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**Definitions, Interpretations and the Scarce Resource -  
Canadian Refugee Policy 1947-1993**

Salma K. Pal

A Thesis

in

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of Geography

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for the Degree of  
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## **Abstract**

### **Definitions, Interpretations and the Scarce Resource Canadian Refugee Policy 1947-1992**

**Salma K. Pal**

**Refugees are a migration phenomenon which continue to challenge, frustrate and anger Western policymakers. To qualify as a Convention refugee, a person must fear persecution because of his/her race, religion, nationality or membership of a social group. The Convention refugee must also be outside of his/her country of origin and unable to receive protection from his/her national government. Canada became a refugee receiving country in the post World War II era. Today, she resettles approximately 25,000 Convention and Humanitarian refugees on an annual basis. This thesis examines the evolution and growth of Canadian refugee policy from its modest beginnings to its modern philosophy and general direction.**

**This thesis is divided into two parts. The first is the Literature Review on the 'refugee' definition itself. The second part consists of an overview and analysis of Canadian refugee policy from 1947 to 1992. It concludes with a brief examination of Canadian policy towards Central America, a region whose history of political instability appeared to reach its zenith in the 1980's.**

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*This thesis is dedicated to the memory of my mother, Catherine Telik Pal (1925-1987).*

*May she know that her dreams have been realized...*

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## **Introduction**

The Philosopher, Howard Adelman, frequently refers to refugee policy as being a litmus test for the concept of justice in a society. He also writes that the most fundamental issue for a society is to determine who it admits into membership. Refugees are not conventional migrants, they do not choose to leave their country, they are forced to do so and must be admitted into countries such as Canada under the auspices of humanitarianism. Refugee policy reflects a country's attitudes and commitment to the aiding of and resettlement of those who find themselves in such a dilemma. This is Professor Adelman's litmus test of justice.

Increasingly, over the last decade, refugee-receiving countries have started to balk and subtly challenge the rights which were granted to asylum seekers decades ago. The most obvious tactic has been the so-called 'economic' and 'bogus' refugees. Such propaganda has trickled down to Canada's mainstream population and resettled in an increased level of antagonism against refugee claimants in general.

The title of this thesis refers to the changing climate towards refugee protection. 'Definition' refers to the 1951 Convention containing the criteria for refugeehood. 'Interpretation' draws the reader's attention to the degree of discretionary power in the definition itself. All of the key phrases such as 'fear', 'persecution' and 'social group' were undefined. It was left in the hands of the signatories to decide how these terms would be administered. The 'Scarce Resource' is the granting of refugee asylum. This term is meant to alert one to the fact that this status has become harder to obtain as more invisible bureaucratic barriers are constructed.



The purpose of this thesis is to give the reader a complete overview of Canadian refugee policy from its post-war beginnings to its present day challenges. It also attempts to offer insight into the future of refugee protection. This paper is rather unique in that it encompasses a 45 year time span. It is the researcher's hope that the reader will learn how Canada has responded to, what has become, a most pressing international migration and human rights issue.

**An Overview of the Literature on the  
1951 Convention and 1967 Protocol  
Relating to the Status of Refugees**

Chapter One

A Convention refugee is defined:

"As a result of events occurring before January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or, who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

Article 1 A (2) of the 1951 Convention. In:Handbook on Procedures and Criteria for Determining Refugee Status, Office of the United Nations High Commissioner for Refugees, Geneva, January 1992, (re-edited), p. 11.

The 1967 Protocol recognizes "...that new refugee situations have arisen since the Convention was adopted and that the refugees concerned may therefore not fall within the scope of the Convention..." and that therefore "...equal status should be enjoyed by all refugees covered by the definition in the Convention irrespective of the dateline 1 January 1951."

Introductory preamble to 1967 Protocol

Relating to the Status of Refugees. In:

Handbook on Procedures and Criteria for Determining

Refugee Status, Office of the United Nations High

Commissioner for Refugees, Geneva, January 1992, (re-

edited), p. 11.

## **Introduction**

On July 28th, 1951, after three years of drafting, the Convention Relating to the Status of Refugees and Stateless Persons was officially adopted by a United Nations Conference of Plenipotentiaries. The Convention became enforceable on April 21st, 1954. The most pertinent and controversial aspect of the 1951 Convention was that it contained a general definition of who could or could not be considered a "refugee". Such an instrument for refugee determination had never been created at the global level. Though the Convention was a collective response to the displaced of World War II, refugee protection was not an entirely new event and, indeed, had already passed through three stages. James Hathaway, a Canadian professor of law and practising refugee lawyer, identified these stages as "Juridical"(1920-1935), "Social" (1935-1939), and "Individualistic"(1938-1950). These last dates should be clarified as during these years, accords were written which led to the ultimate ratification of the 1951 Convention.

The Juridical and Social perspectives were relatively similar because they both considered the struggle of refugees as a group not as individuals. The Juridical policy-makers' primary interest was denaturalization. The Juridical "refugee" was the individual who sought freedom of movement but lacked state protection. Any person who was involuntarily outside his/her native country could apply for League of Nations identity certificates. These certificates were the equivalent of passports and, therefore, the signatories to this agreement were obligated to respect them.

The Social approach differed as its objectives revolved around the refugee's personal safety and/or well-being. Like the Juridical era, long-term solutions were not considered and

both approaches were rather ad hoc and temporary in nature. Individualistic refugee asylum was revolutionary due to its rejection of group determination. The prospective refugee claimant had to prove personal discord/persecution between themselves and their country. This was the beginning of the current refugee determination process (for a complete discussion of these phases of refugee determination, see Hathaway, 1991b).

There has been only one addition to the 1951 Convention: the 1967 Protocol Relating to the Status of Refugees (submitted January 31st, 1967 and enforceable October 4th, 1967). The Protocol eliminated the date of the definition (1 January 1951) and all geographical boundaries. This was tacit recognition that the refugee problem had not disappeared from Europe but had spread to other parts of the world. The terms 'Convention' and 'Protocol' are used interchangeably, they are considered one and the same. For the purposes of this thesis, when referring to the definition, it is assumed to be the 1951 Convention and 1967 Protocol.

This thesis is dual-layered. The central theme is the "refugee" definition. The definition is almost a misnomer for in order to understand it, one is first required to explore the conditions which create refugees. All of the available literature on the definition examines the social, political and economic conditions which give rise to global migration. These intricate factors are the measuring rod for refugeehood. Only after doing this, one may decide whether or not the definition remains pertinent. This is why the Literature Review is the first chapter. It is the foundation for the rest of the thesis.

Wrapped around the definition is an evaluation of Canadian Refugee Policy from 1947 to 1992. Depending on one's points of reference, Canadian policy has been described as 'compassionate', 'calculated', 'biased', even 'racist'. The second and third chapters of this

thesis are devoted to the refugee determination system between these years. The third chapter also briefly examines Canadian policy towards Central America, a region that produced enormous numbers of refugees during the 1980's.

The definition of refugee (as articulated by the 1951 Geneva Convention and 1967 Protocol) has become the central point around which refugee policy has been built. Consequently, the definition has become a controversial issue. Its supporters believe that it is a unifying factor as it clearly identifies who may be granted asylum. Its opponents feel that the definition has become a politically divisive instrument upon which to base narrow "anti-refugee" policies. To the outsider, it is easy to feel that either side is capable of scoring a (moral?) victory, but as one becomes more involved with the subject, it is soon apparent that neither side is right or wrong.

This brings us to the very frustrating crux of the matter: the ambiguities of language; murkiness not only in terms of words but the overall meaning. The definition was written fairly broadly and in general terms. While the conditions for asylum are relatively clear, critical words such as 'fear' and 'persecution' have never been defined at an international level. Instead, they were considered part of the discretionary powers countries like Canada use to determine their immigration and refugee policies.

This literature review focuses on the definition because it provides a necessary philosophical, legal and practical basis for the rest of the thesis. The literature on the definition may be divided into three themes: first, the "refugee" definition, second, refugee migration and third, the citizen-state relationship. While there are authors who are comfortable with the status quo, the research shows that the definition has become weighed

down by sharp, even vitriolic, criticism. While some of this touches on language, it more frequently attacks the definition on the grounds that it is obsolete. What one discovers in the readings differs from what one may expect from such a discussion. The definition is constantly referred to but the heart of the matter is the reason for change. The reader will discover that only two authors, James Hathaway and Guy Goodwin-Gill, both lawyers, delve into the actual logistics of 'fear' and 'persecution'. The rest have argued their case for or against changing the definition based on the current international situation. It is worth noting that most of the printed information concerning the definition, is unavailable. It is securely tucked away behind the confines of the United Nations High Commissioner for Refugees (UNHCR). Ultimately, this limits the discussion. While there is some literature published by those who have worked within the refugee determination system, most authors cited in this Literature Review are either sociologists, political scientists, anthropologists or economists. There are a few articles written by geographers (Richard Black, Vaughan Robinson).

