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# Accepting Refugees: International Law in a Canadian Context in the Twentieth Century

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# ACCEPTING REFUGEES: INTERNATIONAL LAW IN A CANADIAN CONTEXT IN THE TWENTIETH CENTURY

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## Editor's Note

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# TABLE OF CONTENTS

Part I.....	2
Introduction.....	2
Part II.....	6
Part III.....	11
I Refugee Policy After World War II – 1945 to 1965 .....	11
1945-1947 .....	11
1948-1955 .....	13
Part IV.....	18
1956-1957.....	18
1958 – 1965.....	20
1966-1968.....	21
1968-1975.....	23
Part V.....	26
1976 - 1982.....	26
Reflections and Adumbration.....	33

# PART 1

## INTRODUCTION

The dominant discourse in contemporary refugee scholarship re policy and law is based on refugee rights. However, by far, the vast majority of refugees in the world are humanitarian refugees; they flee, not because they are targeted for persecution, but because of war or a natural disaster.<sup>1</sup> Even when the instigation is persecution, they are often accepted for admission as humanitarian rather than Convention refugees.<sup>2</sup> Further, the Convention refugee category offers rights only to those victimized by very specific kinds of persecution. Yet, Convention refugees constitute most of those admitted to Canada as refugees.<sup>3</sup>

Why does the Convention and the issue of refugee rights dominate the intellectual and conceptual landscape? Why is there not far greater attention applied to those who flee because of need? Why, in fact, are rights granted only to those who flee persecution and not to those who flee because of need? This is especially important because a number of states, including Canada, have, at times, been more willing to grant entry to humanitarian refugees rather than respecting the right of Convention refugee claimants to claim refugee status once on Canadian shores. The intake of Indochinese refugees is an example.

In the case of *rights refugees*, there is a direct clash with the concept of sovereignty. In the case of *needs refugees*, there is no conceptual conflict – though some would try to make one.

“When a country is no longer able to say who can, and who cannot, come in & out,  
especially for reasons of safety & security — big trouble!”

Donald Trump tweet, 4 February 2017

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<sup>1</sup> Of almost 64 million refugees and persons of concern to UNHCR in 2015, only 3,219,941 were asylum seekers and many if not most did not qualify as Convention refugees. In contrast, there were over 16 million humanitarian refugees, though IDPs were more than double that number. (<http://popstats.unhcr.org/en/overview>)

<sup>2</sup> For example, government assisted refugees (GARs) and Blended Visa Office-referred Refugees (BVORs) are Convention refugees referred to Canada for resettlement by UNHCR, while privately sponsored refugees (PSRs) may be Convention refugees or Country of Asylum refugees, that is, refugees seriously and personally affected by civil war or armed conflict.

<sup>3</sup> Thus, of 40,081 Syrian refugees who arrived since 4 November 2015 to the end of 2016, GAR and BVORs made up over 25,000 of the total while under 15,000 were PSRs. Some of these were Convention refugees referred to Canada and private sponsors by UNHCR. (<http://www.cic.gc.ca/english/refugees/welcome/milestones.asp>) In addition, within Canada over 16,000 individuals claimed Convention refugee status in 2015. If even only 40% of those end up being accepted as Convention refugees, and even if all PSRs were non-Convention refugees, Convention refugees would outnumber humanitarian refugees admitted to Canada by approximately a 2:1 ratio.

This paper will discuss the interweaving of policy in Canada applied to *rights refugees* and humanitarian refugees since WWII, not to answer the above questions, but to provide an empirical backdrop for wrestling with them.

The timing is propitious, but only with respect to academics and practitioners concerned with refugees, not with refugees themselves. They are doubly victimized, first by the warriors and ideologues that forced them to flee their homelands if they wanted to survive, and then, a second time, when persons in authority like the malignant narcissist and serial liar, Donald Trump, placed an indefinite ban<sup>4</sup> on Syrian refugees coming to the United States, and then a “temporary” 90-day ban on refugees coming to the United States from six other countries – Iraq, Iran,<sup>5</sup> Libya, Somalia, Sudan and Yemen in his notorious executive order issued 27 January 2017, “Protecting the Nation from Foreign Terrorist Entry into the United States.”

Visas will not be issued to anyone from those countries. Even those traveling with valid visas may be and were turned back or detained. Many others, including, initially, those with Green Cards, were not allowed to take their seats on airplanes on which they had booked travel.

It just happens that these seven dangerous “Muslim” countries are all ones which the U.S. has waged war against and even actually bombed, but does not include Saudi Arabia, the source of the majority of the 9/11 terrorists and a country in which Donald Trump has financial interests, nor Pakistan, the home country of one of the very few Islamicist terrorists who committed heinous crimes within the United States in the last eight years.<sup>6</sup> It also just happens that not one of those seven countries nurtured a single terrorist who committed a terrorist act on American soil.

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<sup>4</sup> Though Trump and members of his administration repeatedly used the word “ban,” they subsequently blamed the media for calling what they were doing a ban. It was only a “pause,” they asserted. How can a pause be “indefinite”?

<sup>5</sup> *Shargh*, the Reformist Iranian newspaper on 26 January 2017 wrote, “Donald Trump ... has taken a hold of a pen, and is fulfilling every one of his electoral promises, and is scaring thousands of people across the world by every decision he is making. The United States of America, the country which is founded on immigration and racial diversity, is now witnessing one of its most anti-immigrant presidents of its history in the White House.” The prominent Iranian actress Taraneh Alidoosti, who stars in Asghar Farhadi’s film, *The Salesman*, decided to boycott the 2017 Academy Awards ceremony in protest.” <http://www.al-monitor.com/pulse/originals/2017/01/trump-executive-order-iran-iranian-visa-ban-alidoosti.html#ixzz4WzPYCYRt>

<sup>6</sup> Not one of the perpetrators of terror attacks on U.S. soil in the twenty-first century came from any one of these countries. Most perpetrators of terrorism are home-grown. Though three of the major terrorist attacks during the Obama regime were perpetrated ostensibly by Muslim terrorists, all three were cases of psychological disturbance. Only two of the sixteen major terrorist cases were clearly ideological, based on Islamism. In the San Bernardino terrorist attack in which 14 were killed, one perpetrator was born in the U.S. of Pakistani descent while the other was a legal resident of the U.S. of Pakistani descent. Any reasonably objective study would conclude that there is virtually no linkage between domestic terrorism and refugees. Trump’s whole policy was based on a lie, and,

Of the relatively small number of refugees that the U.S. planned to take in during 2017, 10,000 slots targeted for Syrians were recently increased to approximately 20,000 by the outgoing Obama administration.<sup>7</sup> All 20,000 will probably now go unfilled even though the original executive order on migrants was stopped in its implementation by American courts.

In contrast, in 2015 even under the Harper regime, Syrians constituted the group of refugees with the highest numbers coming to Canada. For ten years, Canada's average intake of refugees had been about 25,000 annually, about 10% of the overall immigrant intake. In 2015, almost 60% came as asylum seekers with their family members, over 40% as either government or privately sponsored refugees, the latter making up about one-third of that 40%.

In 2016, the Harper government had planned an intake of 10,000 refugees. When the Liberal Justin Trudeau Government was elected, it immediately announced some ambitious plans for the intake of Syrian refugees. As indicated above, by the end of 2016, Canada took in almost 40,000 refugees under this new initiative, twice that even planned by the Obama government and now literally infinitely more than will be allowed entry by the Trump administration

The breakdown was as follows:

#### **Data as of 2 January 2017**

Refugee category	Number of refugees
Government-Assisted Refugee	21,751
Blended Visa Office-Referred Refugee (BVOR)	3,923
Privately-Sponsored Refugee	13,997
<b>TOTAL</b>	<b>39,671</b>

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unlike the fraud of weapons of mass destruction that took the Americans into Iraq, this is a case of a blatant lie, not simply one of questionable evidence but of no evidence.

<sup>7</sup> The U.S. under the Obama administration admitted about 10,000 Syrian refugees in 2016. For 2017, it planned to increase the overall target of admitted refugees to 110,000 for 2017, a 30% increase over 2016. The single largest increase, by an additional 10,000, was expected to go to Syrian refugees.



The number estimated for 2017 is expected to be about 23,500, the reduction coming overwhelmingly from the government-sponsored class. Just after 'The Donald' issued his executive order, an initiative was begun almost immediately for Canada to admit 20,000 *more* Syrian refugees than planned for 2017 on a matching formula whereby the government will take in the same number of government-sponsored Syrian refugees, up to 10,000 in 2017, as the number of Syrian refugees sponsored by the private sector. There need not be any deliberate explicit connection to Trump's embargo. The day after Donald Trump issued his executive order, Justin Trudeau tweeted, "To those fleeing persecution, terror & war, Canadians will welcome you, regardless of your faith. Diversity is our strength #WelcomeToCanada." He walked that fine line by praising Canadian values rather than criticizing current American policy. At the same time, an influx of refugees from the United States began arriving on Canadian soil to claim refugee status. For example, some crossed from Minnesota into Manitoba at Emerson after trekking for miles in freezing weather through deep snow drifts.<sup>8</sup> When the weather improves, the numbers are expected to dramatically increase.

The current Canadian Minister of Immigration, Refugees and Citizenship, Ahmed Hussen, who himself fled war-torn Somalia at the age of 16, under the plain reading of the Trump executive order would not be allowed entry to the United States if he were not traveling on a diplomatic passport. Hussen issued a policy directive in response to the Trump decree that Canada would issue temporary residency permits to those stranded because of Trump's order, but that would do nothing for Canadian citizens and permanent residents born in those seven countries. Later, the State Department, in apparent direct contravention of the wording of Trump's executive order, declared that the ban would NOT apply to Canadian citizens with dual passports or to Canadian permanent residents with passports from those countries.

