente. Des mesures devraient être prises pour permettre au Canada de retrouver son rôle comme pays avant tout de réinstallation pour les réfugiés sélectionnés à l'étranger et non pas comme pays accueillant un grand nombre de demandeurs d'asile faisant des réclamations sur son territoire. Compte tenu de l'appui soutenu du public pour des changements majeurs, les partis politiques qui s'opposent à ces réformes le font au risque de perdre leur soutien électoral.

Introduction

The year 2010 saw major activity on the part of the Government of Canada in terms of presenting legislation designed to deal with perceived shortcomings of the refugee determination system. Early in the year a bill was tabled in Parliament to address sharp rises in refugee claims by nationals of countries that would not normally be considered as refugee-producing. In the years preceding the tabling of the bill there had been concern over the large number of claims by asylum seekers from the Czech Republic and Mexico. The case made by refugee claimants from Mexico was usually that they were fleeing violence precipitated by drug cartels, while the Czechs were from the Roma (Gypsy) minority and cited the widespread discrimination they encountered in their homeland.

While both groups of claimants had reason to believe they would be better off in Canada, the Government did not consider that the reasons they advanced in support of their applications for protection constituted convincing cases of persecution as required by the 1951 United Nations Convention relating to the Status of Refugees. With regard to Mexican claimants, fleeing criminal violence was not

regarded as being equivalent to suffering from persecution as stipulated by the Convention, and if this kind of problem were accepted as grounds for being granted asylum, there were undoubtedly millions more around the world entitled to come here as refugees.

As for the Roma from the Czech Republic, suffering from discrimination was not considered equivalent to government persecution. It did not help their case that Roma from the Czech Republic were free to travel to any other member country of the European Union, none of which would consider a refugee claim from a Czech citizen.

An indication of the extent to which Canada was out of line with other countries in considering claims from the nationals of these two nations is that according to UNHCR statistics no other nation granted refugee status to a Czech in 2008 and only Canada and the United States did so in the case of Mexicans—with Canada accepting far more than the US.¹

Efforts to Make the Refugee Determination System More Efficient

The Government accordingly tabled legislation designed to deal with large increases in arrivals of asylum seekers as well as measures to introduce more efficiency and fairness to what is widely regarded as a largely dysfunctional refugee determination system. The bill presented to Parliament was aimed at speeding up the processing and disposition of both applications that appeared to have little merit as well as those that were well-founded and stood a good chance of being approved.

A specific objective of the legislation was to deny the opportunity for in-Canada appeals to claimants from non-refugee producing countries. The purpose of this was to avoid situations where such unsuccessful claimants could remain here while their appeals wound their way through the system and thereby increase their chances of remaining here indefinitely by one means or another. Other countries, such as the United Kingdom, require that appeals from such refused claimants be pursued from abroad if they wish to do so in order that they don't gain advantage from prolonging their stay in Britain.

Included in the legislation package was the creation of a Refugee Appeal Division (RAD) of the Immigration and Refugee Board (IRB), a unit that had been provided for in the 2001 Immigration and Refugee Protection Act (IRPA). Successive Liberal and Conservative immigration ministers had refused, however, to implement this section of the Act since in their estimation there were already too many opportunities for refugee claimants turned down by the IRB to have their cases appealed or reviewed. Until this was

sorted out, it was viewed as unwise to add yet another level of appeal.²

In consequence, in the bill presented in early 2010, the Government included provision for the establishment of the RAD in combination with changes to the system that would consolidate the existing opportunities to have failed cases appealed and reviewed. If all the elements of the bill were approved, it was, therefore, expected to bring about an overall improvement of the system in terms of efficiency and timely disposition of claims.

In the event, however, refugee lawyers and activists as well as members of opposition parties in Parliament were successful in retaining inclusion of the RAD while diluting other parts of the legislation. It remains to be seen, in the circumstances, whether the Balanced Refugee Reform Act passed in June will be an improvement on the current system. Immigration expert James Bissett, for one, believes it likely that the provisions of the new legislation will create even more backlogs.³

Arrival of the Sun Sea

Later in 2010 the Government again tried to introduce reforms with the tabling of a bill designed to curb human smuggling following the arrival of a boatload of 492 Tamil asylum seekers in August on a vessel named the *Sun Sea*. While Canadian authorities had known for weeks that the *Sun Sea* was headed in this direction from Asia, the Government felt it had no choice but to allow it to land in Canada and permit those on board to claim refugee status. Its arrival raised questions about the extent to which we are able to control who enters our territory and, by implication, the degree to which we are able to protect our sovereignty.

Public Opinion Supports Strong Measures to Prevent Human Smuggling

Public opinion is clearly in support of taking a firm line on how we should deal with such incidents. A Leger Marketing poll⁴ released after the arrival of the *Sun Sea* found that 60 per cent of those surveyed thought the ship and its passengers should be turned away and escorted back to Sri Lanka by the Canadian Navy. According to an Angus Reid poll⁵ taken at about the same time, almost half of those surveyed felt that, even if the refugee claims of those who arrived on the *Sun Sea* were found to be legitimate and no links were made between them and any terrorist organization, the ship's crew and passengers should still be sent back to Sri Lanka. While it should not be concluded from this that Canadians are unsympathetic towards the plight of refugees in general, these survey results clearly reflect a high level of frustration on the part of Canadians with regard to what they perceive as abuse of the system.

There is fairly broad agreement among political parties that the bill should provide heavy fines and sentences for those who organize the voyages as well as major penalties for the owners and operators of the ships involved. The sections being challenged by opposition parties in Parliament are those aimed at deterring asylum seekers themselves from using the services of human smugglers to get to Canada.

The bill if approved by Parliament would stipulate that asylum seekers who reach Canadian shores in such mass arrivals would be detained for up to a year in order to determine their identity, admissibility, and whether they were involved in illegal activity. They would, furthermore, be barred from applying for permanent resident status for five years even if they were granted refugee status, and would not be able to sponsor family members for five years. In addition they would lose their status if they went back for visits to the country from which they sought refuge or if the situation there improved to the point where it was safe for them to return.

Notwithstanding the strong indications noted above that public opinion supports a firm stance on refugee claimants using human smugglers to enter Canada, refugee advocates and opposition members in Parliament have taken the position that the asylum seekers should be considered as victims of the human smugglers. They should not be considered as complicit in a criminal operation given that they may have had no other means of reaching Canada to make a refugee claim. In the view of refugee advocates, the bill would, moreover, create a two-tier system in which asylum seekers arriving as part of a “designated human smuggling event” are treated unfairly in comparison with those who get here by other means and are, therefore, not subject to such harsh rules.

