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The Politics of Asylum and Public Perception

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Canada's asylum policy is undergoing change. Reforms that have taken place over the past decade, and in particular those that have recently been proposed for implementation, insinuate that Canada is becoming less receptive to asylum seekers. At first glance, some aspects of Canada's policy may appear to resemble that of Australia, an immigrant-receiving country notorious for its poor treatment of asylum seekers. This paper explores the significance of recent changes to Canada's asylum system, including those focused on prevention and deterrence. While some preventative measures are effective in reducing the number of asylum seekers, this paper argues that deterrence reforms are largely symbolic efforts designed to appease an anxious public.

Once praised by the United Nations High Commissioner for Refugees (UNHCR) as an exemplar in the recognition of refugees, Canada's asylum policy is undergoing change. Reforms that have taken place over the past decade, and in particular those that have been proposed for implementation in the near future, suggest that Canada is becoming less receptive to asylum seekers. Federal immigration minister Jason Kenney has issued statements about cracking down on human smugglers and "manifestly unfounded" refugee claims (Government of Canada 2010e; Government of Canada 2010f). There is talk of mandatory detention for asylum claimants (Government of Canada 2010f). At first glance, certain aspects of Canada's policy may appear to resemble that of Australia, an immigrant-receiving country notorious for its poor treatment of asylum seekers. This paper will explore the significance of recent changes to Canada's asylum policy, including those focused on prevention and deterrence. While some preventative measures are effective in reducing the number of asylum seekers, I will argue that the deterrence reforms are largely symbolic and designed to appease an anxious public. Rather than restricting the flow of migrants, these measures attempt to convey to the Canadian public that the government is in control of an inevitably unstable and unpredictable process.

Before discussing the reforms in more detail, it is necessary to briefly explore Canada's refugee system. There are two ways to enter Canada as a refugee. In the first case, an individual applies for resettlement to Canada from outside the country. Each year, Citizenship and Immigration Canada (CIC) resettles between 10,000 and 12,000 refugees through government-assisted and privately sponsored programs (Government of Canada 2008). The second way to gain refugee status is to claim asylum at a Canadian port of entry. The asylum process has been in place since the creation of the 1951 United Nations Convention on Refugees, negotiated in the aftermath of the Second World War as of result of the sympathies engendered from the human suffering and deaths of the Holocaust. The Convention defines refugees as individuals with a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group, or political opinion (Weiner 1995, 16). The interpretation of the Convention in Canada means that any individual fleeing persecution that arrives at a Canadian port of entry has the right to make a refugee claim. If the individual is eligible[1], his or her claim will be referred to the Immigration and Refugee Board (IRB), an independent administrative tribunal that determines whether the claimant is a Convention refugee, faces a threat of torture, or a risk to his or her life. If the IRB accepts the claim, the individual is able to apply for permanent residence. If the claim is rejected, there are avenues for appeal.

While the Government of Canada continues to uphold the Convention today, it is worth highlighting some significant developments that have taken place around the world since 1951. Since the late 1960s, asylum has become a globalized phenomenon, a mechanism that allows refugees and economic migrants from the South to gain access to the West (Gibney and Hansen 2003, 9). The asylum phenomenon was significantly influenced by several key movements, including the prevalence of refugee-producing events in the South, an expansion of the Convention to non-European countries, the advancement of the telecommunications industry, and increased labour migration movements in general (ibid). By the 1980s, with demand on the asylum system steadily increasing, including

1 A claim is not eligible if the claimant made a previous refugee claim in Canada; has refugee status in another country; arrived through a "safe third country" such as the U.S.; or is inadmissible on certain security and criminality grounds (Citizenship and Immigration Canada, 2008).

highly publicized cases of boat people arriving off-shore and claiming refugee status, Western states began to implement measures to restrict claimants from reaching their borders and started to distinguish more carefully between legitimate refugees and bogus claimants. The terrorist attacks in New York City in September 2001 sharply intensified the focus on border security in North America, increasing pressure on the government to tighten access to Canada's refugee system. Like other Western states, Canada has used various preventative measures in an attempt to stabilize and manage the flow of asylum claimants; the government imposed visas on certain countries with high refusal volumes and placed sanctions on airline carriers that were transporting passengers without valid identification (Brouwer and Kumin 2003, 8-9). CIC also dispatched immigration control and migration integrity officers to Canada's missions around the world (ibid, 10).