What has happened to the carefully constructed international refugee system developed in the aftermath of World War II that has enabled millions of refugees in every region to find safety in other countries? What has happened to the country that for decades welcomed refugees, that until very recently resettled millions of refugees, from regions in turmoil and led initiatives in inspiring other countries to engage in responsibility-

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<sup>8</sup> *The Globe and Mail* on 12 February 2017 ("Quebec and Manitoba see influx of asylum seekers crossing U.S. border") reported that on the previous weekend, 42 people crossed illegally into Quebec and 21 into Manitoba. Most were Somalis. Thus far in 2016 into 2017, 400 had crossed, an increase from 68 in the previous 2014-2015 fiscal year.

sharing?<sup>9</sup> That country has now fallen into the hands of a president governed by a radical nationalist ideology who builds policy on paranoia and prejudice rather than any analysis of data or of consequences. Make no mistake about it; his policy has as little to do with the threat of terrorism as the connection between drinking Coca-Cola and a healthy lifestyle. Though couched in security concerns, the Trump policy is rooted in cultural identity politics with virtually no reference to either rational economic policy or genuine dangers.

It is not as if Trump is alone. Stephen Harper for almost ten years offered a polite and non-demagogic perspective that was suspicious of Islamic refugees from the Middle East, but is now perceived as an extremely faint shadow of Trump's position. However, in today's world, Trump's blatant extremist position is not rare. Look at Europe. Hungarian Prime Minister Viktor Orban as a "defender of Western Christendom" built a wall to keep out the Islamic hordes. Slovakia's populist Prime Minister, Robert Fico, insisted that Islam had "no place in Slovakia." And in Western Europe, France and Holland, Marine Le Pen and Geert Wilders, are rising populist stars who have been building support based on their anti-Islamic rhetoric.

## PART II

If you think the current wave of negative attitudes towards refugees is a monopoly of nationalist populist extremists, it is not. On 27 January 2017, I participated in an international webinar,<sup>10</sup> "European Union third-country partnerships: Where do we go from here?" The discussion centered on current refugee policy in Europe with participants in Brussels, Berlin, Madrid, Washington, etc. Those who led the discussion moderated by Elizabeth Collett, Director of the Migration Policy Institute Europe, included four very distinguished and knowledgeable, as well as liberal, leaders and academicians very intimately involved in the formulation of those European laws and policies.<sup>11</sup>

I will not even attempt a summary of the discussion. But I do want to communicate its predominant theme. That theme was not refugee asylum policy or issues of integration. This was not simply because of the topic.

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<sup>9</sup> For a historical comparison of the development of refugee policy in the two countries, Canada and the U.S., see Howard Adelman (ed.) (1991) *Refugee Policy: Canada and the United States*, Toronto: York Lanes Press Ltd.

<sup>10</sup> <https://migrationpolicy.webex.com/migrationpolicy/onstage/g.php?MTID=e4cfca0049867a54019aea1d8961fab86>

<sup>11</sup> Jean-Louis de Brouwer, Director, Humanitarian and Civil Protection Operations, DG ECHO, European Commission; Laura Hammond, Reader, Development Studies, and Team Leader, Research and Evidence Facility, EU Emergency Trust Fund for Africa, SOAS University of London; Nassim Majidi, Co-Founder and Co-Director of Samuel Hall and the Migration Pillar Lead; Affiliate Researcher, Sciences Po Paris / CERI, France; and Affiliate Researcher, Wits University / ACMS, South Africa; Mia Steninge, Chief Advisor, Migration and Development, Ministry of Foreign Affairs, Denmark.



For the title of the webinar itself had been chosen because the prime approach in Europe these days to refugee issues, *from those sympathetic to refugees*, is refugee return. The prime issue is how to link return with development in partnership with the states from which the irregular migrants are fleeing. The primary challenge is now re-migration and reintegration, taking into consideration the country of return's capacities and the skills the returnees bring with them on their return.

This focus was based on the conclusion that there was no solution to the refugee issue if the primary reliance was on law and the individual rights of refugees. As one person put it, "THERE IS NO LEGAL WAY OUT." Instead, the focus was on knowledge gaps, on evaluations of past practices, on leadership in the face of the humanitarian disaster producing so many millions of refugees and pushing them to seek very unsafe passageways to the West. Further, the not-so-hidden problem is that humanitarian aid funds are primarily used to hold refugees in place rather than return them, using a more vulgar but colourful language, to warehouse them. But reintegration poses its own set of problems – competition among those who stayed behind, IDPs returning and refugee returnees. The latter may be the ones who are best off given skills acquired in camps and when abroad, and given their better access to aid funding.

Money tells the story. The EU recently pledged \$2 billion in development aid to assist refugee return and reintegration.<sup>12</sup> Thus, the policy of an enlightened refugee-receiving country like Denmark now is to focus on linking development aid both to refugee return and to inducing people to stay. Instead of the right to claim asylum, the emphasis is placed on the "right to stay" that, of course, went far beyond issues of governance and transportation. In the webinar, sensible slogans were thrown about, such as a "broad approach," the linkage between peace and local stability<sup>13</sup>, the need for coordination among like-minded countries, the absolute requirement that climate change and climate change policy be integrated into any solution, that there would have to be a primary reliance on civil society rather than government. Thus, humanitarian policies and rights

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<sup>12</sup> See, for example, the following: Charlotte Alfred (2016) "How the EU Is Trying To Stop Africans Boarding Boats To Europe," Worldpost, 9 June; James Traub (2016) "Europe Wishes to Inform You That the Refugee Crisis is Over," *Foreign Affairs*, 18 October; Patryk Kugiel (2016) "Can Development Assistance Solve the Refugee Crisis?" The Polish Institute for International Affairs, 87 (937), 14 December. The effort is attacked as far more expensive to implement than estimated, far more difficult to get cooperation on the ground in real terms, while incurring political and moral costs. The Turkish agreement is an example where the EU said it would continue to consider asylum claims from within countries of first asylum, but, with the pressure off, is, in fact, doing very little to process claimants.

<sup>13</sup> To understand how refugee return can be a destabilizing factor and contribute to a renewal of war, cf. Howard Adelman (2002), "Repatriation of Refugees Following the Signing of Peace Agreements: A Comparative Study of the Aftermath of Peace in Fourteen Civil Wars," in Stephen Stedman et al *Thematic Issues in Peace Agreements Following Civil Wars*. Boulder: Lynne Rienner Publishers.

had to be examined within the larger political, social cultural and primarily economic contexts. So why call them *rights* at all? And what was *humanitarian* about such a program?

The application of such efforts has some dire consequences on the right to leave. On 3 February 2017, at the same time as this talk, European Union leaders met in Malta to try to extend the initial deal made with Turkey to a contract with the countries in North Africa. The gist of the deal to reduce crossings, primarily to Italy now that the efforts to reach Greece have been largely stopped, entails a deal where the North African countries assume the responsibilities for search-and-rescue, hence avoiding the problem of warehousing the refugees on European soil and giving those refugees access to the refugee asylum system in Europe. On 2 February 2017, Libya signed the first deal, the EU-Libya Framework Agreement, to accept monies in return for assuming these responsibilities. The problem is, given the past record, North African countries may not be as effective in saving people given their capacity limitations and their disincentives to save illegal migrants.<sup>14</sup>

What we also need to keep in mind is that migration has always been used for families to manage risks, as demonstrated in the role that management of that risk played in getting the refugees to different places in the first place.<sup>15</sup> Yet the focus of the discussion was overwhelmingly about *individuals*.

However, my goal in this paper, issued initially as a series, is not to undertake an analysis of the United States or of Europe. Nor is my focus on contemporary policy, though I hope I will throw some light on the current situation. Rather, I want to use the trajectory of the development of that refugee (and migration) policy in the twentieth century *in Canada* to provide some understanding of where we find ourselves today with respect to the issue of refugees within Canada and within a global context. Because the material is so vast, I will use my personal involvement with refugees as a totally non-objective selective guide to offer a constructed narrative of what took place.

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<sup>14</sup> Cf. Elizabeth Collett (2017) "New EU Partnerships in North Africa: Potential to Backfire?", Migration Policy Institute, 2 February <http://www.migrationpolicy.org/news/new-eu-partnerships-north-africa-potential-backfire>

<sup>15</sup> The pioneer work to underpin migration movements, not in individual choice, but in family survival strategies, was initially put forth by Oded Stark (with D. Bloom) (1985) "The new economics of labor migration." *American Economic Review*, 75, 173–178. The family, not the individual is the crucial agent in the vast majority of cases of migration. This applies to integration as well as emigration. In both, the family constitutes a crucial actor in the process of human mobility. Given this family risk management framework, it is often the case that family reunification may not be the ideal goal in dealing with migrants. Cf. Laura Zanfrini (2012) "Family Migration: Fulfilling the Gap between Law and Social Processes," *Societies* 2:3, 63-74.

Further, even using my selective mechanism, it is not possible to cover the whole story of the development of Canada as an outlier country in the West with respect to refugee policy. But by covering three-quarters of the period, I can, I believe, unpack the tensions involved in the development of that policy and the fundamental contradictions that are at the base of the problems. That basic tension exists between *rights refugees* and *needs refugees*, between Convention versus humanitarian refugees, and, within Canada, between asylum claimants and refugees admitted under relaxed immigration criteria.

In 1943, two years before I start my tale, Hannah Arendt wrote a seminal essay, “We Refugees.”<sup>16</sup> She began by stating that “we” refugees avoided that designation and preferred to be called newcomers or immigrants. At that time, she defined the term refugee in terms of needs rather than rights. Refugees “are those of us who have been so unfortunate as to arrive in a new country without means and have to be helped by Refugee Committees.” (110) In resettling, “We were told to forget; and we forgot quicker than anybody ever could imagine,” avoiding any allusion to concentration camps (by enemies) or internment camps (by friends). Recall that Emil Fackenheim and Gregory Baum were interned in Canada as “enemy aliens.”

Arendt then went on to discuss PTSD as it is known now, Post-Traumatic Stress Disorder, suffered by many of the refugees, with some of them taking their own lives. This was a pattern that began, not in the camps, but with the rise of fascist power accompanied by a massive inversion from optimism to pessimism. Captives and slaves rarely commit suicide. Those about to lose their freedom, those whose freedoms are haunted by memories and traumas, do. Their own sense of personal failure, combined with the lack of recognition of themselves as human beings, not political oppression, does them in.

Most fundamentally, we must recognize that refugees are people who do not want to be refugees, who do not want that as their identifier. At once, they want to be accepted and recognized as one of us while being induced often to forget that they are, behind the mask, one of them. One way to forget, ironically, is to “Never Forget,” to pass forward and help new refugees.