While there is some merit in the claim that asylum seekers using human smugglers to get here will be treated more sternly than those who don't, it is not unreasonable to ask whether some of the tougher rules should not be applied to refugee claimants in general. It is difficult to see, for example, why any asylum seeker should be able to pursue their claim if they have no problem with going back to visit the countries from which they said they had to flee.⁶ The Government, in fact, has the legal right to terminate its obligation not to *refouler* in such cases through “cessation”—although it rarely applies this provision.

Need to Establish Temporary Status for Refugees in Canada

In like manner, there would seem to be good reason for requiring that all asylum seekers should be prepared to return to their countries of origin if the situation there improves within a reasonable period of time and they are no

longer at risk if they go back. In 1999, for example, Canada along with other Western countries accepted thousands of Kosovars as refugees on the basis that they were considered in danger from Serbian armed forces in Kosovo. Later the same year an agreement was reached for the withdrawal of Serbian troops and the introduction of UN peacekeepers to maintain security and, in consequence, by June of 2000 more than 800,000 Kosovars who had gone to other countries to flee the violence had returned home.

Most Western countries encouraged those on their territory to do so and in some instances put pressure on them to this end. In the case of Australia, for example, 95 per cent of the 4,000 Kosovars who had been admitted as refugees returned home. Canada, however, has no provision for granting temporary status for refugees and a large majority of Kosovars in this country chose to stay⁷—which should hardly come as a surprise considering the much better social services and economic prospects available to them here than in Kosovo.

In the circumstances, there is a strong case for creating temporary protection status for refugees fleeing from areas where the situation is evolving and may improve in the foreseeable future to the extent that they can safely return. Other countries have such provisions and there is no reason why Canada should not.

As for the proposed legislation, even if it were approved by Parliament without major changes, it would be unlikely to reduce substantially the very large number of individuals making refugee claims in Canada. Relatively few, in fact, reach our soil in mass arrivals such as we saw in the case of the *Sun Sea*; most come individually or in small numbers and usually by air.

In addition, some asylum seekers have no need to employ human smugglers to enter Canada. Actor Randy Quaid and his wife, for example, as American citizens were simply able to cross the border legally from the United States in order to be able to claim refugee status—which they said they required because they were in danger from Hollywood “star whackers” and had been persecuted by American authorities for the past twenty years.

Canada Should Concentrate on Being a Country of Resettlement—Not of First Asylum

This leads to the question of whether Canada simply makes it too easy to make a refugee claim on our territory. In this respect, it is useful to recall that when Canada began accepting refugees in the wake of World War II it did not see itself as a country of first asylum but rather as one that could make a contribution by resettling those who had sought refuge in other countries. Accordingly, we took in 186,000 displaced persons from Europe in the years following the

war as well as significant numbers after the Hungarian revolution in 1956 and the uprising in Czechoslovakia in 1968. We continued with this tradition in the case of Asians fleeing Uganda and Chileans in the early 1970s as well as with Indochinese boat people later in the decade.

The UN Refugee Convention Is Out of Date

We did not expect to become a significant country of first asylum since our geographic location made it unlikely that we would be the first available country of refuge for someone fleeing a regime that had been persecuting them. We nevertheless had doubts about whether the provisions of the 1951 Convention would provide suitable terms of reference for Canadian refugee policy and did not, in the event, accede to it until 1969—by which time Canada had become so firmly committed to multilateral solutions to international problems that we found it increasingly difficult not to sign on.

As events were to show, our reservations about acceding to the Convention turned out to be justified. Article 33 stipulated that contracting states could not engage in “*refoulement*,” i.e. expelling or returning refugees to territories where their life or freedom would be threatened on account of their race, religion, nationality, membership of a particular social group or political opinion. This article of the Convention was designed to protect individuals who were fleeing across borders from repressive regimes from being forced back to where they came from—individuals, in effect, whose only chance to reach freedom was to take the route they did. Since Canada had no common borders with countries that persecuted its citizens, it did not seem likely that this provision would come into play very often in our case.

It did so only occasionally as, for example, during the Cold War when the Aeroflot flight from Moscow to Havana stopped in Gander, Newfoundland, to refuel, and passengers from Communist countries sometimes took the opportunity to claim refugee status in Canada. The prospect of large numbers being able to claim asylum in Canada under this provision, however, seemed remote. Most international flights into Canada departed from democratic countries where asylum seekers could apply for refugee status and where they were expected to do so according to generally accepted international rules. To continue on to make a claim somewhere else is considered “asylum shopping” because it involves trying to get to the countries that offer the most generous benefits. Such action indicates that the individual is more concerned about getting to a place where they can enjoy a better life than they are about reaching safety since they chose not to make a claim in the first safe country they managed to reach.

Use of Human Smugglers by Asylum Seekers

In recent decades, nevertheless, asylum seekers have increasingly made use of the section of the Convention that makes it possible to claim refugee status on our territory and human smugglers have been active in facilitating their movement. According to the RCMP, between 1997 and 2002, smugglers assisted almost 12 per cent of the 14,792 improperly documented migrants who were intercepted in Canada or en route.⁸ This presumably referred to cases that had been clearly identified as involving human smugglers and the real percentage may be much higher. One RCMP officer as well as some immigration department officials reportedly estimated that as many as 90 per cent of refugee claimants accepted by Canada between 1983 and 1995 got here with the assistance of human smugglers.⁹

One reason why the use of smugglers has become so widespread is very likely the fact that migrants attempting to enter countries without the proper authorization have had to resort to professional help to get around the increasingly sophisticated control measures of governments. The imposition of visitor visas, introduction of documents that are difficult to counterfeit, and presence of control officers at airports have reduced the ability of amateurs to bypass controls and, thereby, increased the use of human smugglers with more professional skills and knowledge.

Canada’s popularity as a destination for asylum seekers is borne out by the number of claims made in this country compared to those made elsewhere. In recent years, for example, Canada has had by far the largest number of asylum claims among the G8 major industrialized nations on a per capita basis even though we are the most difficult to reach because of our geographic location.¹⁰

Our popularity is due to a combination of factors that include our high rates of acceptance, our readiness to consider claims from citizens of any country in the world, our generous package of benefits, and the prospect that, even if one’s claim is turned down, the appeals and reviews available make it possible to stay in Canada for years and even decades, with a very good chance of never being made to leave.