Migration, or the 'reason for leaving', is an almost equally complicated theme. While the human condition has been in motion for thousands of years, it was the motivation for migration that formed an element of the "refugee" definition and this itself has altered since 1951. Not only has the ethnic composition of refugees changed, but conditions have been considerably challenged by civil war, natural disaster, starvation, ethnic conflict and rivalry, broader forms of discrimination and subtle human rights abuses. These situations have posed new challenges for the "good offices" of the UNHCR in that these migrants have unintentionally undermined the nature of the international refugee protection system. They



have forced embarrassed policymakers to globally re-assess their programmes in light of what is more frequently being described as a world refugee crisis.

The third theme has a philosophical and moral slant to it. It is the citizen-state relationship. Do refugees unwittingly challenge the sovereignty of the countries in which they seek asylum? Like other facets of the debate, it is a tendentious question. Those who are nervous about the limits of a country's asylum feel that refugees (and other migrants) are undermining state sovereignty. However much truth there might be to this position, it is overshadowed by the fact that any country which signed the 1951 Convention, gave permission for potential asylum-seekers to make claims for protection. Controlling one's borders is an essential feature of sovereignty for without them, the state loses all meaning. Being stateless individuals, refugees are in an extremely weak negotiating position for unlike immigrants, who, to become equal members in a new society, bargain on the basis of their professional skills and family relationships, refugees only have their personal stories which will be either accepted or rejected. Accordingly, such stories must correspond to the definition. The relationship between citizen and state, has been cast as what political theorists, such as Michael Walzer, may refer to as a "third wheel" in the form of refugees. The debate revolves around and between those who feel that a limited number of refugees should be admitted with two qualifiers. One, that it be done as a political favour and, two, that they do not have the same broad rights as the indigenous population. On the other side of this fascinating debate are those who believe that not only do countries have a moral obligation and duty to accept refugees but that planning targets could be easily doubled as it is their belief that a western country's absorptive capacity is extremely elastic and that this

elasticity has been constricted by ignorance and a generally hostile attitude towards all newcomers.

## **Part I: The Definition**

The purpose of this section is to introduce the reader to the linguistic complexities associated with the universally adopted refugee definition as quoted in full above. Zolberg, Suhrke and Aguayo were most succinct when they wrote that the definition has become "...challenged by contemporary realities." They believe that isolating fear of persecution as a reason for leaving is becoming increasingly obsolete and that there should be more consideration paid "...to conflicts, or radical political, social, or economic changes in their own country" (Zolberg, Suhrke and Aguayo, 1989, p. 151). Or, as Janina Dacyl writes, "...escapees who flee, owing to a well-founded fear of being persecuted for reasons other than, 'race, religion, nationality, membership of a particular social group or political opinion' are still not entitled to refugee status" (Dacyl, 1990, p. 41). Vaughan Robinson comments that, while the definition "...uses persecution as the sole diacritical variable,...this is really too narrow for the 1990's. Instead we need to isolate and specify a range of markers which capture the essence of being a refugee" (Robinson, 1991, p. 71). But, perhaps regardless of any definition, lists - whether they be broad or narrow - ultimately it is the spirit (grudgingly helpful or accommodating) in which they are employed.

Essentially, much of the discussion revolves around the belief that 'fear' and 'persecution' have taken on broader meanings in light of the fact that the definition was drafted over forty years ago. The world is not the same environment whether it be politically, economically or socially. In this new era, it is difficult to treat refugees as a wholly independent phenomena because the "...economic, social and political factors are inextricably linked, as they often appear to be in the motivations of the migrants themselves"

(Zolberg, 1983, p. 16). Peter and Renata Singer have pushed this point even further by suggesting that there is little difference between an individual fleeing the bureaucratically-accepted concept of persecution (the definition), and another running from a land made "...uninhabitable by prolonged drought..." (Singer, 1988, p. 114). Therefore, the question of being an economic or political refugee loses all relevancy for the displacement of persons remains the same. They become international anomalies because their country is unable or unwilling to help them. Much in the same vein, Andrew Shacknove essentially condemned the entire system when he defined refugees as "...persons whose basic needs are unprotected by their country of origin, who have no remaining recourse other than to seek international restitution of their needs, and are so situated that international assistance is possible (Shacknove, 1985, p. 277). Shacknove is a distinct minority voice in refugee affairs as there do not appear to be many authors who concede to the magnitude of this definition.

Contemporary global society is indeed complex, but, in the face of this challenge, the concept of persecution "...is being limited to the starkest violations of the political rights of an individual" (Demmer, 1991, p. 31). As well, in the literature, there is a preoccupation on semantics as "public discourse on refugees has...been reduced to the question of distinguishing between the genuine refugee and the 'pseudo' refugee" (Wong, 1989, p. 281). Pseudo refugees have also been described as economic migrants, bogus refugees, even human contraband.

James Hathaway adds two often-overlooked features pertaining to the definition. The first is that the Geneva Convention rejects "...group determination of refugee status." Previous standard notions were removed by the drafters of the 1951 Convention and "...the

essence of refugee status came to be discord between the individual refugee applicant's personal characteristics and convictions and the tenets of the political system in her country of origin" (Hathaway, 1991, p. 5). Such vocabulary isolates the asylum seeker making his/her chance of success a much greater challenge than if they were a member of a group singled out for persecution. Hathaway argues that this is an injudicious decision because it left broad scope for the politicization of the refugee determination system. The drafting of the definition became an ideological tug-of-war between Western states and Socialist states, the latter of whom felt that the subjectivity of the concept was merely a political strategy disguised as concern for human rights.

The second critical aspect of the definition relevant to this discussion, is that the criteria for refugee status has no geographical limitations but, the majority of third world refugees flee due to "...broadly based political and economic turmoil rather than by 'persecution', at least as that term is understood in the Western context" (ibid., p. 10). These are two important sub-themes which are referred to by others but have not received serious academic attention. None the less, the status of refugees from the developing world has become a unifying symbol for re-negotiating the definition and removing all traces of ambivalence. It is widely believed that vague terms such as 'fear' and 'social group' have allowed countries, like Canada and most of Europe, to set the most stringent of conditions for political asylum (Demmer, 1991; Redmond, 1992).

Guy Goodwin-Gill, a former legal counsel to the UNHCR, believes that on a state by state basis, the definition's application has been uneven. As well, he mentions an aspect to the Convention frequently overlooked by modern-day policymakers. That

...the putative refugee shall have fled by reason of fear of persecution, not that the persecution should have actually occurred...This latter element is itself a combination of subjective and objective factors...If the applicant's statements in regard to that fear are consistent and credible, then little more can be required in the way of formal proof...The next question is whether that subjective fear is well-founded; whether there are sufficient facts to permit the finding that the applicant would face a serious possibility of persecution (Goodwin-Gill, 1983, p. 25).

The use of the word 'fear' "...was employed to mandate a forward-looking assessment of risk, not to require an examination of the emotional reaction of the claimant" (Hathaway, 1991, p. 66). Rosemarie Rogers largely dismisses such criteria when she writes that "in many parts of the world, people were fleeing from generalized violence rather than because they had been singled out for persecution" (Rogers, 1990, p. 1117). Oddly enough, her statement reinforces the contradictory theme of the UNHCR: that it is committed to "...groups and categories of refugees..." but offers "...a definition of the refugee which is essentially individualistic..." (Goodwin-Gill, 1983, p. 6).

Perhaps this dichotomy refers to the commonly held notion that the 1951 Convention was created as a response to the aftermath of World War II with its millions of Jewish refugees scattered throughout Europe. Therefore, it was "...essentially an instrument to establish, confirm or clarify the legal status of a known population of displaced persons" (Goodwin-Gill, 1988, p. 165). In light of the circumstances surrounding the war and the grisly discoveries after, the granting of asylum and protection was an altogether different

experience than today. Compared with the current situation, a "...restrictive interpretation..." of "...the Convention refugee definition..." appears to have become an alternative for countries who will continue to admit refugees but want to find some means of reducing their overall intake (Hathaway, 1992, p. 85; see also Hathaway, 1991a and 1991b).

While he did not use such blunt language, David A. Martin essentially justified this position. He is

...convinced that the Convention definition, understood narrowly but appropriately, may offer the best way to make sense out of the precarious legal institution of political asylum in those haven countries where the rule of law enjoys sufficient strength and independence to draw a fairly sharp distinction between law and politics (Martin, 1991, p. 30).