Let me end this section with a story that I have told often. It really took place. It was 1979. We were in what used to be the Cecil Street Synagogue (not its Jewish name) where my older brother had his Bar Mitzvah and

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<sup>16</sup> The essay was published in, *Altogether Elsewhere: Writers on Exile*, edited by Marc Robinson, London: Faber and Faber, 110-119.

was then and remains to this day a Chinese-Canadian community centre. We were greeting and offering some orientation to the first group of ethnic Chinese refugees from Vietnam who had been privately sponsored and arrived in Toronto.

I belonged to a group of people introduced in Chinese as VIPs. We may have been very important people in their eyes, but each one of us lacked the ability to give a speech from the heart. Instead, all four of us, without any coordination whatsoever, gave the same speech – of course using different words and different situations for illustration – but the same speech in terms of the theme. ‘You are us,’ we told them. Except for the indigenous people, all the rest of us Canadians came as immigrants and refugees. We are you and you are us. And, they had lots of time to think about what we said because our words were being translated.

The speeches of Chinese community leaders followed. Those speeches too were all the same – again different words and depictions, but, according to what I heard from the translator beside me, offered a radically different message than the one we had. “You are NOT one of them. You are not yet even one of us. If you are staying in a private sponsor’s home or in a private sponsor’s apartment, do not cook with fish oil. They [mostly Caucasians] hate the smell of cooking with fish oil. Always remember that you are representatives of the Chinese-Canadian community in Toronto. Do not shame us. Do not disgrace us.”

If they were not torn between bewilderment, the need to feel appreciation and the desperate desire to get on with their lives, they might have been able to wonder. “Weren’t those white guys (there was one woman among the four of us) liars? We did not speak their language. We did not look like them. But they told us we are the same because their parents or grandparents or great grandparents came to Canada as immigrants and refugees? What do they personally know about the risks, the death of loved ones? At least 1 in 10 of us died in the flight. Their smiling welcome is obviously a false front.”

Perhaps they were bothered even more by the local ethnic Chinese who said the refugees represented them. “We held their reputations in our hands, or, more accurately, in how we cooked. They were so condescending in letting us know that we had a long way to go before we became hyphenated Canadians. For though they looked like me and spoke my language, they not only were not us, but they made sure that we knew, in their superego instructions to us, that we had a long way to go before we became them.”

While I offer this long historical talk on the development of refugee policy in Canada, a talk that only covers half the period since WWII, let's not forget those who are at the centre of this story, refugees, refugees who for the most part do not even aspire to be human beings, as Hannah Arendt did. They just once again want to be themselves. And that requires that they be recognized. Hannah Arendt ended her essay, "The community of European peoples went to pieces when, and because, it allowed its weakest members to be excluded and persecuted." Behind my paper is the question, "How can Canada not go down that path? How can we help reverse the direction of the path on which our American cousins are racing?"

An even larger question: why are security concerns linked with the rejection of refugees? Why are refugees increasingly seen as barnacles on the body-politic of the nation-state that show that the human rights commitments of these states are a sham? And even when those rights are used for protection, they protect so very few and conceptually omit offering any rights to the tens of millions of refugees who simply flee war and may not be individually targeted for persecution? Why are these refugees given no rights but are declared to be humanitarian refugees, refugees only with needs? From another perspective, why does a predominant conception of sovereignty in the end reject refugee claims based on universal right, since the prime right of a sovereign state is to protect its members and determine its new ones? And, in the ultimate end of this madness, why are those least likely to be security threats branded as a prime security threat?

## PART III

### I REFUGEE POLICY AFTER WORLD WAR II – 1945 TO 1965

#### 1945-1947

It is often forgotten that Canada's refugee policy in the immediate aftermath of WWII was pretty dreadful, characterized still by exclusion and xenophobia.<sup>17</sup> Before WWII, it was even worse. Canada had a terrible reputation as a receiving country for refugees. Canada would not admit any of the hundreds of thousands of refugees left in the aftermath of WWI because there was no provision that they could be returned, though, in

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<sup>17</sup> Cf. Howard Adelman (1991) "Canadian Refugee Policy in the Postwar Period: An Analysis," *Refugee Policy: Canada and the United States*, ed. by Howard Adelman, Toronto: York Lanes Press, 173-223.

the 1920s, the government admitted over a million selected immigrants. In contrast to immigrants, refugees might not be able to be sent back home.

In the 1920s, Canada refused to recognize the Nansen passports. A 1923 Order in Council specifically prohibited the entry of “Asiatics.” In the 1930’s, a racist immigration policy was the order of the day and immigration in terms of numbers was also very restrictive.

When the Deputy Minister Frederick Charles Blair, who headed Immigration, Mines and Resources, was asked how many Jewish refugees could be admitted, he replied, “None Is Too Many.”<sup>18</sup> Blair retired in 1943, but even after the war, Canada only admitted 8,000 Jews between 1945 and 1948. When Canada had one of the 11 seats on the United Nations Special Committee on Palestine occupied by Ivan Rand, he supported the position of partition of Palestine between Jews and Arabs, not because of any guilt about the Holocaust<sup>19</sup> – that influenced none of the members in their recommendation – but primarily because 250,000 Jewish refugees were still languishing in European refugee camps and countries, including Canada, would not offer to resettle them. A Jewish state seemed to provide an opportune answer.

Prime Minister Mackenzie King certainly opposed admission of anyone as a fundamental right. Despite previous reservations about admitting refugees even based on Canadian self interest married to humanitarian concerns, this position shifted, in good part motivated by the need for manpower in a rapidly industrializing country and the availability of people from Europe. The shift was *not* motivated by a concern with rights.

Changes were underway. Parliament in 1946 began to consider the possibility of admitting refugees as immigrants under relaxed admission criteria, though it would be ten years before any large program was implemented. French immigrants were finally treated equally with American and British applicants. And, in 1946, Canada also made provision for Canadians to be citizens and not just British subjects.

In June of 1947, Louis St. Laurent became Prime Minister of Canada (1948-1957). Finally, in that month, Canada opened its doors, a bit and then wider and wider for the admission of Eastern Europeans – Poles,

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<sup>18</sup> See Irving Abella and Harold Troper (1982; 2012), *None is Too Many: Canada and the Jews of Europe, 1933-1948*. Toronto: Lester & Orpen Dennys and revised edition, University of Toronto Press.

<sup>19</sup> For a more general argument about this thesis and its influence on the development of human rights laws in general, cf. Mark Mazower (2004) “The Strange Triumph of Human Rights, 1933–1950,” *The Historical Journal* 47:2, June, 379-398.



Hungarians, Ukrainians – initially only 5,000 and then only if they were privately sponsored. The arrival of over 1,500, mostly Estonians, in 1948 marked the real beginning of the program.<sup>20</sup> One quarter of a million European “refugees” as well as almost two million immigrants were eventually admitted over the next 14 years.

## 1948-1955

The shift in 1948 was quite radical for Canada at the time. In 1950, Leslie Chance, a Canadian, took the role of Chair of a United Nations Ad Hoc Committee on Refugees and Stateless Persons Special Committee to draft a new refugee convention. Up until that time, refugees had been dealt with on a case-by-case basis focused on providing humanitarian aid on a temporary basis until they could return to their homes or be settled in the regions or countries to which they had fled. This was the case with UNRWA, the United Nations Relief and Works Agency, which focused on both Arab and Jewish refugees displaced from the war in Palestine. It was also the case with The United Nations Korean Reconstruction Agency (UNKRA) (1950-1958) established in **1950** to provide relief and rehabilitation on behalf of the United Nations in South Korea.

The minutes of the debates in developing the Refugee and Stateless Persons Report during 1950 make for fascinating reading, if only because the issues sound so familiar 67 years later. For example, the beginning discussions at the Lake Success 13 February 1950 initial meeting largely focused on ending statelessness based on a report of the Israeli delegation. One issue was the nationality of a child born of a refugee claimant on the soil of a country in which the woman was not a national. Based on *lex sanguinis*, should children born of refugee applicants be denied citizenship because the mother was only in the country temporarily, an issue still alive today? What if the child remained in the country until he or she was an adult? Or should *ius soli* be applied and such children automatically be granted citizenship? Discussion of granting refugee status based on rights would never prove straightforward, especially since rights, supposedly universal, were interpreted so differently by different countries.

The minutes of the final meetings between 14-25 August in Geneva considering the report and the final recommendations are especially instructive.<sup>21</sup> Canada was represented in the latter meeting by Ross W.

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<sup>20</sup> The documents on their arrival can be found in the archives of Tartu College at 310 Bloor St. W. in Toronto.

<sup>21</sup> <http://www.refworld.org/docid/3ae68c1a10.html>

Winter and N.F.H. Berlis. (Leslie Chance was unable to attend that meeting.) John Humphrey was also present as a representative of the UN Secretary-General. The report was drafted by the International Refugee Organization (IRO) and amended in response to various government inputs. Since it is 26 pages, let me just quote some germane passages, beginning with the preamble:

## PREAMBLE

1. *Considering* that the Charter of the United Nations and the Universal Declaration of Human Rights establish the principle that human beings shall enjoy fundamental rights and freedoms without discrimination;
2. *Considering* that the United Nations has, on various occasions, and most recently in General Assembly Resolution 319 A (IV), manifested its profound concern for refugees and endeavored to assure refugees the widest possible exercise of these fundamental rights and freedoms;
3. *Considering* that, in the light of experience, the adoption of an international convention would appear to be one of the most effective ways of guaranteeing refugees the exercise of such rights<sup>22</sup>;
4. *Considering* further that it is desirable to revise and consolidate previous international agreements relating to the protection of refugees, to extend the scope of such agreements to additional groups of refugees, and to increase the protection accorded by these instruments;