In addition to pursuing preventative measures, Canada is exploring ways to deter illegitimate asylum claimants from claiming asylum. Deportation is considered the main deterrent, and some reforms developed after September 2001 include more explicit policies regarding detention, limitations in appeal processes and other legal opportunities in order to expedite the deportation of suspected criminals (Cornelius et. al. 2004, 129). Currently, discussions on the asylum process are heavily shaped by a global focus on deterring human smuggling. In October 2010, the Canadian government introduced legislation to make it easier to prosecute human smugglers, impose mandatory prison sentences on convicted smugglers, and hold ship owners and operators to account for use of their ships in human smuggling operations. In addition to penalizing smugglers themselves, the proposed changes would also authorize the mandatory detention of illegal migrants for up to one year to allow for the determination of identity, inadmissibility and illegal activity. Other key deterrence measures that would specifically apply to illegal migrants who come to Canada by way of a human smuggling operation include: a reassessment, within five years, of those who obtain refugee status to determine whether they still need protection or can be returned to their country of origin; and preventing illegal migrants from obtaining permanent resident status or sponsoring family members for five years (Government of Canada 2010f). Taken at face value, these deterrence measures suggest that Canada is taking major steps to decrease the flow of asylum seekers. Assuming the

changes are implemented, will they be effective in deterring bogus claimants. Moreover, will they compromise the value of the asylum system by potentially deterring genuine refugees?

Let us first discuss the effectiveness of the prevention approach. There is evidence that preventative measures have been somewhat effective in restricting the flow of asylum seekers. For instance, the Government of Canada's reinstatement of a temporary resident visa requirement on the Czech Republic as well as the first-time imposition of a visa requirement for nationals of Mexico resulted in a 10 per cent decrease in the volume of asylum applications in Canada from 2008 to 2009 (Annual Report to Parliament on Immigration, 2010, 11). In spite of this decrease, a significant number of people still manage to come to Canada as asylum seekers every year. In 2009, approximately 33,000 people claimed asylum at a Canadian port of entry (Lejeune-Kaba 2010). Among claimants, only a minority are found to be legitimate refugees. In fact, 58 per cent of asylum claims made in Canada are subsequently determined not to be in need of the country's protection (Citizenship and Immigration Canada 2010). Meanwhile, as the number of overturned refugee claims continues to increase, the fact that 50-70 per cent of individuals who are not granted status still remain in the country creates further pressure to restrict the system (Gibney and Hansen 2004, 74). Despite these pressures, numbers suggest that it does not appear that the government can successfully deter the number of asylum claimants who come to Canada. Why is this the case?

Deportation is supposedly the ultimate deterrent for illegitimate refugee claimants; however, although the majority of claimants are unsuccessful, they are very rarely deported. According to a controversial report from the federal Auditor General in May 2008, there were 41,000 people that Canada wanted to deport but could not find (Chase et al 2008). Though these individuals are not all failed refugee claimants, the finding strongly suggests that deportation is not a priority for the government. One reason for this is "self-imposed" limits of sovereignty. Canada is a signatory to human rights agreements, such as the Convention against Torture, that prohibit it from returning individuals to countries in which they would be tortured or treated inhumanely (Gibney and Hansen 2003 10).

Most individuals in this category would be granted some form of non-refugee humanitarian status (ibid). Additionally, it is important to consider the length of time involved in each refugee determination process. In 2010, it took up to nineteen months for claims to be heard by the IRB[2], after which lengthy appeal processes could ensue (Government of Canada 2010d). The linkage of residence to rights – meaning the longer individuals spend in a given country, the stronger their claim becomes against removal – can sometimes complicate the deportation process.

In addition to legal considerations, there are also practical obstacles to deportation. The process is very expensive, time-consuming and resource intensive, particularly given that some individuals who are in the country illegally may have gone into hiding. Even if officials are able to successfully track down a failed claimant, the removal process itself is challenging. Additional chartered flights may have to be arranged as normal carriers will not often take deportees. Moreover, security arrangements, including those on the receiving end, are costly for the deporting state on which they are borne (ibid). Another obstacle to deportation is the need for the interstate cooperation (Ellermann 2006). Deportation cannot proceed without the agreement and cooperation of the country of origin. In this sense, negotiations can be long and drawn out, and when certain countries with large emigration pressures refuse to co-operate, the deporting country is powerless (ibid). The numbers, and accompanying considerations, clearly show that while deportation may be a deterrent on principle, in reality it is more often than not an empty threat.