He quite rightly points out that the definition is able to

...whittle away at the usually jealously guarded sovereign prerogatives over permission for aliens to enter and remain in the national territory, and indeed, that more than one hundred nations willingly became parties, despite this ostensible ceding of power (ibid., p. 32).

The granting of asylum is indeed a binding obligation for a state to enter into for there are specific and implicit protections: the country assumes responsibility for the refugee's health, education and re-training all in the hopes that he or she will fully integrate into their new environment.

Martin challenges Convention detractors when he suggests that not only are they interpreting it too literally, but, that the Convention was "...a treaty about the status of

refugees...", mainly "...about the status of those refugees that the state has chosen, in its discretion, to treat as lawfully present" (ibid., p. 31). While he did not offer his own definition like Shacknove, Martin believes that genuine refugees are political activists. These individuals would have been subjected to "...jailings, beatings, perhaps even torture and death..." the state would have been "...bent on defeating both the individual and the cause" (ibid., p. 40).

When is "...foreign relocation the indispensable solution to individual need?" (ibid., p. 39). Martin feels that needs can be met through "urgent relief supplies..." and "...by broader aid...", but if these supplies are maldistributed or exploited, such actions may be regarded as political oppression. It is difficult to appreciate exactly what kind "...of political threats..." he believes "...ought to count" for as he writes that "...those who leave are ...turning their back on continuing the struggle for a communal answer to the human rights abuses and instead simply seeking, through relocation, an improvement in their individual human rights situation" (ibid., p. 44). Yet, it might also be true that these individuals see the remedy to their country's turmoil as being out of their grasp.

Controversy over the definition loses all relevancy when "true human rights progress depends on the willingness of that society's own members to incur risks, sometimes of the gravest sort, in quest of these ends." Martin stresses not only the ultimate communal goal of a just world, but, the granting of asylum only in cases where "...the danger is so great that it is too much to ask them to remain or return" (ibid., pp. 44-45). There is not so much a problem with the definition, but, with its liberal use. Such practices, he contends, serve to undermine a system that should be administered with a firm and judicious hold. He asks that



when it is not too much to ask because of targeted political threats, this version of refugee law insists that those who are not unduly menaced go home to struggle for change there, with the help, whenever possible, of the international human rights community. Such an approach also husbands the limited political reserves that keep asylum vital in the haven countries for those who are in the greatest jeopardy (ibid., p. 46).

While Martin may be considered as falling short on certain specifics such as defining limits of personal danger, support exists for his more general ideas. In a conference report, Emily Copeland writes about some recent developments on involuntary migrants including the policy challenges of the 1990's and options in light of the demands on the system. A central topic for discussion is whether the refugee regime needs a new definition or more meaningful political will (Copeland, 1992, p. 994). While it does not figure prominently in the research, many authors defer to political will as a potent instrument for positive change within the refugee system (Gurtov, 1991; Dewey, 1992; Coles, 1988; Rogers, 1988; Rizvi, 1988).

Copeland reports that while the definition does not apply "...to the majority of forced migrants...", changing the definition would potentially overburden an already overtaxed system, and "...that those persons most in need of protection would be crowded out" (Copeland, 1991, p. 994). Rather, energies "...should be focused on getting those in need brought to the attention of policy-makers and assistance organizations instead of quibbling over definitions" (ibid.). Essentially, there exists an urgent need to deal with the root causes of the refugee crisis and "...ameliorating the problems early before they beget massive

refugee flows" (ibid., p. 996). But, as she rightly points out, there must be fair burden sharing (burden sharing for the absorption of refugees commonly depends on the ranking of comparative per capita income, comparative economic growth and the relative strength in job creation and employment; it is widely accepted that the affluent countries should share more than the non-affluent). This has become a delicate issue as many Western countries, partly due to public opinion (which, in many instances, may be derived from internal economic difficulty), are declaring "compassion fatigue" (Dacyl, 1990; Demko and Wood, 1987; Copeland, 1992). Donor "weariness" places increased stress on the hopes of improving the overall performances of international aid agencies. One could observe that such political realities make arguments like those found in Copeland's report, even more complicated and difficult to realize. One could also speculate as to whether or not compassion fatigue is an oxymoron: may a country make a legitimate claim of compassion fatigue towards those it has committed to help?

There are two authors whose interpretation of the definition deserve mentioning. They are Mel Gurtov and G. J. L. Coles. Both emphasize human rights solutions as being the responsibility of the entire international community. With respect to the definition, Coles labels it a poor model for universal application. He gives two reasons for this: first, that there exists a huge gap between theory and practice, and second, that refugee law - a direct consequence of the definition - has become separated from the enormous reality of the refugee problem (Coles, 1988, p. 212). Coles writes that "law especially became increasingly divorced from reality; instead of the law becoming a means to channel thinking and action along lines of humanity and practicality, it became, in many situations, a cause of distorted

thinking and inappropriate action." Therefore, "...refugee law..." has "...increasingly lost its relevance and utility" (ibid.). He believes that the definition had an exilic bias (i.e. a "built-in" prejudice) because the problem is only defined in terms of obtaining permission to remain abroad. Any prospect of repatriation was largely dismissed as "...the basic solution was principally external settlement.." (ibid., p. 213). Humanitarianism is defined within a political sense. Freedom of choice is only for the receiving country to decide.

Gurtov avoids the use of strong language, but his message is within the same vein. He cites a need to expand the definition to encompass the real numbers of refugees (Gurtov, 1991, p. 489). This would include economic and social rights. That is, an adequate standard of living based upon economic, social and cultural well-being; civil and political rights: basic human rights such as freedom from torture and cruel and inhumane punishment; the right to self-determination. Unlike Shacknove, Gurtov does not attempt to re-define refugees, but he does consider them to be "...human rights victims - people who are denied some basic kind of security and/or fear for their safety, and therefore take the extraordinary step of leaving their homelands" (ibid.). However, "the political reality is that governments and transnational corporations place on people the burden of proving their authenticity as victims, and at that only for a narrow range of causes" (ibid.).

Both Coles and, especially, Gurtov believe that the global community may be on the brink of a new era of principles and pragmatic action which could translate into lasting solutions. Any action must be based on human rights as they are "...universally recognized as the foundation of freedom, justice and peace" (Coles, 1988, p. 217). Traditionally accepted

notions of persecution must be expanded to include "...respect for social, economic and cultural rights..." (ibid., p. 216).

Real and lasting change will be the result of general willingness and cooperation. The publishing of Gurtov's article in 1991 coincided with the birth of the so-called "New World Order". Frequently used, yet largely undefined term (some associate it with the breakdown of the U.S.S.R., others with the Persian Gulf War), it has become a symbol of hope for increased international cooperation. As such, Gurtov writes that the world may be at the exact time in history when the heart of the refugee crisis - "global underdevelopment and its attendant structural inequalities" - may be solved with a "...collective leap of political wills" (Gurtov, 1991, pp. 494-495). He strays from Coles because he emphasizes the roles military spending and underdevelopment have played in the creation of refugee movements.

Regardless of its political overtones, the definition's primary ambition is to help alleviate human suffering. The controversy lies in the "how's" and "why's". While the definition identifies those forms of persecution considered acceptable for international assistance, it leaves considerable scope for broad or narrow interpretation. Many authors feel that this scope has been abused by signatory countries which are appearing reluctant to accept and re-settle convention refugees not only in the face of hostile public opinion but of conflicting internal bureaucratic agendas. In all fairness, it should be mentioned that countries like Canada and the United States have a "Humanitarian" classification for non-Convention refugees. It is normally the last option available for those who have failed to qualify through the standard channels. They may appeal their case using this strategy. Unfortunately, the chances of success are rather low as the applicant's suffering must be

proven to be truly exceptional. Once again, the individual applicant faces a term open to interpretation and discretion.

## **Part II: Refugee Migration**

Vic Satzewich writes that migratory flows are the result of a combination of economic, political and ideological relations (Satzewich, 1991, p. 301). It is challenging to consider refugee migration separately because the movement of people across borders has been "...a fundamental aspect of capitalist development since the Industrial Revolution" (ibid.). Yet forced migration may be difficult to precisely account for. There are intricate push and pull factors "...and it is too personal and psychological to subsume under large-scale forces" (Gurtov, 1991, p. 491). Depending on one's own perspective, refugees may be seen as independent from regular migrants, or, they may be studied within the parameters of migration as a whole. Julian Simon entirely dismisses the refugee factor when he writes that "...because the political discussions concerning the admission of refugees adduce different sorts of arguments than discussions of non-refugee immigrant admission; decisions of refugees are apparently affected by 'humanitarian' motives instead of, or in addition to, the effect upon natives' economic lot" (Simon, 1989, p. 9).