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<sup>22</sup> This supposed “international constitutional moment” (Anne-Marie Slaughter and William Burke-White, (2002) “An International Constitutional Moment,” 43:1), in which refugee law was built into human rights law, is under dispute from many directions. Some argue that the moment existed, but not at birth, but only when these rights were first really institutionalized – in human rights law in the 1970s and in refugee law in the 1980s. Others argue that all three types of rights, general human rights born with the Universal Declaration of Human Rights (along with the subsequent International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR)), Refugee Rights in the Convention and the rights of a group not be attacked for their culture, beliefs and way of life in the Genocide Convention, are triplets, born at about the same time out of the same seed, even if one of the triplets, human rights law, emerged first from the womb. Still others argue that the legacy is much older than the aftermath of WWII. Human rights and refugee rights are as old as Methuselah. And primogeniture belongs to refugee rights expressed deeply in all three major religions that arose in the Middle East and possibly Far East religions as well. Cf. Jill I. Goldenziel (2016) “The Curse of the Nation-State: Refugees, Migration, and Security in International Law,” *Arizona State Law Journal* 48: 579-636, 581-2. Goldenziel argues that, in the contemporary world, refugee rights not only emerged from a very much older tradition, but coalesced in the 1940’s because of national interests as well as abstract principles. (There is a sense in which each of these positions is correct, but that is for another discussion. The real debate is whether refugee law should be primarily understood in terms of human rights law as my colleagues Guy Goodwin-Gill and James Hathaway have argued. (For the latter, see his 1991 article, “Reconceiving Refugee Law as Human Rights Protection,” *Journal of Refugee Studies* 113: 113-131 and the many other articles and books he has published to advance that argument.) The argument proceeds by concentrating on the Convention and its aftermath and largely ignores humanitarian law applied to refugees. Or, for that matter, to actual genocides. Cf. Howard Adelman and Astri Suhrke (1996) *Early Warning and Conflict Management, Volume 2 of The International Response to Conflict and Genocide: Lessons from the Rwanda Experience*, Copenhagen: DANIDA; Howard Adelman and Astri Suhrke (eds.) (1999) *The Path of a Genocide: The Rwanda Crisis from Uganda to Zaire*, New Brunswick, N.J.: Transaction Books; Howard Adelman, with Frank Chalk, Alexandre Kiss, William A. Schabas and Dinah L. Shelton (co-eds.) (2004) *Encyclopedia of Genocide and Crimes Against Humanity*, 3 volumes, New York: Macmillan USA. The interaction between the issue of genocide and refugee flows is discussed in Howard Adelman (2005) “Rwanda and Refugees,” Matthew J. Gibney and Randall Hansen (eds.) *Immigration and Asylum: From 1900 to the Present*, Oxford: ABC Clio 2, 542-547.

5. *Considering*, however, that the exercise of the right of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international co-operation;

6. *Considering* that the High Commissioner for Refugees will be called upon to supervise the application of this Convention, and that the effective implementation of this Convention depends on the full co-operation of States with the High Commissioner and on a wide measure of international co-operation.

7. *Expressing the hope* finally that this Convention will be regarded as having a value as an example exceeding its contractual scope, and that without prejudice to any recommendations the General Assembly may be led to make in order to invite the High Contracting Parties to extend to other categories of persons the benefits of this Convention, all nations will be guided by it in granting to persons who might come to be present in their territory in the capacity of refugees and who would not be covered by the following provisions, treatment affording the same rights and advantages."

This was a radical change. Instead of a refugee being regarded as a national outside the borders of his nation, and sometimes even within, as a person with humanitarian needs, the report recognized refugees as members of humanity first and foremost with inalienable rights. The refugee convention was to be designed to both recognize and protect those rights.

But what was that right? Was it to be guaranteed membership in a nation-state that protected all other rights. But if the nation-state was the instrument recognized as the protector of rights, who or what would protect the right to be a member? As it turned out, refugees were not really given rights, only those refugees who could establish that they had been targeted for persecution were given rights. And then, only if they were on the soil of a nation-state that signed the Convention.

Further, and even more telling, there was a caveat inserted because of pressures from some countries – clause 5. If a country determined that a refugee exercising his or her rights placed “unduly heavy burdens” on the country of asylum, the granting of those rights would depend on international cooperation or what later became known as “burden sharing.” However, the report, and then the Convention based on it, allowed a refugee on the territory of a nation that was a signatory to the Convention, to claim those rights as a refugee. (Clause 7)

It is no wonder that in the history of human rights, refugee rights are viewed as ersatz rights when sovereignty and security so easily trump those rights. It should be no surprise that refugee rights are rarely placed among the pantheon of fundamental rights even though no other right can be enjoyed unless one is a member of a nation-state that protects such rights.

Though the refugee convention was initially restricted in both time covered and geographical region, the refugee in section A was defined as a person outside of his country of nationality and unwilling to avail himself or herself of its protection and required to have a “well-founded fear of being the victim of persecution for reasons of race, religion, nationality or political opinion” to claim refugee status. But could such persons be later expelled if found to be detrimental to the life of that nation – an issue that continually stymied Canada from accepting the Convention for years.

There was also the issue of *non-refoulement*, that a claimant not be sent back to a country where they would be at risk. But what if they did not satisfy the criteria for being a refugee? One principle would deny their admission. *Non-refoulement* would prevent expulsion. Claimants could become *de facto* landed even if they were not granted refugee status.

Does not the following ring familiar?

Mr. ORDONNEAU (France) pointed out that article 24 as originally drafted by the Secretariat had covered both expulsion and non-admittance. The reference to non-admittance at the frontier (refoulement) had been omitted from the new draft, which was thus incomplete.

In reply to a question by Mr. ORDONNEAU (France), Mr. GIRAUD (Secretariat explained that the original draft of article 24 had been based on article 3 of the 1933 Convention. The reference to non-admittance at the frontier (refoulement) in paragraph 1 applied only to refugees who had already been authorized to reside in the territory in question. The practice known as refoulement in French did not exist in the English-speaking countries. In France and Belgium, however, there was a definite distinction between expulsion, which could only be carried out in pursuance of the decision of a judicial authority, and refoulement, which meant either deportation as a police measure or non-admittance at the frontier.

Mr. CUVELIER (Belgium) agreed with that explanation and added that the term “expulsion” was used when the refugee concerned had committed some criminal offence, whereas the term “refoulement” was used in cases

when the refugee was deported or refused admittance because his presence in the country was considered undesirable, even though he was a person of good character.

Sir Leslie BRASS (United Kingdom) concluded from the discussion that the notion of "refoulement" could apply to (a) refugees seeking admission, (b) refugees illegally present in a country, and (c) refugees admitted temporarily or conditionally. Referring to the practice followed in his own country, Sir Leslie stated that refugees who had been allowed to enter the United Kingdom could be sent out of the country only by expulsion or deportation.

The effort of Mr. Henkin from the U.S. to speak on behalf of the French but attempt to mediate the debate in the direction of the British also sounds familiar. But the main point is that wherever you probe, the definition of rights expected to be universal, in their application proved to be anything but; they varied from nation to nation.

In the larger picture, we had two different streams for defining refugees, one as persons in *need* to be admitted to Canada as a humanitarian determination solely at the discretion of the Canadian government, and a *rights* definition whereby a refugee claimant on Canadian soil could make a claim as a matter of right for Canadian protection.<sup>23</sup> Of course, Canada could also then choose to admit a person determined to be a refugee by UNHCR under the Convention, and, in that case, sovereign choice would be wedded to rights.

In due course, when Canada eventually signed the Convention in 1969, this was the method used initially. Subsequently, Canada developed its own capacity to make such decisions. Within the rights perspective, rights were always presumed to be universal, but, as soon as the process was domesticated, they varied depending on how the state balanced its self-interest, humanitarianism and principles of sovereignty against those rights. The historical process kept hitting the wall of the nation-state which subsumed refugee law within its own national framework.

In the interim, the Canadian Cabinet opted NOT to sign the Refugee Convention, finalized in 1951. Why? The old fear that Canada would be restrained from deporting refugee claimants if, for example, they turned out to be subversive communists. (Canada did not become a signatory to the Convention until 1969.) Ministers

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<sup>23</sup> Cf. Goldenziel, Jill I., (2016) "The Curse of the Nation-State: Refugees, Migration, and Security in International Law (July 10). *Arizona State Law Journal*, 48. SSRN: <https://ssrn.com/abstract=2684903>; see also, François Cr  peau and Michael Barutciski (1995) "Refugee Rights in Canada and the 1951 Geneva Convention," *Journal of Refugee Studies*, 7, 239-248.

were concerned that the Convention would impede Canada's ability to deport persons they considered a security risk, especially communists. Further, the cabinet even then recognized that rights were not just abstract under Canadian law, but conferred rights to representation and rights to a hearing where the claimant was present. Canadian officials were reluctant to grant refugees such rights, including "the right to be represented in the hearing of his appeal against deportation."

This period of development ended with a unique contribution by Canada that would be one factor that led to Canada being appointed to gavel the refugee talks between Israel and the Palestinians in the 1990s.<sup>24</sup> Major-General (ret'd) Howard Kennedy from Canada had been the first UNRWA Director from 1950-1951. In 1955, in the summer, Canada offered to admit refugees that were not from Europe for the first time, adumbrating a policy change that would take place only a few years later. The Canadian government offered to admit 100 Palestinian refugees and their families who possessed skills that Canada could use. In addition to acquiring migrants with needed skills, the program was intended to relieve the economic burden of countries in the region who were hosting a population that had grown to almost a million. The effort was also intended to contribute to facilitating peace in the region. That goal faltered as the Arab and Palestinian leadership raised a hue and cry and accused Canada of siding with Israel and, in today's language, helping Israel ethnically cleanse the Palestinians from the Middle East.<sup>25</sup>

## PART IV

### 1956-1957

Given my later extensive research on Palestinian refugees<sup>26</sup>, one might expect that this last initiative would have been my first real foray into the refugee issue. But it was not. I first became involved with refugees in 1957, sixty years ago. I was then the General Manager of the Campus Cooperative Residences at the

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<sup>24</sup> A major concern was the right of refugee return, not discussed in this article. For an extensive analysis, cf. Howard Adelman and Elazar Barkan (2011) *No Return, No Refuge*. New York: Columbia University Press. For an analysis, most germane to the thesis of this essay, cf. Howard Adelman (1994) "Refugees: The Right of Return" in *Group Rights*, ed. Judith Baker, University of Toronto Press, 164-185, and Howard Adelman (1987) *Palestinian Refugees and Durable Solutions*, Oxford: Refugee Studies Programme. When applied to refugees in the Far East, cf. Howard Adelman (ed) (2008) *Protracted Displacement in Asia: No Place to Call Home*, London: Ashgate, and, more generally, Howard Adelman, (2013) "The Law of Return and the Right of Return," in M Rafiqul Islam, Azizur Rahman Chowdhury and Jahid Hossain Bhuiyan (eds.) *An Introduction to International Refugee Law*, Leiden: BRILL, Netherlands, 291-318, and Howard Adelman (2010) "Refugee Return: By Right and By Law," in Dan Avnon and Yotam Benziman (eds.) *Plurality and Citizenship in Israel: Moving Beyond the Jewish/Palestinian Civil Divide*, London: Routledge, 31-52.