The Charter of Rights and the Singh Decision

The long process often involved in arriving at the final disposition of a claim has been complicated in particular by a decision of the Supreme Court in 1985 (known as the Singh decision) that allowed refugee claimants to receive the full benefit of Section 7 of the Canadian Charter of Rights and Freedoms. Section 7 states, “Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.”

This decision has played a major role in making it very difficult for our refugee determination system to deal expeditiously with the large volume of people who make refugee claims in Canada. A former deputy minister of immigration, John L. Manion, warned when the Charter was still in draft that Section 7 should apply only to Canadian citizens (or at least those with legal resident status in Canada) rather than to “everyone,” as otherwise it would grant rights to foreigners that would allow them to bypass or frustrate our immigration laws.¹¹

As it turned out, Manion’s advice was ignored and the use of the term “everyone” in this section of the Charter made possible the 1985 decision which, in his words, “destroyed any real immigration control, and made Canada the laughing stock of the world, and the destination of too many foot-loose criminals, terrorists and social parasites.” In terms of the number of applications, it is worth noting that in the six years prior to the Singh decision, 42,000 made refugee claims in Canada, while in the six years following the decision this number had ballooned to over 200,000, with close to three quarters of a million being made since 1985. While this matched to a considerable degree increases in the number of claims made in other Western countries, the Singh decision limited the scope of the Government’s response and made Canada a more attractive destination for asylum shoppers.

In a letter written in 1999 to the then minister of citizenship and immigration, Manion recommended that the Government use the “notwithstanding” clause of the Charter to address the problems created by the Singh decision in terms of extending Charter rights to anyone seeking to remain in Canada. In Manion’s judgment, as a sovereign country, Canada must be in a position to make summary decisions in cases of those who have no legal connection to this country, as virtually every other country in the world does.

Manion, however, was not sanguine about the likelihood of the Government invoking the “notwithstanding” clause for this purpose and, therefore, proposed at the very least that Canada formally cancel its accession to the UN Convention. In his view, Canada was very generous in the way it dealt with people fleeing from persecution in repressive countries and should continue with this tradition. By the same token, we should not be subject to international rules that were no longer relevant to current realities and should be free to develop our own policies for dealing with such situations as we saw fit.

Criticism of the Refugee Convention

Manion has not been alone in criticizing the Convention. In 2001, British Home Secretary Jack Straw called for the

redrafting of international refugee rules because “people traffickers” were effectively deciding who was coming to Britain and claiming refugee status. In 2000, Australian Immigration Minister Phillip Ruddock warned that the 1951 Convention was out of date and being manipulated by people who were not genuine refugees. A paper prepared by the Australian Parliamentary Library provides one of the most comprehensive critiques of the Convention, noting that is “anachronistic” and “developed in and for a different era.” It observes, “While Western countries’ asylum systems might have coped well enough until the end of the Cold War, they were not designed with today’s mass refugee outflows and migratory movements in mind.” Former British Prime Minister Tony Blair made similar observations in his memoirs published in September, 2009. In Blair’s view, the Convention, written in response to the horrors of World War II, had helped create a system that was completely unrealistic in today’s world and utterly incapable of dealing with the massive number of asylum claims now being made.¹²

It is clear that provisions of the 1951 Convention are ill-suited to the realities of today’s world. While the Convention drafters envisaged relatively small numbers of people fleeing across borders from countries that were persecuting them and were seeking sanctuary in the first safe country they could reach, we now are faced with having tens of thousands of people travelling great distances to reach the country that will give them the greatest benefits. In doing so, many if not most pass through or bypass other countries where they could have sought asylum. In a great many cases they do so with the aid of human smugglers.

Ideally, countries that accept refugees for permanent resettlement could together produce a new convention based on today’s realities. Reaching agreement on what should be included would almost certainly prove to be difficult, however, because of the legal frameworks for dealing with asylum seekers that have developed over the years in various countries as well as because of the influential domestic refugee advocacy lobbies that argue for ever more generous provisions for asylum seekers.

Canada Should Consider Withdrawing from the Refugee Convention

In the circumstances, it would be much more realistic for Canada to withdraw its accession to the UN Convention and create its own framework for dealing with asylum seekers. It could seek to do this in concert with other countries such as Australia that regard themselves primarily as countries of resettlement for refugees rather than of first asylum.

There is no question that were the Government to embark on such a course of action it would face strident opposition from a range of groups that have to date been able to play

a major role in determining our policy towards asylum refugee claimants. These include immigration lawyers who have built careers around representing clients who are asylum seekers as well as organizations such as the Canadian Council for Refugees and Amnesty International. All frequently remind us that we have no choice but to let virtually anyone who wishes to do so come to Canada and have their refugee claims heard because of our “international obligations” quite apart from the impact the Charter has had on the refugee determination system because of the Singh decision.

In addition to the problems created by the wording of the Charter that made possible the Singh decision and the outdated UN Convention, a particularly serious impediment to the creation of a workable and fair refugee determination system in Canada is our failure to make adequate use of safe third country¹³ provisions in determining who may make refugee claims in Canada.

The Need to Apply the Safe Third Country Principle More Robustly

The safe third country concept is based on the principle that, if someone flees their country of origin, they should seek sanctuary in the first safe country they are able to reach. If, however, they choose to move on to somewhere else to seek asylum, it indicates that their primary concern was not to reach safety but rather to be allowed to seek asylum and remain permanently in countries where there are generous benefits, high rates of acceptance, etc. In this regard they are considered to be “asylum shoppers.”

When the legislation creating the Immigration and Refugee Board was drafted in the late 1980s it was fully intended that that a list of safe third countries would be established in order that Canada not be inundated with asylum shoppers and so that the refugee determination system would be able to process both expeditiously and thoroughly a relatively limited number of claims. In the event, the refugee lobby was sufficiently influential that it was able to convince the then minister of immigration that no other country in the world but Canada was safe for asylum seekers and none should, therefore, be designated as safe third countries (James Bissett has described in some detail how this came about¹⁴).

Since these events took place, Canada has concluded a Safe Third Country Agreement (STCA) with the United States under which asylum seekers must seek protection in the first of the two countries where they have an opportunity to do so, rather than, as in the past, being able to go to the mutual border and apply for refugee status in the other country. While this has led to complaints from refugee activists who argue that the United States is far too parsimonious¹⁵

when it comes to granting asylum, significant numbers of refugee claimants are still able to enter Canada at the US border if they qualify under one of the exceptions to the agreement.

Very clearly a key element in our being able to keep access to the refugee determination system to a manageable level is we must make more extensive use of the safe third country principle as do other Western countries. It makes no sense for us to cater to asylum shoppers who have arrived here via Britain, France, or other democratic countries that have good human rights records. This does not mean that some of them may not have a good case for claiming refugee status or that they should be prevented from making claims but simply that they must return to the safe country they travelled through en route to Canada to make their claims.