But, theories of migration in general, have traditionally proceeded on different levels. Brinley Thomas refers to migration as "...one of the few exceptions to the general rule of laissez-faire" (Thomas, 1973, p. 2). Thomas offers an interpretation (of migration) that remains au courant today whether referring to voluntary or involuntary migrants. He observes that "overseas migration would...have to be carefully controlled so that it would tend to

maximize employment at home, and every effort was made to attract skilled immigrants from other countries. It was a frankly nationalist creed, and its exponents saw no reason to deny that the successes of one country were won at the expense of others" (ibid.). Not surprisingly, Andrew Shacknove gives an altogether unique twist to refugee migration when he declared that "refugeehood is unrelated to migration." Thus, because the refugee is a stateless individual: he/she does not have to cross a border because "protection of his/her basic needs is absent, even at home" (Shacknove, 1985, p. 283).

Regardless, involuntary migration receives increased attention. Most authors are studying the 'hows' and 'whys' of these flows. Are there conditions more conducive to creating refugees and, if so, has research been able to establish patterns? The long-term goal remains fairly consistent throughout the literature: that to be effective, "...policy must go beyond conventional control and humanitarian measures, so that managing migration pressures becomes a part of countries' central economic, political, and security objectives" (Meissner, 1992, p. 67). It should be pointed out that there is minimal discussion as to whether refugees should be considered part of a global migratory trend or treated separately. Geographer Richard Black rejects the notion of refugees as special migrants. He believes it is necessary to draw links between refugee studies and "...migration, 'natural' and other disasters, and the politics of conflicts which are often the immediate cause of refugee flows" (Black, 1991, p. 281). He feels that it is part of the wider process of international and intranational migration and fears that there is a "...temptation to slip back into a static typological exercise, in which refugees are distinguished from other migrant groups on the basis of identifying a single 'cause' of their migration" (ibid., p. 286). Years earlier, the

political scientist, Aristide Zolberg argued that although refugees have been treated as a phenomenon independent of international migration, history has proven that they cannot be separated (Zolberg, 1983, p. 16).

One may find a virtual myriad of possible reasons for refugee migration. As mentioned in the introduction, the definition's 'reasons for leaving' have been lost under new and complex realities. One may find constant references to economic underdevelopment. Anne-Marie Demmer refers to the economic gap between the North and South hemispheres. Approximately two-thirds of the world lives in poverty and "...this poverty continues to provide a fertile breeding ground for intolerance, totalitarianism and war" (Demmer, 1991, p. 30; see also Griffin, 1978). Zolberg, Aguayo and Suhrke write that the entire issue of global migration is undermined by the wage gap and demography. They feel that the fate of the majority of the world is very much influenced by "...the external policies of the leading countries and the activities of their firms on export agencies, as well as transnational processes that arise as unintended by-products of these" (Zolberg, Aguayo and Suhrke, 1989, p. 230, see also, Zolberg, 1988, p. 424). They refer to the high birthrate in southern countries versus the lower one in the north. They believe that the refusal of foreign labour to return home provided the impetus for restrictive immigration policy thereby preventing any massive shifts of population.

Janina Dacyl contradicts this for she feels that flows will not only continue but increase as the income gap widens between north and south. She cites Africa as one such example due to its extreme environmental degradation (Dacyl, 1990, p. 43). Meissner identifies the contrasting rates of development as the biggest challenge for bureaucrats to

overcome. She believes that only consistent policy with long-term goals will curtail migration overall (Meissner, 1992, p. 79). In a conference report, Vaughan Robinson describes what many participants feel to be causes of modern refugee migration. Understandably, Africa figures prominently as it is the world's top refugee-producing continents. There are two primary themes: the first relates to the economy and the second, environmental refugees. Many of Africa's countries are a product of colonization. One participant concludes that there are parallels between the colonial and post-colonial flows and "...argued that contemporary refugee movements must therefore be seen as a response to the uneven spread of capitalist development." Robinson also illustrates problems with the definition as the "...flight of nomads from the Sahel into Ghana as a result of drought..." were excluded from assistance while the same agency successfully repatriated 43,000 Namibians" (Robinson, 1992, pp. 68-69). This conference also reaches a conclusion scarcely mentioned in other literature: that there is "...a resource crisis in parallel to the refugee crisis." That regional economic inequalities "...not only help channel population movements, they also affect those unable to migrate (further) and reliant upon state aid" (ibid., p. 70).

The end of the Cold War brought complications with the rise of nationalism and the forming of new states (Redmond, 1992, p. 22). Redmond saw this as providing the impetus for change within the refugee regime. While the death of the Cold War ended a traditional source of refugees, it paved the way for, in some instances, extreme ethnic violence with yet more displaced persons either languishing in refugee camps or travelling overland searching for countries which would accept them (ibid, p. 23; see also: Moussali, 1991, p. 34; Robinson, 1990, p. 10).



The search for contemporary models of refugee migration may be described as frustrating and short-lived. The discipline in which one would expect the most research, Geography, provides the least amount of information. Richard Black describes a "continuing and basic ambiguity in much geographical writing on refugees" (Black, 1991, p. 281). Indeed, he writes that though geographers study refugees, "...the most comprehensive recent survey of the geographical distribution of refugees on a global scale was produced not by a geographer, but by a sociologist, a political scientist and an anthropologist" (ibid, p. 283).

While there is not a body of theory on which to build, Aristide Zolberg has produced a sizable body of literature on involuntary migration in the hopes of realizing those situations most likely to generate refugees. Historically, refugees have been the product of two processes: one, the end of colonization and the creation of new states; two, the ensuing tensions in the new state over the social order, whether old or new (Zolberg, 1988, p. 416; see also Rizvi, 1988, p. 109; Dacyl, 1990, p. 29). While these reasons fail to encompass the scope of present-day refugee movements, they are pertinent for a significant portion of involuntary migrants. The role of ethnic diversity and conflict is also mentioned with special reference to Asia and Africa. Ethnic conflict is divided into four types: one, ethnic hierarchies; second, target minorities; third, communal conflict; fourth, separatism (Zolberg, Aguayo and Suhrke, 1989, p. 236; see also Dowty, 1987; Johnston, R. J., 1982). Though it is an important link, colonialism is not discussed as much as its political, economic and social consequences.

In all of Zolberg's writings, whether produced alone or in a group, he uses the linkages of the global state system as a framework around which to base research. The

concept of globalization was defined through two stages in world history. The first was "...the emergence in the late Middle Ages of the state and capitalism" (ibid., p. 230). The second was the growth of expanded transportation networks which were less costly to use and more readily accessible. Superimposed on this framework were those countries which were capital-rich, technologically advanced and strategically located. This combination merely served to reinforce the wage gap between rich and poor (ibid.). Such complicated linkages would have a measure of influence over revolutions (all of which, successful or not, produce refugees) as they usually entailed a level of foreign involvement.

In 1983 Zolberg wrote that those most likely to become refugees were those minorities which were a combination of cultural uniqueness and economic specialization. Any group thought to be a threat to national integration could be targeted (Zolberg, 1983, p. 79). The idea of a target minority flows throughout Zolberg's works until 1989 when, in a collaborative effort, the term was properly defined. These groups were singled out for persecution in the belief that to achieve cultural homogeneity, certain minorities should be eliminated. Minorities were seen as obstacles and their victimization "...gave rise to the classic type of refugee, targeted for persecution for reasons of religion or nationality" (Zolberg, Aguayo, Suhrke, 1989, p. 238). Target minorities are considered rare and there appear to be only two obvious cases: "...the hypernationalist Khmer Rouge regime, which lashed out at all non-Khmer minorities in Kampuchea, and the fundamentalist Iranian government, which persecuted Muslim Heretics" (ibid.).

Other types of refugee-producing ethnic violence are referred to by the authors as "ruling minorities" or "trading minorities". The ruling minority is a small group that wields

economic, political and military power over the majority group. To the indigenous majority they are considered to be "...ruthless exploiters, who either usurp positions that could be filled by genuine nationals or fail to perform any valid economic function at all" (ibid., p. 237). The on-going violence in Rwanda is often referred to as an example (ibid.). The conflict itself is extremely violent, almost taking the form of social revolution. The goal is "...the elimination of the dominant group by means of anticipated flight, wholesale massacre, massive expulsion, or some combination of these as determined by local circumstances" (ibid., p. 236). The term "communal conflict" was first used to describe ethnic clashes in South Asia. Such tension is not related to an ethnic hierarchy whereas ruling and target minorities are. Communal conflict may be regionally concentrated or spatially interspersed "...and the overall configuration within a state often is a combination of both" (ibid., p. 238). Despite the fact that the clashes are usually excessively violent with exceptionally high death tolls, the authors do not feel that this type of conflict produces many refugees. This is due to the clashes occurring within the country's borders leaving its refugees internally displaced (ibid., p. 239).