<sup>25</sup> Cf. Jan Raska (2015) "Forgotten Experiment: Canada's Resettlement of Palestinian Refugees, 1955-1956," *Histoire sociale/Social History*, November, 48:97

<sup>26</sup> See, for example, Howard Adelman (1986), Guest Editor, *Palestinian Refugees, Middle East Focus*, 9:2.



University of Toronto. The previous fall, in November, I had been one of the young romantic students who met on campus to join a group who were going to volunteer to go overseas to fight and defend the “democratic” Hungarian regime in its efforts to throw off the yoke of Moscow. With the arrival of Russian tanks, the attempt of Hungary to break away from the Soviet bloc was crushed as were the impossible romantic notions of young students dreaming of recreating the “glory” days of the Front in the war in Spain in the 1930s.

My chance to play a part arose the following spring when the Canadian government was searching for temporary housing for the Hungarian refugees arriving in Canada. Of the over 200,000 Hungarians who fled following the crushing of the revolt, under the leadership of the unstoppable Jack Pickersgill (Liberal - Bonavista-Twillingate, Newfoundland), Minister for Citizenship and Immigration 1954-1957, Canada ended up taking in just over 37,000 Hungarian refugees under the humanitarian provisions of relaxed immigration criteria<sup>27</sup>, an initiative even supported by John Diefenbaker, leader of the Progressive Conservative Party that won the election in 1957. Jack personally flew overseas to organize the processing of the applicants.<sup>28</sup>

That does not mean there was not opposition to the intake, even from within the Liberal cabinet. Worries were expressed that the refugees would be infiltrated with communist spies and hence the movement represented a security threat to Canada. After all, the Igor Gouzenko security crisis had taken place after the end of WWII, just 12 years earlier.<sup>29</sup> But Pickersgill was such a powerful personality. Further, he was backed by a tremendous upsurge of vocal support from civil society. He was unstoppable. And so was the Canadian initiative.

Though the movement was considered one of the great triumphs of Canadian humanitarian initiative, it was not without its problems. Among the brilliant businessmen, scientists, academic, artists, theatre directors and filmmakers who came to Canada were a significant criminal element, for the prisons were opened to allow inmates to flee with the refugees. I know of no estimate of how large that group was – some estimate as high

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<sup>27</sup> For an overview of these developments, cf. Howard Adelman, editor-in-chief (2002) *Immigration Policy and Practice in Canada*. Ottawa: Metropolis Institute.

<sup>28</sup> Howard Adelman (ed.) (1994) *Hungarian Refugees*, Toronto: York Lanes Press and “Genesis,” in *The Genesis of a Domestic Refugee Regime: The Case of Hungary*, Toronto: York Lanes Press.

<sup>29</sup> The Gouzenko Affair marked not only the beginning of the Cold War, but an unprecedented abuse of human rights in the name of national security by the Federal Government of Canada with the suspension of Habeas Corpus, the arrest and trial of many, and with the reputations of many others ruined in the process.

as 10% of the intake – but I was personally acquainted with one group who operated a Hungarian restaurant on the north side of Bloor just west of Spadina. They were colourful racketeers who also melded into Canadian society without any significant incident.

Though “Jumping Jack,” as he was often called, was widely recognized as getting Prime Minister St. Laurent in 1956 to agree to waiving the requirement that the refugees take out loans to fly to Canada – 200 air flights had been chartered – what is less known is that he discovered an old nineteenth century provision in Canadian law that allowed the Prime Minister to, in effect, print script and thereby spend money without Parliamentary or even Cabinet approval. Jack directed the processing of refugee applicants before monies had been allocated for the task which, provided he worked fast enough, would allow him to take into Canada in the end one-sixth of the refugees before a lid was placed on the numbers we accepted. The only country that took more, and it had ten times the population of Canada, was the United States, and it only took about a thousand extra. Suddenly, Canada had leapt to the head of the line in resettling humanitarian refugees, but still showed no indication that it was willing to sign the Convention and recognize refugee rights. I am proud that I played a very minor role in helping a small group of them with temporary housing.<sup>30</sup>

## 1958 – 1965

Canada continued to apply its race-based immigration policies even when applied to refugees accepted only through humanitarian programs. In the United States, the 1965 Immigration Act made major changes in immigration policy by amending the McCarran-Walter Act of 1952. Quota systems were abolished as were preference system and labour clearances for certain classes of immigrants. These changes immediately affected the country of origin of migrants. Southern European, Asian and Caribbean immigrants made up increasingly larger proportions of migrants. There were also increased volumes.<sup>31</sup>

In Canada, a 1962 Order-in-Council accomplished most of the same goals by substituting skill criteria and eliminating overt racial discrimination through the designation of only specific countries of origin from

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<sup>30</sup> For a more thorough discussion, cf. Howard Adelman (1991) “Humanitarianism and Self-Interest: Canadian Refugee Policy and the Hungarian Refugees,” *Studie- en Informatiecentrum Mensenrechten Special 11* Netherlands Institute of Human Rights, 98-108.

<sup>31</sup> Charles b. Keely (1971) “effects of the immigration act of 1965 on selected population characteristics of immigrants to the united states,” *demography* 8:2, 157-169.

Canadian immigration policy. All Canadian citizens and permanent residents could sponsor relatives. Racism, however, still left its residue. Only Canadian immigrants from preferred nations in Europe, the Americas and select countries in the Middle East could sponsor children over the age of 21, married children and other members of their extended family. Canadians with respect to immigrant sponsorship were divided into two types of citizens in the first effort to get around the racism built into Canadian immigration and refugee policy up until that time.

## 1966-1968

What a difference new thinking on migrants and refugees makes! It began with the 1962 Order-in-Council and culminated in the 1966 White Paper on Immigration originally commissioned by Mike Pearson's Liberal government to recommend restructuring the whole immigration process. The big change – choose immigrants based on their skills and potential contribution to the Canadian economy and not based on the source country. The other big change was on refugees. The White paper insisted that the time had come to sign the Convention. Secondly, finally specific legislation should be introduced to deal with refugees.

These changes are widely known. Less known, and of much greater relevance to the present, were the security provisions. Enhanced protections against the admissions of criminals and homosexuals or, indeed, chronic alcoholics, labeled security risks, were deleted from the Immigration Act. No longer would these types of people be rejected because they were defined as presenting a danger to the country. Whether a potential immigrant (or refugee) was a security threat would be determined on a case-by-case basis. Until Trump, that had also been the *modus operandi* in the U.S. for over fifty years.

You might believe that these more impartial and fairer provisions would have been broadly welcomed. Instead, they stirred up a hornet's nest of complaints from labour unions and from immigrants who arrived recently and wanted preference to be given to their family members, both immediate and more distant. Churches and synagogues wanted to continue the process of sponsorship that left more decisions in their hands, but would, in effect, reinforce a preference for immigrants who were reflections of who they were.<sup>32</sup>

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<sup>32</sup> Cf. Harold Troper (1993) "Canada's Immigration Policy since 1945," *International Journal* 48:2, Spring; Ninette Kelley and Michael Trebilcock (1998) *The Making of the Mosaic: A History of Canadian Immigration Policy*, Toronto: University of

Nevertheless, the 1967 regulations that followed in launching the point system to replace country of origin criteria, leveled the playing field for family sponsorship with the introduction of both the Sponsored and the Nominated Categories. Universality had become the order of the day. The basic premise of the new immigration system was to be based on the premise of treating everyone as an economic actor and assessing the degree that individual who applied to Canada would be useful to the Canadian nation-state in advancing its economic prospects.

Internationally, universality had also been applied to refugees as the 1967 Protocol to the Refugee Convention removed the geographic restrictions in defining refugees. When Canada signed both the Convention and the Protocol two years later in 1969, refugees became, initially only formally, a problem of rights as well as needs. If needs, they were to be given humanitarian aid overseas and were not issues of Canadian self-interest unless the refugees were viewed as benefiting the Canadian economy, in which case they could be admitted under relaxed immigration criteria. In terms of rights, there was a conflict between the sovereignty of the nation-state to determine its own members and the right of the refugee to belong to a nation-state which could and would protect his/her rights.

But human rights law was about the obligation of the nation-state to guarantee those rights, so how could that obligation be internationalized to become a responsibility of the whole world community? Only with the introduction of the Convention. In that Convention, nation-states surrendered part of their sovereignty to allow certain individuals, those who could establish that they were in fear of persecution on grounds considered to be abuses of human rights, to come (and, later, stay) in Canada and claim membership as a matter of right. There were fundamental contradictions among three different poles: a) between the conception of a nation-state and its sovereignty; b) the conception of the nation-state as the instrument for protecting the rights of its own citizens; and c) the new notion that the sovereignty must be qualified and the obligation of the state to serve and protect was to be extended to those who were not citizens.

Hannah Arendt had pointed out the real core flaw in the international system in her seminal paper on persons who do not have membership in a state that protects their rights, either because they are stateless or because the state to which they belong is an abuser rather than a protector of their rights. Michael Walzer had pointed out that the most important decision a state makes is who to accept as a member and that is the essence and core of sovereignty. A White paper premised on serving self-interests fairly with respect to the intake of immigrant was not the best place to adjudicate how refugees would be protected. The first statutory provision for protecting refugees only took place in 1973 with an amendment to the Immigration Act about allowing refugees to remain in Canada if they claimed to be refugees.

In the meanwhile, Canada introduced practices and procedures to make this principle of universality, initially only with respect to immigrants, operational. Area Offices were created staffed by Canadian officials – subsequently called visa officers. Within a year, they were interviewing people in one hundred countries and territories. This would turn into the operational foundation for selecting humanitarian refugees under relaxed criteria.