The limits of deportation aside, the effectiveness of other deterrence measures is equally questionable. One major consideration is that deterrence cannot be measured; it is impossible to tell how many people decided not to migrate or decided to migrate elsewhere (Malmberg 2004, 11). As well, it is not possible to know whether people decided to stay put because of improved conditions in their home country or because they are daunted by deterrence measures. Moreover, since none of these measures address the reasons why people migrate, one can assume that they will not stop the flow of migration (ibid,

2 Wait times are expected to change following legislation adopted in June 2010 to speed up the refugee determination process (Government of Canada 2010d).

12).

The considerations above show that a deterrence approach to asylum may not be the most effective one. But can a focus on deterrence threaten to compromise the integrity of the asylum process? The answer is no. As the principle of generous access, the hallmark of the Canadian immigration system, remains intact, everyone who enters Canada and wants to make an asylum claim is able to do so. Naturally, generous access means that the incentive, for both genuine and illegitimate refugees, is to file a claim. This, however, results in a smaller illegal migrant population in Canada relative to the United States (Showler 2009). Another major strength of the Canadian system that remains uncompromised by change is the IRB, the independent decision-making tribunal. The IRB's expertise of on-the-ground happenings in each country enables tribunal members to make decisions about instances of persecution on a case by case basis (ibid). Finally, as permanent residents, accepted refugees continue to have full access to employment and education.

The strengths of Canada's system are especially evident when comparing the country to other immigrant and refugee receiving jurisdictions. Australia's more extreme policy is one of extraterritorial processing. This policy was famously piloted in the 2001 Tampa incident when a Norwegian freighter carrying 430 asylum seekers, mainly from Afghanistan, was refused permission to dock on Australian territory. They were sent to Christmas Island, in legal limbo outside the Australian system, until Australia successfully negotiated with Nauru, a small Pacific country, to house the claimants (Brouwer and Kumin, 2003, 8). Through its Pacific Plan, Australia denies asylum seekers access to its national legal system and outsources its responsibilities under the 1951 Refugee Convention, clearly undermining the spirit of the Agreement (Kneebone 2009). Australia's mandatory and automatic detention policy for all asylum claimants has also attracted considerable controversy.

The purpose of the above comparison is not to display Canada's moral superiority over Australia. Rather, it demonstrates that as long as Canada continues to provide generous access to all refugee claimants while balancing international human rights obliga-

tions and national security interests, the refugee asylum system remains fundamentally unchanged. This is not to say changes that prevent certain individuals from making claims are insignificant, such as the impact of the recent visa imposition on Mexico and the Czech Republic. But these changes do not alter the fundamentals of the system. As long as Canada continues to allow asylum seekers to file claims upon arrival, deterrence policies will not effectively discourage their arrival. Naturally, this poses the question: why does the government make these changes?

More than anything, these changes are made to "assuage the worries and anger of Canadians about immigration abuses" (Geddes 2010). Prime Minister Stephen Harper conveyed precisely this when, in support of the changes his government proposed in October 2010 to crackdown on human smuggling, he said, "A failure to act and act strongly will inevitably lead to a massive collapse in public support for our immigration system" (ibid). The same Canadian public that is generally in favour of Canada's immigration program can be extremely volatile on the issue of asylum seekers. The public is aware of the burden asylum seekers impose on housing, employment and public services. Moreover, they recognize that it is one thing for their government to choose which people to admit, and another for these decisions to be made by foreign actors, including would-be migrants, not actually in fear of persecution, and taking the place of legitimate refugees, destitute and patiently waiting in camps (Weiner 1995, 12).

Paradoxically, while the public expresses support for tighter immigration controls, it is not in favour of deportation. Discomfort and compassion caused by media images of individuals forced from their homes to an awaiting airplane seems to trump the public's anger over illegal migration (Gibney and Hansen 2003, 12). The heightened, and somewhat conflicting interests, taken by the Canadian public in asylum-related policies demonstrates the need for the government to show responsiveness to public opinion on this file, and highlights the importance of doing so in a balanced manner.

This paper has explored the significance of recent and proposed changes to Canada's asylum system, including those focused on prevention and deterrence. While some preventative measures are indeed effective in reducing the number of asylum seekers,

I have argued that the deterrence reforms are largely symbolic, designed to appease an anxious public. Interestingly, the contradictory nature of public opinion on issues of migration actually mirrors the government's balanced approach on asylum policy, carefully weighing national security interests with human rights obligations. Ultimately, this need for balance—reinforced in the international community and at home—reduces the significance of changes that attempt to deter the flow of asylum claimants.

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