The second form of non-hierarchical tension is separatism:

conflict

...over distribution of power between the center - which in multiethnic societies is almost necessarily dominated by a distinctive group or combination - and the periphery, which believes that the existing distribution is hindering its existence as a group, both materially and symbolically (ibid., p. 242).

Separatism has a distinctive political element to it not found in other ethnic conflicts. This is because the

...controversies are over unitary versus federal institutions, and the particulars of federalism; the regional allocation of public and private investments; the balance between national and ethnoregional cultures in the education system; and, if relevant, the language of public life, including not only the government sector but the labor market more generally (ibid.).

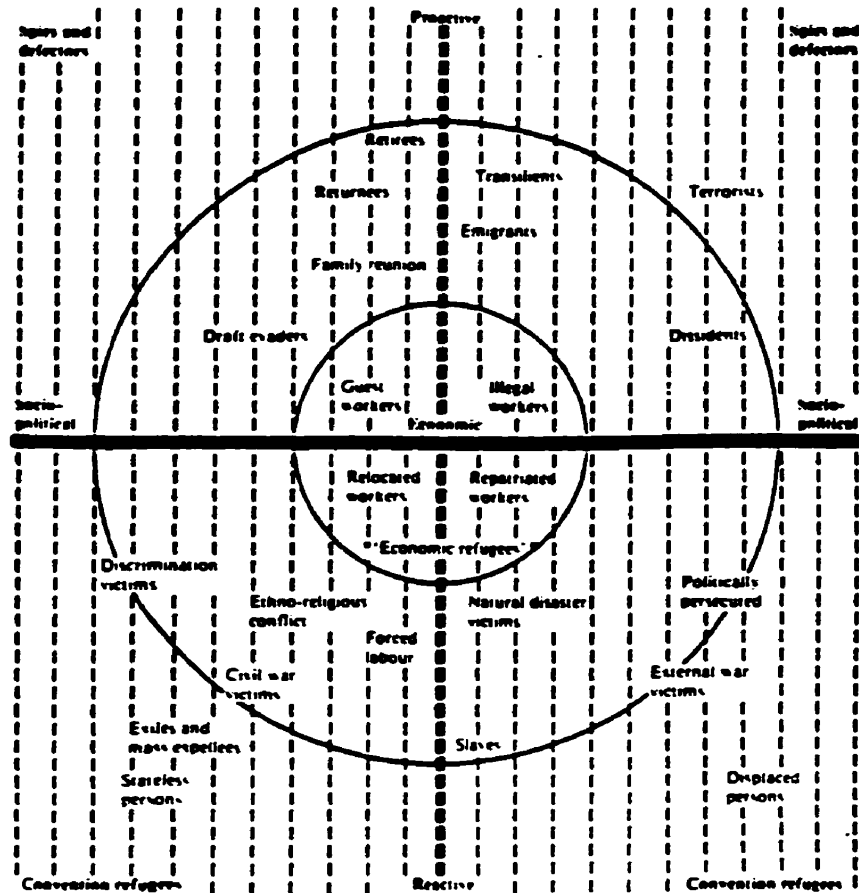
Separatism is considered rarely successful as it has produced few migratory movements. Zolberg, Aguayo and Suhrke speculated that such movements may linger for years as "...the state that is challenged seldom has the resources required for effective repression and containment" (ibid., p. 245). Bangladesh is mentioned as the only successful separatist movement.

Sociologist Anthony H. Richmond offers a contrast to Zolberg, Aguayo and Suhrke in his assessment of migration theory. His comments may be salient for other researchers. He wrote that "...it is no longer possible to treat 'refugee' movements as completely independent of the state of the global economy. Complex questions of sovereignty, perceived interests, international relations and ideological questions are also involved" (Richmond, 1988, p. 12).

Richmond's criticism echoes that of Richard Black's as he believes that there has been over-emphasis on "...the demographic characteristics of immigrants, migration decision-making,...the policies of sending and receiving countries, or global trends in population movements" (ibid.). He feels that the contradiction of involuntary migration is

that people flee situations partly created by the countries to whose aid they turn . Sociology divides migration theory into two categories: macro and micro. Macro theory is mutually exclusive to voluntary migrants with its references to Ravenstein's law of migration, Stouffer's model of positive and negative factors and Mabogunje's system's model (ibid., p. 9-10; see also Black, 1991; Zolberg, 1988). Macro theory may be best described as one which studies the "...conditions under which large-scale movements occur." Besides examining the demographic, economic and social institutions in aggregate terms, it looks at adaption processes, economic and social integration from a structural or cultural perspective (ibid., p. 9). Conversely, Micro theory attempts to define much more difficult issues such as motivation and the decision to move. It adopts a deconstructionist approach as there is an assumption that the person is conscious of his/her decision and has evaluated the costs and benefits (ibid., p. 13).

**FIGURE 1**  
**Paradigm of International Population Movements**



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Migrants may be proactive and reactive [figure 1]. The proactive migrant is public policy's rational actor. There is complete information and all aspects of the decision have been evaluated. Conversely, the reactive migrant is regarded as one whose decision to leave was made under duress: in a state of panic by one facing a crisis or personal threat. Richmond defined the environment for the reactive migrant as being the result of

...when societal institutions disintegrate, or are weakened to the point that they are unable to provide a substantial section of the population with an adequate sense of group inclusion, trust and ontological security, a refugee situation is created (ibid., p. 18; ontological security: one's fundamental right for security be it emotional or otherwise).

Richmond believes that Micro theory fails to explain refugee behaviour because it assumes "...the availability of adequate information on which to base decisions" (ibid.). He seems to believe that "although theoretically elegant, explanations are only weakly supported by empirical evidence and tend to overlook the multiple cognitive and correlative influences which prevail in a media-saturated information environment" (ibid.). He argues that the central factors are constraints and choice and that refugees "...are an extreme case of the constraints that are placed upon the choices available to an individual in particular circumstances" (ibid., p. 14). Sociological theories of migration face a paradox between that of an individual's free will and theories which state that behaviour is determined by forces over which individuals have little or no control. He cites Marx's straightforward, yet not so simple, assessment of the problem that "men make history, but not in circumstances of their own choosing" (ibid., p. 15). Choice may refer to complete free will despite constraints, the ability for self-motivated action that may or may not be realized, even the abstract concept of choice regardless of "...ideal or natural conditions" (ibid.).

Richmond's preferred theoretical position contrasts that of Black's. Both reject the concept that migratory decisions, voluntary or otherwise, may be isolated economically, politically or socially. Both accept multivariate approaches recognizing that

"...ethnoreligious, social, economic and political determinants are inextricably bound together" and that "all human behavior is constrained and enabled by the structuration process within which degrees of freedom of choice are limited " (ibid., p. 20; see also Black, 1991, p. 294; Black and Robinson, 1991, pp. 3-13; Robinson, 1991, pp. 71-72).

The refugee's "reasons for leaving" are the most critical as they will ultimately determine his/her fate. The "reasons for leaving" point to the core of the rationale for refugee determination. It appears clear from the literature that the Convention's aim of isolating a sole variable is a formidable task as economics, politics and social factors are so clearly inter-twined. Migration literature is difficult to classify for it encompasses a range of issues from the emotional to the practical. Perhaps from a moral perspective, there is little difference between a person running from persecution and one seeking a better life. But, from a practical standpoint, it is unlikely that a country such as Canada would be unwilling to classify the latter as anyone other than an immigrant. Never the less, the literature does leave one with the impression that the international refugee regime and western foreign aid agendas should not only acknowledge the existence of non-Convention refugees, but should utilize a not necessarily identical mandate and offer some hope in the form of a solid platform.

### **Part III The Refugee And the State**

This brief section discusses the most challenging aspect of the definition: the state's obligation to admit refugees. The entire scope of this enters a whole new realm of ambiguity and interpretation. There is strong agreement on some general issues, there are deep divisions



on specifics. James C. Chad best explained the dilemma when he wrote that "the United States has the sovereign right, if it constitutionally reflects the majority view, to exclude others from coming here. It is that simple; it is that awkward. The essence of sovereignty remains the power to exclude" (Chad, 1994, p. 150; see also Weiner, 1985, p. 442; Rogers, 1992, p. 40).