## 1968-1975

The basic premise of the new system was to be based on the premise of treating everyone as an economic actor and assessing the degree that individual who applied to Canada would be useful to the Canadian nation-state in advancing its economic prospects. But refugees were either a problem of needs or of rights. If needs, they were to be given humanitarian aid overseas and were not issues of Canadian self-interest unless the refugees were viewed as benefitting the Canadian economy. In terms of rights, there was a conflict between the sovereignty of the nation-state to determine its own members and the right of the refugee to belong to a nation-state which could and would protect his/her rights.

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“Increasingly I have come to see international human rights law as having a dysfunctional relationship with justice. The rhetoric is beautiful, but it’s all dressed up with no place to go.” Supreme Court Justice (Canada) Rosalie Silberman Abella, “International Justice in Crisis.” 9 February 2011.

Canada was now on a roll, not vis-à-vis refugees with rights, but with refugees with needs, with humanitarian refugees. For another fifteen years, the issue of *rights refugees* would sit as a shadow in the background. The issue of *rights refugees* would grow slowly and emerge out of the darkness to become the predominant issue in refugee policy in the 1980s.

In the meanwhile, Canada admitted almost 11,000 refugees from Czechoslovakia between 20 August 1968 and 28 February 1969 when once again Russian-led Warsaw pact troops crushed a thrust for independence by one of its most western satellites. However, if public support from civil society proved telling in *backing* the government initiative, in the initiative in fostering the intake of the largest refugee intake into Canada, civil society was in the lead to allow entry of American draft dodgers and, later, deserters into this country.

Of course, Americans were not called refugees. The use of that term would have insulted both them and the American government, our big bully partner to the south. The Americans came as immigrants and were quickly processed for admission. Some were genuine immigrants who came because they did not want their children to fight in Vietnam. However, the clear majority, perhaps up to 180,000,<sup>33</sup> came to escape participating in the Vietnam War. If they had come from any other country, they would have been labeled refugees. That was evident in the lobbying that we had to do to facilitate quick entry approval, easy initially for draft dodgers, much more difficult but eventually successful for deserters.

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<sup>33</sup> Precise figures are not available because Canada diplomatically never announced a special program for American refugees. We did not have to go overseas to get them. They arrived in Canada on their own, often with the help of Canadians in what was termed the Vietnam underground railroad. I then lived in Rosedale and cannot count the number of draft dodgers and deserters who came to the terminus of that railroad to sleep in our third floor.



On the path of rights refugees as distinct from humanitarian ones, after the signing of the Convention and Protocol, problems of principle and subsequently operations would also arise. On 27 July 1970, the Federal Cabinet noted that, "while Canada's immigration policy was placed on a universal basis with the introduction of the new immigration regulations in 1967, the selection of refugees continued to favour persons of European origin." How could the principle of universality be applied to refugees? Only if the European geographical bias was removed.

Canada dropped the Euro-centred refugee definition and adopted the Convention universal one. At the same time, in terms of needs refugees, discretion could be applied to selection. As a result, a number of humanitarian classes of refugees would be created, including the oppressed minority policy that allowed entry to Canada for persons who had not fled their country of origin., a measure that would subsequently benefit refugees from Russia, Uganda, Chile and other Central American countries.

The foundations began to be constructed also of a refugee rights regime. An Immigration Department Operations Memorandum on 17 January 1971 led to the creation of an "Interdepartmental Refugee Eligibility Committee. This was the precursor to the independent stream of refugee adjudicators eventually developed. Tibetan refugees constituted the next group of needs refugees permitted entry under relaxed immigration criteria. However, their numbers were small.

The first large group of non-European sourced refugees were the Ugandan Asians who came in 1972. When Idi Amin decreed that Ugandan Asians were no longer wanted in that country, Canada, with only the slightest pressure from Britain because they were British subjects, stepped up to the plate and allowed the entry of 20% of those expelled, just over 7,000 by the end of 1973. It helped, of course, that these were largely prosperous professionals and business people. The principle of accepting humanitarian refugees as immigrants under relaxed criteria designated for that class seemed to be working very well. That should have set a precedent for the Canadian response to a refugee crisis originating in Latin America when Pinochet overthrew the Allende government in Chile in a coup, but this proved more difficult. Our department of philosophy at Atkinson College (I was the chair at that time) was successful in getting Claudio Durán, his wife and children into Canada by offering Claudio a faculty position in the department, but for many others without job offers, the gates were closed. I regard it as a disgrace that by February 1975, less than 1,200

Chilean refugees had managed to escape to Canada. 3,000 Chileans “disappeared” in the ruthless Pinochet coup.<sup>34</sup>

However, the foundations were in place for a much larger group of humanitarian refugees. The experiences above, as well as with people fleeing the Soviet Union, bequeathed to the department an enormous experiential treasure that was used in writing the 1976 Immigration Act and its promulgation in 1978 as well as dealing with the first wave of Indochinese refugees. It is through these experiences that the designated classes and the idea of private sponsorship emerged that would be so influential in the intake of subsequent waves of refugees.

These initiatives also took place with respect to rights refugees. The Immigration Department not only developed specialized units focused on refugees, but cooperated with External Affairs and CIDA by assigning specialists to the Permanent Mission to the UN in Geneva to connect with UNHCR, ICEM (IOM), the Red Cross organization, the World Council of Churches and an ever-increasing number of international refugee-centred NGOs. With this foundation in place, the Canadian regime with respect to both needs refugees and rights refugees was ready to expand and develop, initially primarily in dealing with humanitarian refugees and the creative response to the Indochinese refugee crisis.

## PART V

### 1976 - 1982

The largest recognized<sup>35</sup> movement of refugees into Canada began in the same year the Chilean movement ended. But one would not have known this from the start. When Americans left Vietnam in such a humiliating way, Canada was asked by the State Department to take some of the refugees. The Canadian government at the time was reluctant. These refugees were perceived as America’s problem. For the vast majority of Canadians, the Americans should not have been involved in the Indochinese wars at all. Further, some once again expressed fears that the refugee stream would be used as a route into Canada of communist spies from Southeast Asia. To mollify its American partner to the south, Canada did agree to take in the three years after

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<sup>34</sup> Steve J. Stern (2004) *Remembering Pinochet’s Chile*, Duke University Press.

<sup>35</sup> Only the American refugee movement during the Vietnam War was larger, but it was not recognized as a distinct movement.

the conquest of the south by the north a total of 8,000 persons, a relatively token number given the demand and the size of the movement.

That attitude changed in 1978. Canadian diplomats concluded that the increasing numbers of refugees fleeing Vietnam, though also Laos and Cambodia, were not the result of the war because the refugees had been allied with the Americans. They were fleeing repression and ethnic cleansing of Chinese in Vietnam at the same time as the ethnic Vietnamese were being cleansed in Cambodia. The issue came to a head in 1978 with the *Hai Hang*, a large and ancient freighter packed with over 2,500 refugees from Vietnam. Local countries were unwilling to admit them fearing they would be followed by a flood which they were reluctant to absorb. The Canadian government stepped forward and instead of the usual international implicit norm of Canada taking 10% of a refugee movement, Canada offered to take 25% of those on board to induce the Hong Kong government to allow the boat to dock and other countries to rally and join with Canada to resettle the refugees. The situation was repeated with a second boatload.

By the beginning of 1979, Bud Cullen, the then Minister of Immigration in the Liberal government, had convinced the Prime Minister and his cabinet colleagues to establish a special program for Indochinese refugees to be admitted under relaxed immigration criteria and set a target of 5,000 for that year.<sup>36</sup> When the Joe Clark Conservatives won the election in the Spring and when Ron Atkey, who had been named as the new Minister of Immigration, sat down and had a talk with Bud, Bud convinced Ron that the most important issue on his desk would be the movement of Indochinese refugees and that Ron should be prepared to take a lead in increasing the numbers of refugees.

One of the first initiatives the Joe Clark government took, after the fiasco over moving the Canadian embassy from Tel Aviv to Jerusalem<sup>37</sup>, was to increase the intake of Indochinese refugees into Canada, 8,000 to be government-sponsored refugees and 4,000 to be privately sponsored. Private sponsorship was a novelty. A little-known clause had been introduced into the new 1976 Immigration Act that had been promulgated in 1978. The change was made to accommodate the Jewish community that wanted small groups of Canadian Jews to sponsor Jews from the Soviet Union. Only 200-300 refugees were expected to come via this route.

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<sup>36</sup> For a more detailed discussion and depiction of these developments, cf. Howard Adelman (ed.) (1980) *The Indochinese Refugee Movement into Canada*, Toronto: Copp Clark, and Howard Adelman (1982) *Canada and the Indochinese Refugees*, Regina: Weigl Educational Publishers.

<sup>37</sup> Howard Adelman (1980) "Clark, and the Canadian Embassy in Israel," *Middle East Focus*, March 2:6, p. 6-18.

The provision allowed a group of five or more sponsors, or a church, synagogue or other organization involved with refugees, to initiate the sponsorship of humanitarian refugees from designated classes determined by the Minister by means of regulations. In 1979, there were three designated classes: the Indochinese, the Latin American Political Prisoners and Oppressed Persons and the East European Self-Exiled Persons. The first would become by far the source of the largest intake.

By the time the government of Joe Clark took office in June and the refugee crisis in the South China seas had reached dramatic proportions, senior government civil servants had only been able to convince two groups, the Mennonite Central Committee and the Dutch (Christian) Reformed Church to sign an umbrella agreement that would permit small groups of its members to initiate sponsorships under the guarantee of the larger church body. There is a myth that the government was forced by public pressure to increase the Indochinese intake.<sup>38</sup> Evidence supports the interpretation that the opposite was the case. In this instance, the government was always the lead player.

The situation changed dramatically in June of 1979. Part of the reason was that a new government had taken over and wanted to demonstrate it was in charge and initiating policy, but it was policy that had support from all sides of Parliament. A second major reason was the dedication of senior policy staff in the Immigration Department; they worked assiduously to get the government to take a lead in dealing with this problem. A third instigator was the media that provided non-stop coverage of the issue as front page news that was critical in arousing the compassion of Canadians. In contrast to the incident of the Hai Hong, where there was much speculation about the gold bars the refugees had used to pay their way out and questions about whether we were helping refugees in need or just wealthy families to escape, that whole concern had been shoved overboard and disappeared into the choppy ocean waves.