The Immigration and Refugee Protection Act stipulates that one of the factors to be considered in designating a country as a safe third is whether it is party to an agreement with Canada for the purpose of sharing responsibility with respect to claims for refugee protection. Since IRPA only states that such an agreement will be a “consideration” rather than a mandatory requirement, we should be able to designate appropriate countries as safe thirds without having to seek their concurrence. Should it be determined that the wording of IRPA means that having an agreement with another state is mandatory before it can be designated as a safe third, the legislation should be amended to remove such a requirement. We should also review the exceptions to the STCA with the United States since some of these are of questionable merit and should be eliminated.

The Refugee Determination System Requires a Complete Overhaul

The foregoing proposals do not constitute a comprehensive list of the measures needed to correct a refugee system that has become highly dysfunctional over the years. In a paper published recently by the Frontier Centre for Public Policy, former Canadian ambassador and executive director of the Canadian Immigration Service, James Bissett, makes the point that half measures will not work and fundamental changes have to be put in place.¹⁶ The same message was conveyed in the Auditor General’s report in 1997 that detailed a wide range of problems with the system and cautioning against attempts at patchwork modifications.¹⁷ There has, in the event, been little improvement since the report was released.

One of the most important changes that must be made to the system is to put in place measures that will discourage individuals from making refugee claims in Canada if they have an opportunity to seek asylum in other safe countries or else apply from abroad to come here as refugees. We

would then once again be able to concentrate our efforts on resettling refugees from overseas. We do, after all, resettle more than 10,000 a year who apply from overseas and there are currently 42,000 waiting patiently in line to come to Canada through this channel.¹⁸ Why, therefore, should we give preference to those who have the resources to pay human smugglers in order to jump this queue? It can hardly be argued that coming to Canada constitutes their only chance to escape persecution when most of them could have sought asylum in countries much easier to reach.

Our System Is Extremely Costly and Unfair to Refugees Overseas

The current system is inequitable to those in need of protection in other ways as well. The cost to Canadians taxpayers of failed claimants alone is estimated to be in excess of \$1 billion a year—or \$50,000 each.¹⁹ At the same time, however, Canada contributed only \$45 million in 2009 to the UNHCR for the protection and assistance of the ten million refugees under its care overseas—which amounts to about \$4 each. Surely our priorities are skewed when this is allowed to happen.

A further possibility that should be considered to bring more order to the system is the imposition of an annual ceiling on how many refugees we accept each year. Originally, we operated on an ad hoc basis; we accepted people as a particular crisis developed overseas—as was the case with the Hungarians, the Czechs, and subsequent refugee movements. In order, presumably, to accommodate the planning of non-governmental organizations assisting in the resettlement of refugees, we established annual targets.

We Need to Establish an Annual Limit on the Number of Refugees Accepted in Canada

We now, however, also have large flows of self-selected refugee claimants arriving in Canada (a situation we did not anticipate in earlier days) in addition to both annual targets for resettlement and, on occasion, ad hoc responses to particular situations overseas—such as our agreement to accept 5,000 refugees from Bhutan in 2007. In the circumstances, it would make sense to establish annual limits for the combined totals entering through all of these channels. Canada is, after all, one of the most generous countries in the world when it comes to the acceptance of refugees from overseas and, in order to maintain public confidence in the system, we should deal with overall numbers in a more orderly fashion.

Australia, by way of example, establishes the number of refugees it will take each year and this includes those resettled from overseas as well as those accepted who have made claims onshore.²⁰ The Australian total in recent years has

ranged between 13,000 and 14,000. If larger numbers than expected come in through one channel, they are reduced in other areas to keep the overall intake within the established limits.

In Canada's case, while there is widespread public support for taking in a reasonable number of genuine refugees, this would be better served if the numbers of successful refugee claimants who applied in Canada were combined with those resettled from abroad to produce an annual total.

Conclusions

Changing the way in which Canada deals with people who arrive on our territory and make refugee claims is both complicated and controversial and there is clearly a lack of public confidence in the present system. It is open to widespread abuse, unfair to genuine refugees waiting to come to Canada, extremely costly, and constrained by domestic and international legal obligations that are ill-fitted to current realities. It is also an area of concern in relation to protecting and preserving our sovereignty since we currently have limited control over who enters and remains on our territory if they claim refugee status.

Correcting the problems related to the refugee determination system poses an immense challenge to any government given the array of individuals and organizations that oppose virtually every attempt to reform it that involves restricting access or reducing opportunities for failed claimants to prolong their stay in Canada. As noted above, some of the principal impediments to making fundamental improvements to the system include the 1985 Singh decision based on Section 7 of the Charter of Rights and Freedoms, the 1951 United Nations Convention relating to the Status of Refugees, and our failure to establish an adequate list of safe third countries.

While there remains strong support in Canada for accepting genuine refugees, it is equally clear that most Canadian believe that the current system is not working properly and needs a major overhaul.²¹ The numbers of people attempting to enter Canada by any means available is only likely to increase in the future. The International Organization for Migration (IOM) estimates that in 2010 there were 214 million international migrants and that at the current rate of growth this could reach 405 million by 2050.²²

While many of these migrants will be crossing borders legally, in its report the IOM expresses concern over the emerging patterns of irregular migration involving *inter alia* asylum seekers. It states that:

Current and future challenges of irregular migration result not only from increasing numbers. Irregular migration is also

becoming more complex, not just because of the variety of routes into irregularity, but also because of the difficulties in distinguishing the particular needs and rights of various types of persons forming part of irregular migration flows—for example, asylum-seekers or unaccompanied minors ... Fundamentally, irregular migration should be curbed because it undermines the rule of law and exerts a heavy human toll on the migrants themselves. When destination countries tolerate high levels of irregular migration, they undermine their own legal immigration systems. There is little credibility for immigration law if migrants and migrant smugglers and human traffickers are allowed to circumvent the policies in place to determine who enters, for what purposes, and for what period of time. Irregular migration also undermines public support for immigration. Often, the public reacts negatively to migration because it feels that the government no longer has control over who is to be admitted. High levels of irregular migration can thus create a backlash that extends to legal immigration as well.²³

In the circumstances, Canada should put its house in order sooner rather than later and take steps to ensure that, while continuing to accept a reasonable number of genuine refugees for resettlement, these should come essentially from among those who have been selected abroad and few from the ranks of those who make refugee claims in Canada.