The citizen-state relationship is also implicit to sovereignty. The question remains open to interpretation whether refugees are entitled to the same full benefits. Shacknove wrote that this relationship has traditionally been based on trust, loyalty, protection and assistance (Shacknove, 1985, p. 278; see also Hathaway, 1992). Tomas Hammar outlined the formal aspect of citizenship in that "a citizen is entitled to a number of rights and obliged to fulfil a number of duties." Furthermore, "citizens must be loyal to the state and if necessary be prepared to fight and die in its defence" (Hammar, 1990, p. 30). Citizenship is a unique membership as "...it is based on co-optation" (ibid.). This bond is shattered for refugees and, as such, with the aid of international organizations, they must search for it elsewhere.

Migration has, and will continue to, play a necessary role in the state. Satzewich defined the nation-state as an imagined community. He outlined the contradictory role migration has played in that it was vital to capital accumulation and state formation. The value of a migrant as a potential citizen rested on whether or not "they could become part of the imagined community"(Satzewich, 1991, p. 302). Immigration had a dual purpose for it was economically necessary and countries like Canada wanted "...labour that would also take on the rights and duties of citizenship" (ibid., p. 305).

Refugees are not considered as part of the nation-building process. They are 'outsiders', or as Michael Walzer called them, 'necessitous strangers'. What their role in the state is not questioned as much as why and to what extent refugees should be helped by the state. Philosopher Howard Adelman stated that "the most fundamental issue for a society is to determine who it admits into membership. That decision, more than any other, shapes the future of that community"(Adelman, 1991, p. 172). He goes so far as to imply that there is a moral element to refugee policy as he considers it "...the litmus test of the concept of justice in a society" (ibid.). He believes that policy-makers wish to establish

to what degree should the entry point be open and closed, and what are the appropriate legal and administrative mechanisms to ensure the gates remain sufficiently open to refugees without destabilizing the domestic body politic? (ibid., p. 176).

Using equilibrium as the framework, Adelman approaches the refugee-state relationship in a manner not seen in other literature. A fairly standard position on the refugee problem assumes that refugees are the natural products of nation-building. They are a destabilizing element that may be dealt with in one of two ways. Expansionists believe that by allowing a fairly large intake, the receiving country is reducing chaos and disorder globally. Conversely, Restrictionists argue that without firm control, chaos and disorder will grow intolerably and become unmanageable. Adelman proposes that equilibrium was part of the problem. This is because while boundaries are supposed to maintain order, he feels that they merely serve to transfer "...entropy or disorder to the environment around it" (ibid., p. 178). The state's goal of equilibrium "...adds to chaos because it displaces that chaos elsewhere as an interim measure

for ensuring its own relative stability" (ibid.). He contradicts convention by arguing that the receiving country is as unstable as the refugee-producing one. He writes that

...the evolution of a state cannot be viewed as *sui generis*, but as developing from its encounters with outside forces, such as refugees. The impinging new forces trigger immediate and fundamental changes in the body politic, crossing over a normally relatively closed system and allowing it to evolve and to develop into a new form (ibid.).

Therefore, by allowing itself to be open to 'forces' which surround it, the state cannot help but be positively stimulated. While the argument of positive benefit is not new, Adelman's use of it with regards to refugees is.

Joseph H. Carens offers a much more familiar rationale. He lists three reasons for helping refugees. The first, causal connection, stems from the refugee-producing country. A state may have "...a direct causal responsibility for the fact that particular people are refugees and this causal responsibility gives rise to a moral responsibility to help them" (Carens, 1991, p. 19). The refugees' fear has been caused by elements in their country and the state "...has either instigated this persecution or been unable or unwilling to prevent it" (ibid.). Carens believes that this point merits special emphasis as "it reminds us that people become refugees because of human actions and that these human actions can be changed, ought to be changed, and sometimes actually are changed" (ibid.). Conversely, a state may have a causal connection to refugees who are not its citizens. The Vietnamese are perhaps the most frequently mentioned group in this respect. Carens writes that "when a state's policies and actions have contributed to the creation of refugees, it has a duty to help those refugees in

particular, regardless of whether its policies and actions were morally culpable" (ibid.; see also Zolberg, Aguayo and Suhrke, 1986; Coles, 1988; Rogers, 1988; Dowty, 1987; Demko and Wood, 1987). Carens adds that the state will deny any accountability because it would be counter to its policy. Policy goals might "...lead states not only to deny any special responsibility for particular refugees but even to deny the legitimacy of their claims to be refugees" (ibid.).

Humanitarianism is viewed as the most basic reason for helping refugees. Carens offers two definitions of it. First, a state responding to a need when the cost is relatively low for its citizens. Second, "...an appeal to the virtue of generosity, something that is admirable but not strictly speaking morally required..." (ibid.; see also Stern, 1988; Adelman, 1988). While their approach used different language, Peter and Renata Singer consider the idea of helping refugees as one that would give equal consideration to all interests ( 'interests' unrestricted). They feel that although there is nothing radical about attempting to solve a social issue in this manner, "...its application to the situation of refugees involves a striking contrast to the current orthodoxy, which in effect, gives the interests of present residents priority over those of refugees and other outsiders" (Singer, 1988, p. 122). The Singers identified those whose interests should be affected as the refugees, the citizens of the receiving country and the environment. They scorn critics who altogether ignore the environmental effects of migration as those who "...refuse to allow independent value to anything nonhuman,...we do not believe that such a refusal is defensible" (ibid., p. 124). Moving from the interested parties to the consequences of helping refugees, the Singers challenge the state's refusal to increase, even double, the intake of refugees. They believe that

there are definite and possible consequences. According to them, for a country like Australia, there would be two definite consequences if its refugee planning targets were increased. First, that hope would be restored to more refugees as "...they could expect, after a few years of struggle, to share in the material comforts, civil rights, and political security of that country" (ibid., p. 125). Second, there would be an increased demand on Australia's welfare services. However, they feel that this burden would be short-lived during which time the new refugees would partake of English language classes, job training and placement.

Possible consequences are unknown and therefore speculative. Some are regarded as more problematic than others for "no one can really say whether doubling Australia's intake of refugees would have any effect at all on the numbers who might consider fleeing their own homes; nor is it possible to predict the consequences in terms of international relations" (ibid., p. 126). This is not to imply that refugee intakes should be doubled and re-doubled. The Singers point to circumstances when "...the balance of interests...would have swung against a further increase in the intake of refugees" (ibid., p. 128). If

...the basic needs of the expanding population were putting such pressure on fragile ecological systems that a further expansion could do irreparable harm. Or there might come a point at which tolerance in a multicultural society was breaking down because of resentment among the resident community, who believed that their children were unable to get jobs because of competition from the hard-working new arrivals; and this loss of tolerance might reach the point at which it was a serious danger to the peace and security of all

previously accepted refugees and other immigrants from different cultures

(ibid.).

They conclude that "it would not be difficult for the nations of the developed world to move closer to fulfilling their moral obligations to refugees. There is no objective evidence to show that doubling their refugee intake would cause them any harm whatsoever" (ibid.).

Returning to Carens, his third reason rests on the very legitimacy of the state system. He believes that "...states ought to help refugees because the moral legitimacy of the state system depends on the provision of some safe state membership to everyone. This makes the issue of helping refugees a matter of justice rather than simply humanitarian concern" (Carens, 1991, p. 20). Carens states that "we need to know whether our social institutions are ones that we can defend and even celebrate or whether they are forces of oppression that we should simply endure where we must and try to change when we can" (ibid., p. 21). The state is considered a social institution, refugees are "...the orphans of the state,...their plight reflects a failure, not only of the particular state from which they are fleeing, but also of the system of dividing the world into independent sovereign states and assigning people at birth to one of them" (ibid.).

The core issue is membership in the state. This is a difficult and confusing aspect of the discussion for it delves, albeit in a limited manner, into the realm of political philosophy. Authors such as Carens, Adelman, Singer, Scanlan and Kent have referred to theorist John Rawls, but mostly, Michael Walzer to explain the state's obligation to refugees. Neither Rawls or Walzer write specifically with involuntary migrants in mind, but for certain critics

of writers on refugee issues, their work is seen as flawed attempts to justify the current vogue amongst receiving countries of making it more difficult for refugees to gain admission.