A fourth element now entered the equation – the involvement of secular civil society at large rather than just special religious groups with a record of commitment to assisting refugees. Operation Lifeline was part of that upsurge. Though it turned out to be the name of the major initiative that spread across Canada, there were

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<sup>38</sup> The source of this false news is not only the media, which has a propensity to view government initiatives as only passive responses to the voice and will of the people. One source of this misleading information is the otherwise extremely reliable Canadian Council for Refugees. On its website summarizing the history and development of refugee policy in Canada, it is written that, "Popular pressure forced the government to adjust upwards its initial commitment to resettling the refugees." <http://ccrweb.ca/en/hundred-years-immigration-canada-part-2> This is just incorrect.

other worthy local initiatives, the most noteworthy being the initiative of Mayor Marion Dewar in Ottawa with Project 4,000.

Operation Lifeline in some form was inevitable, but it developed from a serendipitous combination of factors.<sup>39</sup> Let me speak of my role first. I had been up north working on my book on Hegel and the Problem of Recognition. I was on an island cut off from the media. I had been up there for six weeks and only returned to Toronto because I had a prior commitment to running a workshop for the Canadian Friends (the Quakers) on the island they owned; the topic was the Israeli-Arab conflict. The group consisted of supporters of each position, but each group was required to take up and defend the position of the other side. It also happened to be the case that I had written a review essay on a spate of books and articles that had recently been published, each having been written about the way various nation-states had turned their backs on Jewish refugees in the 1930s. As I was inundated with the media coverage that everyone had been reading for weeks, I became determined that this should not happen again.

When I finished the retreat, I decided to stay in Toronto a few days longer to write Ron Atkey, my member of Parliament and a former colleague at York University where he previously taught at the Osgoode Faculty of Law. I wanted to exert pressure on him to enlarge his initiative. I organized a meeting at my house on a Sunday, 26 June 1979, after church was out at 1:00 p.m. Representatives of the Catholic church up the street, an Anglican minister whom I knew from the area, rabbis from Holy Blossom Temple and Beth Tzedec Synagogue as well as the local alderman and some friends were invited to draft a letter to Ron asking the government to take a larger initiative. Not one who was invited failed to come or send a representative.

Just after 1:00 when the meeting was just beginning, there was a knock on the door. I went to answer presuming it was just some late comers who I had not been expecting. It was, but from a source I would never have guessed. The Director of Settlement for Ontario in the Immigration Department as well as the head of public relations for that department, André Pilon and Bob Parkes, were at the front door. They said that they had heard about the meeting and wondered if I would mind if they were permitted to attend and listen in.

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<sup>39</sup> For a journalist's account, see Peter Goodspeed (2014) "Can Canada duplicate its boat people rescue with Syrian refugees?" *Toronto Star*, 26 September.

I had to overcome being flabbergasted that senior civil servants had heard about the meeting, that they took time on a Sunday to come to a private home of someone they did not know. They did not even know if they would be welcome. I invited them in to join the group. We wrangled over the wording of the proposed letter for perhaps half an hour when our visitors from that strange land, the government, intervened. They asked if they could offer a suggestion. We easily acquiesced, if only to get relief from fifteen or so people trying to write a letter together. They informed us of this small provision in the Immigration Act. They asked if, perhaps in addition to writing a letter, we might want to make use of that provision and initiate some sponsorships as a form of witnessing.

Within a few minutes, we agreed to abandon our letter drafting and took up the idea of private sponsorship. We quickly determined that among the religious institutions in the riding as well as local community groups, we could organize at least 50 sponsorships. We divided up responsibilities with each of us agreeing to contact others to arrange for sponsorships. Within two weeks, we had overshot our target. We could never arrive at an accurate figure, but we certainly organized over 150 sponsorships in our riding.

Serendipity, once again, entered. It so happened that I had invited one of my graduate students to attend the meeting, on the assumption he might be interested, as well as to save time so we could work on his thesis immediately after the meeting was over and before I headed north again. He had never told me that he was a stringer for our national newspaper, *The Globe and Mail*. The next morning, when I was sitting at my desk, at 5:45 the phone rang. It was a lady from Marystown, Newfoundland. She had read about Operation Lifeline in the *Globe* and wanted to know how she could help. Startled, I asked her what Operation Lifeline was? She then read me Dick Beddoes' page length column in the newspaper that has described myself as abandoning my book on Haekel (sic!) to return to Toronto to save the Boat People and to organize Operation Lifeline. At the bottom of the page, he had printed my name and number and suggested that if others wanted to help, they could contact me.

I laughed at the enormous lie, but then responded that she should organize a chapter of Operation Lifeline in her riding. I appointed her chair of the Marystown Chapter of Operation Lifeline. She protested, insisted that she was only a housewife and did not know how to go about this. I told her to contact her friends, her local clergy of any denomination, local politicians to form a local chapter of Operation Lifeline in her federal riding.

I said I would send her an express package describing in detail how to go about sponsoring, even though at the time I had no clue. Reluctantly she agreed, and she performed admirably as she promised to keep me notified of her success.

Delighted, I hung up the phone and no sooner had I done so, it rang again. By the end of two weeks, 66 chapters of Operation Lifeline had been organized across Canada. By the end of the week, my house was overrun with volunteers – it was great that the family were now up at the island and that school was over. Also by the end of the week, the target of 50 sponsorships had been reached in our riding and would soon be greatly exceeded. In that morning, people began showing up at the door to volunteer since they were unable to reach me on the phone. One of these was Wendy Schelew, an expert in hospital administration who was between jobs and volunteered her services. She became the managing head of Operation Lifeline. Another was Dr. Joseph Wong who had organized a similar initiative among his friends who had immigrated from Hong Kong and he merged his organization with ours and became a stalwart. A third was Elaine Slater who brought us a pile of office supplies; she would become chair of the Board.

Another was a former fellow graduate student in philosophy who was then a practicing lawyer. He had gathered an enormous body of material on private sponsorship when he had tried – unsuccessfully – to get his United Church in April to initiate a sponsorship group. By Tuesday morning, after the two of us worked all night, we had a manual on private sponsorship that we could send out to chapters of Operation Lifeline that were mushrooming up all over.

There are many stories to tell about the exhilarating days that followed, how, for example, Flora MacDonald, Foreign Minister, got her cabinet to raise the target from 12,000 to 50,000, with 21,000 to be sponsored by the private sector. (The private sector by the end of the period of 18 months had almost doubled that target.) But I will end this story of the beginning of the Indochinese private sponsorship movement with one tale, that of Operation Intellectual Kneecapping. (It turned out to be a stupid name, but that is what we called it.) The National Citizens Coalition (NCC), then headed by Colin Brown, though subsequently by Stephen Harper, published within weeks of each other in August and September full page ads in Canadian newspapers. The first said that each refugee brought in would eventually bring in another 16 family members on average. The result: according to the NCC, almost a million Indochinese would be allowed to enter Canada.

Setting aside whether that would be a problem in the first place, setting aside that the numbers projected were based on early forms of family sponsorship practices no longer possible under the 1976 Immigration Act, the ads stank of racism and the fears of the “Yellow Peril.” Sometimes the bogeymen are communists. At other times, they are Islamic terrorists.<sup>40</sup> That time, race was the spectre.

That initial ad was followed by a second based on a survey the NCC had taken. Based on that survey, most Canadians were opposed to the intake of 50,000 Indochinese refugees. Only about a third of the population supported the expanded initiative. At the time, we denounced the way the survey had been carried out and the leading questions asked. But we later learned that secret surveys of public attitudes had been undertaken about the same time, but based on more scientifically stringent questions and methods. The results were not significantly different. Though virtually every professional organization, business association, business leaders, along with the parties in parliament, had endorsed the initiative, the NCC was tapping into a racist vein that ran through the heart of Canada. Quite aside from its effects on the sponsorship movement and on the political process, an NCC anti-refugee campaign would be very detrimental to the process of resettling refugees. They already had more than enough insecurities. We would be welcoming refugees against a background noise that said that they were not welcome.

Dr. Joseph Wong and I huddled together and he came up with an idea to contact one of the financial supporters of the NCC whom he knew to be a very good guy, though a fiscal and financial conservative. Joseph contacted him and he agreed to meet with us for breakfast at 7:00 a.m. the next day at what was then called the Prince Hotel on University Avenue. We told him the problem. He said he understood and sympathized. The breakfast ended before 8:00 a.m. Before noon, he phoned Joseph and told him that we could set our concerns aside. The NCC would not be publishing anything more on the issue.

He had phoned seventeen of his friends and acquaintances who were donors to the NCC and received permission to speak on their behalf. He phoned Colin Brown and told him to stick to financial issues and abandon the campaign against the sponsorship of the Indochinese refugees otherwise not only would he and his friends withdraw their support, but he would personally phone people he knew across Canada, who were

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<sup>40</sup> For a discussion of the interaction between terrorist threats and Canadian refugee policy, cf. Howard Adelman (2008) “Canada’s Balancing Act: Protecting Human Rights and Countering Terrorist Threats”, in Alison Brysk and Gershon Shafir (eds.) *National Insecurity and Human Rights: Democracies Debate Counterterrorism*, Berkeley and Los Angeles: University of California Press, 137-156.



supporters and contributors to the NCC, to withdraw their support unless he received an immediate commitment to stick to financial issues.

We never heard another peep from the NCC. The danger of organizing a racist backlash had been diverted. However, when the President of the United States holds such views rooted in invented fears of terrorists slipping into the U.S. through the refugee door, when he is ostensibly a billionaire in his own right, the problem is raised to a totally different dimension.

## REFLECTIONS AND ADUMBRATION

In the 1980s, the mouse that eventually roared was that sleepy issue of *rights refugees*. At the beginning of the Indochinese refugee movement that would eventually bring 160,000 Indochinese refugees into Canada, *rights refugees* were a sliver in the refugee movement. In 1982, there were approximately 300 files that were reviewed by the Minister to determine whether a refugee claimant should be allowed to stay or whether a refugee referred to by UNHCR for protection status could be approved for admission by the Canadian government. But the signs were becoming ominous. The number of files had doubled from the year before. By the end of the decade, refugee claimants on Canadian soil had reached over 50,000 applicants per year with a backlog of over one hundred thousand. The story of *rights refugee* claimants had moved from the back burner to a front firestorm.