Political parties that fail to recognize this state of affairs can eventually expect to pay a price in terms of support at the ballot box.

NOTES

1. UNHCR, *Statistical Yearbook* 2008, Table 12.
2. Judy Sgro, who was one of the Liberal Government immigration ministers who refused to implement the RAD, was quoted in July 2004 as stating that there were already too many appeals available to failed refugee claimants that enabled them to delay their departure from Canada; Jim Bronskill, "Refugee Appeals Too Slow, Too Costly, Sgro Says," *Globe and Mail* (Toronto), July 27, 2004.
3. James Bissett, "Abusing Canada's Generosity and Ignoring Genuine Refugees," Frontier Centre for Public Policy, October 2010, 44, accessed November 15, 2010, http://www.fcpp.org/files/1/PS96_Refugees_NV02F2.pdf.
4. Brian Lilley, "Send Tamil Migrants Home: Poll," *Toronto Sun*, August 20, 2010, accessed November 15, 2010, <http://www.torontosun.com/news/canada/2010/08/19/15080536.html>.
5. Angus Reid Canadian Public Opinion Poll, "More Canadians Are Questioning the Benefits of Immigration," September 9, 2010, accessed November 15, 2010, http://www.visioncritical.com/wp-content/uploads/2010/09/2010.09.09_Immigration_CAN.pdf.
6. A *Maclean's* magazine article reported in 1996 that "According to records from the consular section of the Sri Lankan High Commission, more than 8,600 Sri Lankans with refugee claims pending in Canada applied for travel documents to visit Canada in 1992. The following year, the figure was 5,865"; see Paul Kaihla, "A Divided Community," *Maclean's*, April 29, 1996, 23. More recently, a government document obtained through access to information showed that over 70 per cent of successful Tamil refugee claimants surveyed returned to Sri Lanka for vacations, business, or to sponsor family members; see Brian Lilley, "Refugees Go Home for Holidays," *Toronto Sun*, August 22, 2010, accessed November 16, 2010, http://www.torontosun.com/news/canada/2010/08/21/15098916.html?comments_page=14&id=15098916.
7. OECD, "Trends in International Migration 2001," 23, Box 1.2., accessed November 16, 2010, http://books.google.ca/books?id=fmzet910itsC&pg=PA23&lpg=PA23&dq=kosovar+refugees+in+Germany&source=bl&ots=BZA4aERJE9&sig=PeZWVva0HYepUaBAxQ2B4H2x9t9A&hl=en&ei=fwLOTNH4C4iisAOL37yWDg&sa=X&oi=book_result&ct=result&resnum=10&ved=0CDsQ6AEwCQ#v=onepage&q=kosovar%20refugees%20in%20Germany&f=false.
8. RCMP, "The W-5 of Human Smuggling to Canada," October 2006, accessed November 16, 2010, <http://www.rcmp-grc.gc.ca/imm-passp/hum-smuggling-clandestin-eng.pdf>.
9. Paul Kaihla, "The People Smugglers," 18.
10. OECD, "2010 International Migration Outlook Statistical Annex, A.1.3 Inflow of Asylum Seekers into Selected OECD Countries," accessed November 16, 2010, http://www.oecd.org/document/57/0,3343,en_2649_39023663_45634233_1_1_1_1,00.html.
11. John L. Manion, unpublished letter to Minister of Citizenship and Immigration Elinor Caplan, August 11, 1999. Manion also spoke about the impact of the Singh decision on the refugee determination system when he testified before Standing Senate Committee on Social Affairs, Science and Technology on October 3, 2002.
12. Tony Blair, *A Journey: My Political Life* (New York: Alfred A. Knopf, 2010), 204–05.
13. The term "safe third country" refers to a country that an asylum seeker has passed through and where they could have made a claim but chose instead to continue their journey in order to seek asylum somewhere else.
14. Bissett, "Abusing Canada's Generosity," 20, 21.
15. Refugee activists argue that US asylum provisions are less generous than Canadian on the basis that their acceptance rates are lower and for various other reasons. Prior to the inception of the STCA, however, it was more common for Canadian activists to claim that our provisions were tougher than those of the United States in an effort to rebut those who claimed that Canada was too soft on refugee claimants. Because the two systems differ in many respects, it is not difficult to find points that support both arguments if one chooses to be selective.

16. Bissett, "Abusing Canada's Generosity," 41 and 43. In addition to Bissett's paper, comprehensive critiques of the refugee determination system have been written by Charles M. Campbell, *Betrayal and Deceit: The Politics of Canadian Immigration* (West Vancouver, BC: Jasmine Books, 2000); Daniel Stoffman, *Who Gets In? What's Wrong with Canada's Immigration Program and How to Fix It* (Toronto: Macfarlane, Walter & Ross, 2002); Stephen Gallagher, *Canada's Dysfunctional Refugee System*, The Fraser Institute, 2003, accessed December 10, 2010, <http://www.fraserinstitute.org/research-news/display.aspx?id=12865>; and Martin Collacott, *Canada's Inadequate Response to Terrorism: The Need for Policy Reform*, The Fraser Institute, 2006, accessed December 10, 2010, <http://www.fraserinstitute.org/research-news/display.aspx?id=12868>.
17. Auditor General of Canada, "Citizenship and Immigration Canada and Immigration and Refugee Board: The Processing of Refugee Claims," Section 25.146, 1997, accessed November 25, 2010, http://www.oag-bvg.gc.ca/internet/English/parl_oag_199712_25_e_8111.html.
18. Public Safety Canada, "Canada's Generous Program for Refugee Resettlement Is Undermined by Human Smugglers Who Abuse Canada's Immigration System" October 21, 2010, accessed November 25, 2010, <http://www.publicsafety.gc.ca/media/nr/2010/nr20101021-6-eng.aspx>.
19. Jason Kenney, "Speaking Notes: Balanced Refugee Reform," March 30, 2010, accessed December 8, 2010, <http://www.cic.gc.ca/English/department/media/speeches/2010/2010-03-30.asp#tphpidtp>.
20. Department of Immigration and Citizenship, "Fact Sheet 60—Australia's Refugee and Humanitarian Program," accessed November 25, 2010, <http://www.immi.gov.au/media/fact-sheets/60refugee.htm>.
21. A survey carried out by Harris/Decima found that 84 per cent of Canadians agree that the Government should take steps to reform the refugee determination system; see Citizenship and Immigration Canada, *Refugee Omnibus Report September 2009 Executive Summary*, 6.
22. International Organization for Migration, "World Migration Report 2010," November 26, 2010, xix, accessed December 10, 2010, http://publications.iom.int/bookstore/free/WMR_2010_ENGLISH.pdf.
23. *Ibid.*, 30.