Rawls' A Theory of Justice was conceived as an alternative to Utilitarianism - a concept that played a major role in the liberal reform movements of the nineteenth century. It defines justice as "the distribution of material benefits between the members of a society" (Findlay, 1982, p. 1). Distributive justice, therefore, must give each member of society his/her due. There have been three approaches towards receiving this 'due': rights, deserts and needs. "Rights" may be positive and are shaped by customs and history, or ideal, commonly used by conservatives where justice is served by respect of rights. "Deserts" is justice according to each person's contribution. This is regarded as "the most intuitive and popular conception of distributive justice..." whereby one may receive either his/her deserved reward or punishment (ibid., p. 2). Each according to his/her "needs" is the most difficult of the three as it appeals to the altruistic society. Utilitarianism has been the compromise approach to these concept of justice for over two centuries.

Rawls dismisses this broad concept of justice and offers his own based on a very clearly articulated social order. This social order has become one of the hallmarks of his theory of justice. The social order is the original position or as Rawls writes, "...the appropriate initial status quo..." (Rawls, 1971, p. 12). In this status quo, no one individual is advantaged or disadvantaged and "...since all are similarly situated...no one is able to design principles to favor his particular advantage" (ibid., see also chapter three; Findlay, 1982; Schaefer, 1979). Rawls defines justice within this scheme as social cooperation for mutual advantage. This is the rights-based approach that permits justice for members of the original

position (one community), and charity for outsiders. Outsiders may not make a claim on the larger society. The power of the state becomes immense in a Rawlsian universe.

Michael Walzer writes on the structure of the state community and its right to limit or close its borders to new members. Like Rawls, Walzer defines distributive justice within the framework of defined membership rights. He writes that "it must vindicate at one time the (limited) right of closure, without which there could be no communities at all" (Walzer, 1981, p. 33). He states that membership is the primary good that is distributed in various forms of the human community. Who is allowed to be a member affects all other distributive choices. Walzer recognizes the reality of immigrants and refugees but emphasizes that the original character of the group not be diminished.

Walzer and Rawls study the right to community from a classical liberal standpoint. But as Scanlan and Kent point out, there lies a fundamental contradiction for such a liberal approach precludes the significance of borders. They writes that "...the moral justifications for this exercise of power are far from obvious" (Scanlan and Kent, 1988, p. 68). They state that

...if the characteristics marks of liberalism are regarded as a growing awareness (or acceptance) of the inherent and essential political equality of all human beings, and a commitment to rationality that in taking that equality into account, requires as an absolute precondition for moral discourse that self-interested preferences give way to universal principles that apply to everyone alike (ibid.).

The moral viewpoint is defined rationally in that the world is regarded from the



...perspective of one person among many rather than from that of a particular self with particular interests, and to choose a course of action, policies, rules and institutions on grounds that would be acceptable to any agent who was impartial among competing interests involved. In a truly liberal policy...national borders would simply lack significance. Relying upon them to argue for immigration restriction would offend basic principles of justice

(ibid.; see also, Findlay, 1982).

As well, they disagree with both Rawls and Walzer's concepts of sovereign power "...as the ultimate political value" because issues "...of unequal global allocation of resources, which necessarily raises more complex questions about morality and distributive justice..." are ignored (ibid., p. 64). They conclude that, from such a perspective, "...national borders...place a limit on the universalizability of moral principles" (ibid.).

Walzer argues that in the absence of any political affinity to which the refugee may appeal to, refugees do not have a right to be successful. Therefore, "...once the number of refugees becomes significant, the strength of an obligation to help is contingent upon the refugee's ideological or ethnic affinity with 'our way of life' or upon how successfully he or she is able to appeal to our 'sense of relatedness and mutuality'" (ibid., p. 85; see also, Singer, 1988). Walzer argues "...against the theory of universal human rights in favour of a view that rights are generated by certain communitarian relations among persons" (ibid., p. 86). Furthermore, Walzer's very notion of community is considered fictitious. For Scanlan and Kent, phrases such as 'our way of life' suggest "...a shared sense of history, tradition and political heritage that speaks in favour of an ideologically neutral refugee policy based on

universal human rights" (ibid.). The political loyalties of an indigenous population are not as unified as Walzer seems to believe they are and there cannot be a bland assumption that the ...communal will of the people is somehow embodied in the dominant social and political institutions that determine refugee admissions. The attitudes of citizens towards these institutions may, at any given time, range from strong loyalty or approval or outright opposition (ibid.).

Indeed, Peter and Renata Singer sum up not only Rawls and Walzer, but many writers on ethics who ignore "...the need to justify our very different treatment of residents and nonresidents...". They write that such approaches revolve around "...how members of a community should treat each other, and overlook the fact that the majority of our fellow human beings are not members of our community" (Singer, 1988, p. 117).

They state quite unequivocally that, given the current world order, it is difficult, if not impossible, to apply Rawls' principle of justice universally. There would have to be a massive shift of wealth to the Developing World in order to fulfil Rawls' "difference principle" (the condition of equal opportunity) and only after this equalization could the economic differences be justified. This is also the main thrust of Findlay's argument, that if there is a re-distribution of labour from regions where productivity is low, to areas where this labour could serve in a more useful manner, global welfare would increase. But, as he concludes,

at the world level...it is a profoundly radical idea, so explosive that it has never really been tried. 'Liberal' economists, preaching the virtues of free trade and capital mobility, have not been conspicuous for their advocacy of

labor mobility across national boundaries, in keeping with Disraeli's cynical observation that Liberalism is an expedient and not a principle (Findlay, 1988, p. 14).

From an ethical perspective, if a country has committed itself to helping refugees by becoming a signatory to the 1951 Convention and 1967 Protocol, then the question of obligation becomes quite irrelevant (the application of this obligation remains). But, given the level of debate over this very issue, it seems that this fact has become rather lost in the process. The country's right to control membership cannot be refuted or questioned but, sometimes it appears that all migrants are being painted with a fairly broad brush. A country's national character and identity is not altered so much by refugees as it is by immigrants. It is indeed questionable logic as the intake numbers bear this out.

## **Concluding Remarks**

The UNHCR has declared the 1990's the "decade of repatriation". It is hoped that through this structural re-building process, the "refugee problem" will be solved or, at the very least, ameliorated for the twenty-first century. It remains to be seen whether or not the combined efforts of government policy makers, humanitarian agencies and political leaders are suitably energized and committed for such a daunting challenge. Repatriation in the absence of efforts to remedy the courses of refugee movements might well appear as a futile exercise. As the literature has shown, being a candidate for refugeehood is an extremely deep and complicated situation. There is no doubt that the conditions which create refugees have changed. Indeed, depending on the source, they have broadened to include the environment and the loss of state human rights and economic protection. However, there remains a fundamental unwillingness on the part of the receiving countries to incorporate this new reality into their refugee determination systems. This stubbornness has contributed to the frustrating long delays for applicants wanting their claims processed (as is required for in-country applications). Certainly, the scope of applicants fleeing dismal and discouraging economic situations has increased; this has not gone unnoticed by those politicians eager to re-label these often-times hapless persons as "economic migrants" and "phony applicants".

If one assumes that the definition remains unchanged, it would appear that the seemingly un-stoppable flow of refugee migrants poses the greatest challenge and threat to the signatories of the 1951 Convention. Good intentions aside, one cannot dispute the fact that the number of these migrants have swelled and burst many times over. Obviously, the solution is not to give people a reason to leave.

The definition chose asylum as the sole solution for refugees and, while it has helped tens of thousands, questions linger. What of those who fail to qualify, those who cannot return to their country but will not be permanently accepted by Western and European countries, can asylum be regarded as one of many durable solutions or, as David A. Martin writes, is it simply a matter of suitable interpretation? The definition involves a measure of compassion. As evident in the literature, it is employing and testing the values countries such as Canada are built upon. The "litmus test of justice", as Howard Adelman writes, lies in how and to what extent these values are respected and if they are considered valid for every member of a society be they indigenous or naturalised. The question of equal rights for newcomers to a society is discussed in the following chapter. While there are credible efforts on the part of Michael Walzer and John Rawls to deny equal rights to persons such as refugees, it seems somewhat unfair as these positions not only reinforce but perpetuate a discriminating attitude towards refugees long after asylum has been granted.

The following chapter will examine the history and growth of Canadian refugee asylum which began with efforts to re-settle European Jewish refugees in the years immediately after World War II.