“Unprecedented in the history of Canadian immigration legislation, the Immigration Act, 1976 attempted to codify the procedures dealing with the entrance of individual refugees to Canada. “That coding would undergo many revisions over the years,”<sup>41</sup> initially in the eighties to give “the benefit of the doubt” to refugee claimants on Canadian soil, but over the longer term in practice, to set in motion procedures which would make it increasingly difficult to arrive in Canada to make a refugee asylum claim in the first place. Other

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<sup>41</sup> Cf. Christopher J. Wydrzynski (1979) “Refugees and the Immigration Act,” Montreal: *McGill Law Journal*, 154-190. This article outlines “the immigration system established to process refugee claims, and will comment on the legislative steps Parliament has taken to ensure that Canada meets her international obligations and provides a system whereby the individual refugee applicant is treated with procedural and substantive fairness.”

scholars concentrate on the glass half full argument in tracing the application of refugee law in general in procedures and practices to make that law more precise.<sup>42</sup>

However, refugee rights regimes never escaped the net of the primacy of sovereignty<sup>43</sup> – we will accept refugee rights but only so long as the sovereign right to select members is only incidentally compromised. Refugee rights are inevitably caught up in security issue, often as indicated at the very beginning, to put in place a nativist agenda that had nothing to do with either refugees or security, except insofar as the former offer a convenient target and the latter offer a convenient even if irrelevant excuse. The security issue is often about cultural security and effects, not simply on the nation-state, but in a federal system like Canada's, on the policies of provinces, such as those of Quebec.<sup>44</sup>

Politics has always been at the centre of refugee issues and rarely at the periphery. And that is completely understandable. As I have said above, the principle of the sovereign to decide for itself and its own interests is sacrosanct, even as it takes into consideration the rights, interests and needs of others. Those considerations can be shaped to serve the interests of the nation-state.<sup>45</sup>

In a subsequent article, I will try to describe the impact of human rights refugee law and its development on humanitarian refugee policy and the boomerang effect the former had on limiting the latter. At the same time, I will try to clarify several historical questions, all of which have an impact on the debate of whether it is preferable to view refugees primarily through a needs window or whether refugee policy should be subsumed under human rights law.

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<sup>42</sup> Cf. Alexander Betts (2009) *Protection by Persuasion: International Cooperation in the Refugee Regime*; Ithaca, NY: Cornell University Press, and Alexander Betts, Gil Loescher and James Milner (eds.) (2012) *UNHCR: The Politics and Practice of Refugee Protection*, London: Routledge.

<sup>43</sup> Howard Adelman (2008) "Sovereignty in the Twenty-First Century: Security, Immigration and Refugees," Ch. 8 in Trudy Jacobsen, Charles Sampford and Ramesh Thakur (eds.) *Re-envisioning Sovereignty: The End of Westphalia?* Aldershot: Ashgate, 129-150. See also Jack Donnelly (2014) "State Sovereignty and International Human Rights," *Ethics and International Affairs*, 225.

<sup>44</sup> Cf. Howard Adelman (1995) "Canada, Quebec and Refugee Claimants," in *Is Quebec Nationalism Just: Perspectives from Anglophone Canada*, ed. Joseph Carens, McGill-Queens University Press, 82-96.

<sup>45</sup> Thus, the effort to get nations to intervene in other states where there were gross abuses of human rights – Government of Canada and U.N. Secretary-General, *Responsibility to Protect: Timely and Decisive Response*, 1, U.N. Doc. A/66/874-S/2012/578 (July 25, 2012). For the more ambitious issue of humanitarian intervention, cf. Canadian Government *Responsibility to Protect* and a critique in terms of practice, Howard Adelman and Govind C. Rao (eds.) (2003) *War and Peace in Zaire/Congo: Analyzing and Evaluating Intervention 1996-1997*, Lawrenceville, N.J.: Africa World Press as well as a more extensive effort to salvage the disasters in application, see U.N. Secretary-General (2012) *Responsibility to Protect: Timely and Decisive Response*, U.N. Doc. A/66/874-S/2012/578, 25 July. Refugee movements are also used as a propaganda tool and an instrument of war. Cf. Howard Adelman (2003) "The Use and Abuse of Refugees in Zaire," Chapter 4, Stephen John Stedman and Fred Tanner (eds.) *Refugee Manipulation: War, Politics, and the Abuse of Human Suffering*. Washington, D.C.: The Brookings Institute, 95-134. For a more theoretical examination that preceded the publication of the *Responsibility to Protect*, cf. Howard Adelman (2001) "Theory and Humanitarian Intervention," Chapter 1, Michael Keren and Donald A. Sylvan (eds.) *International Intervention: Sovereignty versus Responsibility*. London: Frank Cass & Co., 3-24.

How did the crisis in El Salvador and the creation of special measures for admitting Salvadorans into Canada in 1981, including those who were already in the U.S., impact on this question? When the Solidarity movement in Poland was repressed, why did we add Poland to the countries included in the Political Prisoners and Oppressed Person Class, a direct and clear case of people targeted for persecution and presumably eligible to be taken in as Convention refugees, but, in fact, allowed entry without having to prove they had a well-established fear of persecution? In 1983, how and why did the government expand the intake of Tamil refugees from Sri Lanka from those simply affected by the riots in Colombo to include all Tamils throughout Sri Lanka affected by the war in the north. And what did this tell us about the rivalry between the primacy of rights versus needs, Convention versus humanitarian refugees?

The big shift took place in 1985 with the Singh decision. If you recall, at the very beginning of the development of the Convention, there had been a debate. If refugees were defined in terms of rights, then, as a concomitant of those rights, there would have to be other rights – rights to be heard, that is, to have an oral hearing and the application not simply processed by the Minister and/or her appointees, but the asylum claimant to be present at the hearing, to be assessed by persons of independent judgment, to have the right of counsel and to have the right of appeal. The Supreme Court of Canada in the Singh case in 1985 ruled that these connections anticipated in 1950 had to be implemented in Canadian refugee law.

Just after the Canadian people were awarded the Nansen medal in 1986 – an event commemorated by all of the Indochinese ethnic groups in Canada in Ottawa last year – for the tremendous leadership and work on behalf of humanitarian refugees performed by Canadian citizens on behalf of refugees, specifically the Indochinese, what followed was that the movement of humanitarian refugees in Canada shifted back into the shadow of an overwhelming focus on *rights refugees* and the creating of large institutionalized systems for hearing and adjudicating claims, for arranging counsel, for educating supposedly independent assessors. An administrative review system was initiated for refugees who had arrived before 21 May 1986, at the same time as Bill C-55 was passed to provide an adjudication system based on a combination of recommendations from the Robinson Report (1981), the Ratushny Report (1984) and mostly the Plaut Report (1985).

No sooner had *rights refugees* come to the fore than the reaction and pushback started. In 1987, refugees from the U.S. were forced to turn back and await a hearing date in the U.S. For only the second time in its history,

parliament was recalled out of its summer recess in 1987 when a group of Sikhs arrived off the shores of Nova Scotia and, upon landing, requested refugee status. Very quickly, the government tabled Bill-84, the Refugee Deterrents and Detention Bill that was finally passed in 1988.

These steps to undermine the possibility of landing in Canada to claim refugee status were compounded by carrier sanctions, by expanding the number of countries where its citizens were required to obtain visas before they came to Canada as well as other deterrent measures. By 1988, where there had once been 150 and then 300 applications, the backlog alone of refugee claimants was over 100,000. By the end of the 1980s, the cost of the whole system just in Canada was estimated at over one billion dollars, equivalent to the entire budget then of UNHCR to deal with 35 million refugees.

The humanitarian designated class system, now relegated to a back seat, continued to function and was applied to overstayers from China following the Tiananmen massacre in Beijing in 1989 and, following the disintegration of the iron curtain that same year, to a European self-exiled class. By 1992, the accumulated methods for deterring the arrival of refugee claimants were expanded even more and given legislative authority in Bill C-86, including more scientific methods of identification – fingerprints originally – and expanding the detention system, though never as broadly or as cruelly as in Australia. Further, refugee claimants who traveled to Canada had to have the proper documents, in total contradiction to both reality and to the principle that the persecuted had rights independent of their membership in a state.

At the very same time, Canada opened the definition to include those persecuted because of gender. But the key shift took place even before the United States when immigration responsibilities were transferred to the Department of Public Security. The message was very clear – much harder to get in and much quicker to be kicked out. The newly elected Chretien government simply reversed that step and shortly after that, modified the requirements on documentation.

By 1987, initiatives were taken to bring the humanitarian process and the asylum or rights process into closer alignment with the creation of a Humanitarian Designated Class applied to applications from those persecuted who were still in their home countries – the Source Country Class. A Country of Asylum Class for Convention refugees from overseas who would be sponsored was created.

The dialectic between humanitarian and *rights refugees* continued into the twenty-first century, leaving the tensions between sovereignty and rights, between security and humanitarianism, between prejudice and generosity, unresolved and leaving the field open for a demagogue to play on fears and ignorance, lies and misrepresentation to advance a populist lowest denominator appeal that would transform an open polity into a closed and paranoid one.

To rephrase Judge Rosalie Abella, with the doctrine of civil liberties we gained the universal right to be equally free from an intrusive state regardless of group identity; with the doctrine of human rights, we gained the universal right to be equally free from discrimination based on group identity. But what about refugee rights? What about the right to belong to a state that protects your rights? For only if we are members of a state can we have both civil and human rights.

This brief historical sketch points to a claim that rights language cannot produce the transcendental conditions that are the preconditions of any rights in the first place. The existence of a sovereign nation-state is a precondition of both civil and human rights and membership in a state that protects such rights in the first place. A nation-state that goes beyond its sovereign and democratic responsibilities to guarantee rights to non-members has a problem. Further, it stimulates a fear that globalizing rights will take away a nation's primary interest in self-preservation and open the way for exploitation by populist demagogues. In any case, refugee rights are redundant. Once a foreigner is on the soil of such a sovereign state, they too must be guaranteed both civil and human rights. There are no separate refugee rights. Further, I suggest much more can be done for refugees and more will be granted membership in a democratic nation-state when the threat to sovereignty is removed.

But this argument requires a full essay on its own.