Martin Collacott served as ambassador of Canada to countries in Asia and the Middle East. He has written and spoken extensively on issues related to the refugee determination system and is currently a senior fellow at the Fraser Institute and spokesperson for the Centre for Immigration Policy Reform.

Wonderous Strange: A Reply to the Myth of the Evil Refugee

RONALD POULTON

The article entitled “Reforming the Canadian Refugee Determination System” advocates for a return to policy-based refugee decision making which cloaks political whims in the robes of immigration officials. In proposing an increase in Canada’s resettlement of persons found to be refugees abroad by immigration officers, a restriction on inland claims through quotas, enhanced safe third country designations, and a withdrawal by Canada from the United Nations accession to the 1951 Refugee Convention, Collacott appears to advocate for the creation of a Canadian fortress state, immune from the tedious task of allowing the free flow of asylum seekers through our borders and a determination of asylum claims in an open, fair, and impartial manner. At the heart of this article is an apparent belief that the fundamental right to life, liberty, and security of the person, as entrenched in the Charter of Rights and Freedoms, is the due only of Canadians. Foreign nationals have no such rights, at least on Canadian soil, and can be dealt with in any fashion deemed politically expedient by the ruling government.

The historical record of the conduct of the government of Canada in its treatment of foreign nationals has been anything but admirable. The case of Manickavasagam Suresh springs to mind. Without the intervention of the Ontario Court and then the Supreme Court of Canada in *Suresh v Minister of Citizenship and Immigration*,¹ Manickavasagam Suresh, my client, would have been detained in Sri Lanka, tortured, and in all likelihood summarily executed. The policy of the government of Canada in that case, as argued by lawyers for the Department of Justice, was that torture was an acceptable consequence for a person such as Suresh, found to have engaged in raising funds for a terrorist organization while in Canada. Canadian government officials at first attempted to deport Suresh and avoid court intervention by obtaining so called assurances from their Sri Lankan government counterparts that Suresh would not be tortured upon return to their country. Our government believed that a promise from a regime which routinely tortured and murdered its enemies would be enough. When the Ontario Court

in reviewing the evidence of the Sri Lankan government’s conduct quickly dismissed these assurances as implausible, the Canadian government then argued that torture would somehow be an acceptable consequence for someone like Suresh. In invoking section 7 of the Charter, the Supreme Court of Canada decided that a risk of torture to this foreign national was not justifiable and stopped Suresh’s deportation. In doing so, they relied on a previous decision of the Court Collacott seeks to have somehow erased from history, the Singh decision of the Supreme Court. Suresh is alive today because Madam Justice Wilson and three of her fellow judges in *Singh*² approved the principle that protections of life, liberty, and security of the person in section 7 extended to citizens and non-citizens alike.

I fail to accept that most Canadians would approve of a system which allows our government to deliver a victim to a foreign power to suffer the most grotesque treatments imaginable, merely because the person concerned was not born or nationalized in Canada. The following is a recitation of the practices of the Sri Lankan government into whose hands our government sought to send Suresh:

Methods of torture included electric shock, beatings (especially on the soles of the feet), suspension by the wrists or feet in contorted positions, burning, and near drownings. In other cases, victims are forced to remain in unnatural positions for extended periods, or have bags laced with insecticide, chili powder or gasoline placed over their heads. Detainees have reported broken bones and other serious injuries as a result of their mistreatment. There were no reports of rape in detention.³

It bears mentioning that prior to the Second World War, Canadian officials had conducted themselves deplorably in their treatment of Jewish refugees seeking asylum in Canada from Nazi Germany. During the twelve-year period of Nazi rule in Germany, Canada admitted fewer than five thousand Jewish refugees, one of the worst records of any democracies. In 1945, asked how many Jews Canada would

admit after the war, a Canadian official answered with the now famous: “None is too many.”⁴

Government policy has certainly shifted radically since the bad old days referred to, but remaining obligated to the Refugee Convention and to the application of Charter rights to foreign nationals ensures that those seeking protection from persecution will have a fair opportunity for asylum in Canada.

Such an opportunity is one which does not base decision making on political expediency or biased and misunderstood factors, but considers a claim to asylum on merit alone: legal criteria, evidence, and on a case-by-case basis. The writer points to “sharp rises” in refugee claims by nationals of the Czech Republic and Mexico, not normally considered as refugee producing countries, as precipitating the recent proposed amendments to the Immigration and Refugee Protection Act. He says that the case made by claimants from these countries cited widespread discrimination. He then says:

While both groups of claimants had reason to believe they *would be better off* in Canada, the government did not consider that the reasons they advanced in support of their applications for protection constituted convincing cases of persecution ... [emphasis added]

In support of his argument that Canada is out of line with other countries, he cites a UNHCR statistic indicating that no other nation granted refugee status to a Roma from the Czech Republic in 2008 and only the US and Canada did so for Mexicans.

In 2008–2009, there were fifty-one cases decided by the Refugee Protection Division (RPD) in Canada on asylum claims from the Czech Republic. The RPD, an independent administrative decision making tribunal, agreed in over 58 per cent of the cases,⁵ that the person claiming persecution from the Czech Republic was indeed at risk. Contrary to Collacott’s statement that the Roma faced only discrimination in the Czech Republic, the United States Department of State 2010 Human Rights Reports for the Czech Republic cited the following:

Societal prejudice against the country’s Romani population occasionally manifested itself in violence. Members and sympathizers of neo-Nazi organizations were the most frequent perpetrators of acts of interethnic violence, particularly against Roma. Ultrationalists were also active. During the year neo-Nazi and skinhead rallies or marches took place in several cities. Although the organizations operated separately, both the Workers Party and the National Party periodically announced they would be

“patrolling” Romani neighborhoods or gatherings to ensure that no laws were being broken.

On March 14, a Molotov cocktail was thrown into a bedroom of a Romani home in the settlement of Bedriska. A 14-year-old girl was asleep in the room at the time. The cocktail failed to explode upon impact, resulting in no injuries and little damage to the home. Local police arrested a neighbor and her minor son on charges of attempted murder. Although police determined that the attack was not racially motivated, activists said it could not be ruled out. On December 10, the regional court in Ostrava sentenced the boy to a three-year suspended sentence for attempted reckless endangerment and his mother to an 18-month suspended sentence for not stopping her son from throwing the cocktail.

On May 12, the regional court in Ostrava opened the trial against Jaromir Lukes, David Vaculik, Ivo Mueller, and Vaclav Cojocar, who were accused of throwing Molotov cocktails into the home of a Romani family in the town of Vitkov in April 2009. Three persons, including a two-year-old girl who was treated for second- and third-degree burns over 80 percent of her body, were injured in the resulting fire.⁶

It is more than discrimination driving the Czech Roma from their homeland. This misunderstanding, or misstatement, of the forces behind some asylum claims drives knee-jerk reactions to Canada’s refugee system. The fact that no other nation accepts Czech Roma as refugees is evidence of inadequate processes and a floodgates hysteria. The fact that Canada has a system which can cut through the fear of irrational hysteria and grant protection to the Roma of the Czech Republic is a credit to our system, not reason for its rebuke. Most Canadians would agree, I believe, that a two-year-old with 80 per cent burns inflicted because of her ethnic group warrants international intervention, and protection, if possible.

The Mexican asylum claimants were accepted as refugees by the RPD in over 11 per cent of cases.⁷ Contrary to what Collacott puts forth, cases are not usually about fleeing violence from drug cartels. Mexico appears to suffer from rampant government corruption, deep-seated homophobia, and a complete failure to take effective action against domestic abuse. In a recent positive decision of the RPD, a Mexican national sought refugee status in Canada because he had become aware of illicit actions by Mexican government officials and as a consequence was kidnapped and beaten, he received death threats, and his truck was burned. He was seriously injured and was treated in hospital. His attackers turned out to be judicial police officers. The RPD decided that the claimant was a Convention refugee given who his

attackers were, their influence over the entire country, and the claimant's particular circumstances.

It is not disputed that there are refugee claims made without merit. Throughout our entire legal system, courts decide daily on non-meritorious claims in criminal cases, civil matters, and all other areas of law. It is a function of the legal process that some cases brought forward will lose. Guilty criminal suspects may plead not guilty in court and run costly trials. No one calls then for a reform to the criminal law system and a restriction on the right of an accused to have his day in court. The courts may have their faults, but they are judicial processes, not political ones. The difference is significant.

The vetting of who is and who is not a genuine refugee must be left to an impartial tribunal, not the political process of determining a safe third country, as Collacott contends. There are meritorious refugee claims from the Czech Republic and Mexico. In labelling all persons from these countries with the same simplistic and inaccurate assumptive brush, and in denying them access to our refugee determination system, we risk sending a Roma child back to a "safe third country" in Europe, for example, to have her claim rejected so that she can be returned to the Czech Republic. Fortress Europe did not accept any Czech Roma as refugees. The democratic nature of the "safe third country" may not necessarily dictate a fair refugee process.

A further argument arises against the "robust" use of the "safe third country" principle. The use of the "safe third country" avenue to return refugee claimants who seek Canada as their country of destination has recently been held as a violation of international human rights law. In a decision by the Inter-American Commission (IAC) on Human Rights,⁸ the OAS rights body upheld a complaint by three refugee claimants returned to the United States by Canada in 2003. As feared, once deported from Canada, they were immediately imprisoned in an ordinary jail facility in the US and then deported to their countries of origin. One of the three men, an Albanian national, later managed to return to Canada directly from his home country. He was then permitted to make a refugee claim and he was found to have a well-founded fear of persecution in Albania by the Canadian RPD. The US determination system in the "safe third country" of the US had failed him.

The IAC ruled that before removing a refugee claimant to a third country, Canada must conduct an individualized assessment of a refugee claimant's case. The consequence of Collacott's proposal for a more robust safe third country provision in our current law is that Canada would act in violation of international human rights law and be subject to protracted litigation and international criticism.

In exchange for the gutting of Charter rights to foreign nationals allowing for the removal to torture, the denial of an oral hearing for many refugee claimants, barriers created to protection by forced return to unsafe safe third countries, and arbitrary quotas, Collacott offers us the utopia of enhanced resettlement of refugees through overseas selection. Overseas selection. To the uninitiated this process entails the determination of whether a claimant is at risk of persecution by a Canadian visa officer sitting in his or her office in an embassy or High Commission in a country other than Canada. The visa officer is unlikely to be a lawyer or have any meaningful legal training. The claimant will usually be unrepresented and will have to gain access to the Embassy to see the visa officer. If in the country of the claimant's nationality, this means risking the journey through the security of locally recruited security guards and other first-line administrative staff, all from the host country, to voice the plea, "Protect me from my own country." This plea must be uttered along the perimeter of the Canadian Embassy in order to get an appointment to see a visa officer. It must be uttered to these local staff members who may or may not exercise discretion in repeating what they have heard. It is a risky process, fraught with the peril of detection. Imagine a political activist opposed to the Iranian regime trying to enter the Canadian embassy in Tehran to say the words, "Help me, I am persecuted by this regime." Even if he does make it inside, the public nature of his plea renders his claim for protection moot. His family remains outside, and vulnerable.

The other possibility of resettlement may be engaged through a third country, a country usually adjacent to the country of nationality and persecution. In this scenario, the refugee claimant has escaped their country of persecution and seeks shelter in a host country by approaching the Canadian Embassy there. The reality of such a process is replete with problems and has given rise to significant criticism. In a media release issued in March 2010 by the Canadian Council of Refugees (CCR)⁹ on refugee decision making by Canadian visa officers in Cairo, they state that these officers are inadequately trained, decisions are rarely reviewed by the courts or monitored internally, and there are few witnesses to the interview, which is not recorded. The system thus lacks accountability. Recent Federal Court proceedings have been commenced concerning the refusal of seventeen cases of Eritrean refugee applicants by one visa officer. It is alleged that she lacked the proper training and understanding of Eritrea to render an adequate decision.¹⁰

While waiting in Cairo, the refugee claimants do not have access to adequate medical treatment, although fourteen said they had been tortured. All seventeen have reported suffering verbal and physical harassment in the streets of

Cairo due to their skin colour. Some of the women have reported sexual harassment.

Canada's overseas refugee resettlement program is hardly an open, fair, and balanced one. It is also conducted in environments which are far from humane and may increase a claimant's risk. This is the program which Collacott argues should be given wider, and perhaps exclusive, use in bringing in refugees to Canada.

Collacott's proposals for change are misconceived, ill-advised, and dangerous to refugee claimants. It is not difficult to understand why he has it so wrong, as a significant source of his information seems to emanate from a so-called immigration expert, James Bissett, a former Canadian ambassador. Mr. Bissett and I shared an open forum discussion on security certificates in the context of a report on the abuse of Sri Lankan Tamils by the LTTE in Toronto. His position then was that such certificates, issued in a secret process and reviewed in secrecy, away from the prying eyes of a defendant and/or his counsel, was more than fair and correct. About twelve months after his defense of this secret process, the Supreme Court of Canada, in a 9 to 0 decision, disagreed with Mr. Bissett and struck down the secret nature of the security process as being fundamentally unfair.¹¹

In any event, a reflection on previous comments made by James Bissett may add further light. Here is what he had to say in 2005:

Canada's sizeable Muslim population is rapidly growing. The numbers doubled from a quarter of a million in 1990 to over half a million ten years later. Muslims now outnumber Presbyterians, Pentecostals, Mormons, and Jews and are *gaining* on the Lutherans. By 2017, the Muslim population is expected to double over 1.25 million.

As with other migrant groups, Muslims tend to reside in urban centers, and this *concentration of numbers gives them enhanced political power*. Muslims, Sikhs, and Tamils are strong supporters of the current liberal government. *In any democracy, it is always*

difficult to get party politicians to act in the national interest when, by doing so, they alienate special interests who have the power to turn elections. Canada is no exception. [emphasis added]¹²

Interesting. Perhaps it is keeping out of Canada the single-minded Muslims, Sikhs, and Tamils which is the agenda for Mr. Bissett. His expertise in immigration must be judged in the context of such perverse statements. The position advocated by Collacott is built on such expertise. I need say no more.

NOTES

1. Suresh v Canada [2002] SCJ no. 3.
2. Singh v Canada [1985] SCJ no. 11.
3. US Department of State, Human Rights Report, 1999, Sri Lanka.
4. Canadian Council for Refugees.
5. "2009 Refugee Claim Data & IRB Member Grant Rates" (29 March 2010), online: <http://www.ccrweb.ca/documents/rehaagdatamarch10.htm>.
6. US Department of State, Human Rights Report, 2010, on the Czech Republic
7. Supra note 5.
8. John Doe et al. v Canada (March 2011) Case 12. 586. Editor's note: the Inter-American Commission on Human Rights does not have the authority to render binding decisions in international law.
9. CCR, April 2011.
10. Ghirmatsion v MCI, IMM-6000-09 (et al.).
11. Charkaoui v Canada [2007] SCJ No. 11.
12. James Bissett, "Learning from Canada's Mistakes: Terror along the Border," *Chronicles Magazine*, October 2005.

*Ronald Poulton is a leading immigration lawyer in Toronto and author of the book *Pale Blue Hope that depicts his work in UN peacekeeping operations in Cambodia in 1992 and in Tajikistan in 1999.**")

Collacott Response to Poulton Critique

MARTIN COLLACOTT

The critic of my paper, Ronald Poulton, makes clear from the outset his commitment to a refugee determination system that leaves the door as open as possible to the free flow of asylum seekers through our borders. Canada has arguably one of the most generous refugee determination systems in the world in terms of the percentage of successful claimants and the number of asylum seekers we accept, as well as the number of refugees we resettle from abroad. In the circumstances, Poulton's claim that our treatment of foreign nationals is "anything but admirable" obviously misses the mark by a wide margin and is symptomatic of the oft-repeated claims by refugee advocates and particularly lawyers that we are too harsh on asylum seekers as they try to get sympathy for their clients.

As an example of such harsh treatment Poulton cites the case of his client, Manickavasagam Suresh, who was a fundraiser in Canada for the Tamil Tiger terrorist group. Poulton says that Suresh would have been sent back by the Canadian authorities to his native Sri Lanka where he would have been detained, tortured, and in all likelihood summarily executed had his removal order not been stayed by the courts. The facts regarding other Tamil cases, however, suggest otherwise. In January 2006, the Immigration and Refugee Board upheld an order to deport Sri Lankan Jeyaseelam Thuraisingam, a Tamil Tiger supporter and leader of a street gang in Toronto. In response to his lawyer's claim that he would be mistreated if sent back to Sri Lanka, the IRB noted that more than one hundred Sri Lankans had been sent back to their homeland and none had been mistreated as their lawyers claimed they would be.¹

Yet another area in which the critic provides an example of where he says our system is too harsh is the difficulty we place in the way of Roma from the Czech Republic trying to get to Canada to make refugee claims. In response to my point that no other member state would even consider a claim from a national of the Czech Republic—whether Roma or not—given that that state is a democracy and has a good human rights record and that no other country on earth but Canada grants refugee status to Czech nationals, the best Poulton can manage is to suggest that it is a credit

to Canada that we alone have a system that can "cut through the fear of irrational hysteria" and grant refugee status to Roma from the Czech Republic.

In response to this I would refer Poulton to the words of David Anderson, who served on the IRB before returning to politics and being appointed to the Cabinet of Canadian Prime Minister Jean Chrétien. When asked why Canada had such high rates of acceptance for asylum seekers compared to other countries, Anderson observed, "Clearly something is wrong ... either everyone else in the world is wrong or we're out of line and I think it's us. There's too much pressure on our board members to deal with cases, to let people in—the underlying premise is that if someone lied well enough to get here then they'll do well."²

In a final effort to throw cold water on the points made in my paper, the critic quotes from statements made in 2005 by former Canadian ambassador and former executive director of the Canadian Immigration Service, James Bissett, relating to the increasing political influence of certain religious and ethnic groups as their numbers grow through immigration. Although Bissett's statements have nothing to do with the refugee system, the critic takes it on himself to imply that such utterances are not only racist in nature but reflect the attitude of people such as myself who dare to raise questions about the effectiveness of our system.

What Poulton is going to have to come to terms with is the realization that the Canadian public is no longer being taken in by the ongoing claims of the refugee lobby that Canada is less than generous when it comes to acceptance of refugees. While the Canadian public continues to support a policy of taking in a reasonable number of genuine refugees, it is increasingly aware of the extent to which the system is being abused by large numbers of individuals who simply want a better life like hundreds of millions of others in less fortunate lands and have the wherewithal to jump the queue and land in Canada as asylum seekers. It is unfortunate that refugee advocates such as Poulton have not to date taken a more balanced approach to the issues and identified areas where the system is not working properly and needs to be improved if widespread abuse is to be avoided. Instead, they

have helped to make it so dysfunctional that major surgery is now required and the winds of change are no longer blowing to the advantage of the refugee lobby.

2. Moira Farrow, "Processing System Branded as 'Corrupt': Refugees: Fake Applicants Accused of Abusing System," *Vancouver Sun* (March 17, 1992).

NOTES

1. Stewart Bell, "Gang Leader Deported to Sri Lanka," *National Post* (January 30, 2006).