# **A Bureaucratic Journey**

## **Chapter Two**

## **Introduction**

Canada has been a refugee-accepting nation since the eighteenth century. According to Gerald Dirks, the founding settlers of British North America after 1783 were immigrants (predominantly British) and refugees. Who were these forerunners of present-day refugee movements? They were “...non-conformist minorities such as the Quakers,...non-English sects of Mennonites, Tunkers, and Amish” (Dirks, 1977, p.16). All of these groups had left the United States for fear of religious persecution and discrimination. This fear stemmed “...upon the refusal of these sects to bear arms or swear oaths to the new republic” (ibid., p.17). For example, the Quakers (originally called The Society of Friends in Christ) “...denied the need to take oaths, rejected actively the use of violence including the bearing of arms, and disavowed a professional ministry or formalized church institutions” (ibid.). Similarly, the Mennonites were “literalist evangelical Christians, doctrinally uncomplicated, and traditionally devoted to the simple agrarian life...” Indeed, their credence was “we shall not provoke or do violence to any man” (ibid., p.19). Groups such as the Mennonites and Quakers “...represented basically conservative philosophies not in keeping with the revolutionary mood sweeping, or threatening to sweep, through America. The fundamentalist sects found it undesirable, if not impossible, to support the revolutionary climate” (ibid.).

During this era, coming to Canada as a refugee was a relatively simple act. There was no coherent policy, no guidelines to follow or admission requirements. All one had to do was cross the border and claim residency. Of course, because the mentioned sects were self-employed as farmers, their move was all the more desirable for Canada.

However, in the current global climate, obtaining refugee asylum may be a long, stressful and arduous undertaking. Although Canadian refugee policy is still relatively young, it has evolved over perhaps the last sixty years. This chapter is historical and descriptive. In it, the reader will learn why and how Canada developed its refugee asylum process. The chapter is divided into two sections. The story starts off on a clearly negative, but true, tone. The displacement of Europe's Jews before, during and after the Second World War remains the subject of lively, sometimes controversial, debate. The barriers faced by these people is an outstanding reminder of the lessons of history. The entire issue of refugee protection was largely irrelevant as their 'Jewishness' obscured the realities of their situations. Canada's previously scattered energies (as they related to displaced persons) were mobilized and quite entrenched against the prospect of admitting them. The subject is a reflection of where Canada was both in terms of its citizen's attitudes towards refugees and the country's relationship with the rest of the world. It is only fair to say that, since the post-war era, Canada expanded her horizons and has provided permanent homes for hundreds of thousands of refugees. The second section of this chapter concerns itself with Canada's role in the burgeoning international refugee protection system (based on the 1951 Geneva Convention). After long and often fractious consultations between Western countries and the new Soviet bloc, a definition of who a refugee could or could not be, was created. Canada, while an active participant in the drafting of the definition, refused to sign the Convention for nearly 20 years. This was because Canada wanted the right to deport those refugees deemed undesirable. While Canada's immigration policy experienced a minor revolution (immigrants were



now welcome, their labour needed for the growing economy), refugees, on the other hand, remained at the mercy of ad hoc decisions until the 1976 Immigration Act.

### **Part I: Coming to Canada - Jewish Refugees**

It is a formidable assignment for a researcher to evaluate the persecution of Jews in Germany and throughout Nazi-occupied Europe before and during World War II. It is even more difficult to discuss Canada's response without possibly being accused of omitting a fact or an important piece of information. So much has been documented, so many stories have been told. It suffices to say that Canada responded to the migration of German Jews much in the way that her American and European allies did. Some authors such as Irving Abella and Harold Troper feel that Canada was unduly harsh, because as the number of Jews trying to leave Germany rose, Canada became increasingly less responsive and created regulations and various bureaucratic obstacles to discourage prospective claimants. History has proven that neither Canada, nor any other Western country, was even remotely interested in helping Jewish refugees.

Paul Johnson wrote that for Adolf Hitler, "...the Jewish problem was central to his whole view of history, political philosophy and programme of action." Indeed, Hitler held that "next to the provision of space and raw materials for the German master-race, the destruction of the Jewish 'bacillus' and its home in Bolshevist Russia was the primary purpose of the war." Hitler was a believer "...in ultimate social engineering" - that "the notion of destroying huge categories of people whose existence imperilled his historic mission was to him...entirely acceptable" (Johnson, 1983, p. 413). German Jews

were easy victims to prey on because “despite relatively small numbers and a high degree of assimilation...”, they were concentrated both geographically and by occupation. Approximately three-quarters of them lived “...in the twelve largest German cities and more than 60% of gainfully employed Jews were in commerce and trade. Many others followed professional vocations, especially law and medicine” (Wyman, 1968, p. 27).

The flow of German refugees began in the spring of 1933, long before the war. The flight paths of these refugees were generated by various state declarations which singled out Jews and the so-called non-Aryans as economic and social outcasts. National Boycott Day (April 1, 1933), declared by the ruling Nazi party, was “...aimed at Jewish stores, products, lawyers and doctors” (ibid., p. 28). Only days later, the Law for the Restoration of the Professional Civil Service was declared. Only state-defined Aryans were eligible to work at the state or municipal levels of government. This was followed by decrees which disallowed Jews “...from medical practice involved with the public health service, from the press, theater, radio, and cultural pursuits generally. Colleges and universities received orders to limit Jews to one and one-half percent of new student enrollments” (ibid). Further compounding the situation for prospective refugees were flight taxes (twenty five per cent of entire assets) and the setting of foreign currency rates by the German government. This concluded the first phase of the pogrom.

The second phase started in September of 1935 with the Nuremberg Laws. Irving Abella and Harold Troper wrote that these laws “...surpassed even the wildest hopes of anti-Semitic demonstrators” (Abella and Troper, 1982, p. 4). The Nuremberg Laws went far beyond economic strangulation. Germany was to be officially racially pure. That is,

“...the distinction between Jews and non-Jews was clarified” (Wyman, 1968, p. 28). The Act for the Protection of German Blood and Honour banned marriage between Jews and non-Jews. Jews and non-Aryans lost their citizenship. They were “...stateless, with no access to the courts...” and had absolutely no protection whatsoever under the law (Abella and Troper, p. 4). By 1937, approximately thirty percent of Germany’s Jews and non-Aryans required financial assistance to survive. Such aid was only available from the German and overseas Jewish communities (Wyman, 1968, p. 29). In April of 1938, the Decree for the Elimination of Jews from German Economic Life was declared. It gave Jews until January 1, 1939 to sell all of their business interests to Aryans. As well, “...Jews were not to serve as managers or to hold other leading positions in any businesses” (ibid.). Jews were forced into the absolute perimeter of German society, “...the cumulative effect of ...” this being that they were pushed into “...a position where they felt that they had to flee their own country” (Fox, 1988, p. 73). The number of Jews emigrating or applying to do so continued to escalate, but the majority could not or would not leave. While approximately 150,000 left Germany by the end of 1938, as Fox pointed out, leaving was not an option for most. There was the financial cost, “...was it possible to obtain visas or entry certificates to other countries or were these being denied or in such short supply as to make their possession almost an impossibility, was one too old or in the wrong profession to start life anew elsewhere...” and, most importantly for this discussion, “...would the new host population be welcoming or hostile?” (ibid., p. 74). Though there was not an official state policy of Jewish expulsion, in early January or 1939, the German government opened the Reich Central Office for Jewish Emigration.

The office's mandate was to encourage Jewish emigration by all available and possible means (ibid., p. 77). The one continuum during the growing crisis was "...the maintenance, if not tightening of immigration controls" (ibid.).

Canadian immigration policy, both before and during the war, was not remarkably different from that of the United States or their European counterparts. Both were the product of nativism (favoured native-born citizens over immigrants), the needs of their respective economies and the preference of certain races over others. Canada was the most conservative of all. Indeed, Abella and Troper wrote that "when economic necessity dictated the admission of non-British and non-American immigrants, it was always in descending order of ethnic preference. Following British and American immigrants, preference was given to northern and then central Europeans. At the bottom were Jews, Orientals and Blacks" (Abella and Troper, 1982, p. 5). Canada wanted to maintain absolute control over who would be admitted and where these individuals would live. The government wanted immigrants to stay in agricultural occupations and, in 1928, in a move designed to punish them for moving into Canada's cities, immigration of East Europeans was reduced to one third of previous levels. This insistence on agricultural workers was maintained before and during World War II. In 1931, Canada "...banned all non-agricultural immigrants unless either British or American" (ibid.). Such maneuvering was perceived as legitimate because of the Depression and its associated unemployment rates. There was really little hope for German Jews with respect to Canada. Bureaucratically-speaking, Canada could have adequately staffed her European embassies and processed more than the four thousand Jews that were admitted

over the entire period. Politically speaking, Jews were regarded as a liability. Canada, like her contemporaries, lacked the political will to do any more than she did.

It might be suggested that political will is full of grey areas. There were certain pressures and prejudices influencing Prime Minister King (his own included) and his cabinet. Perhaps the most obvious was the high level of antipathy directed at Jews by, not only the vast majority of Canadians, but the Immigration bureaucracy itself, and King's Ministers. Not only was the hostility rationalized by Christian dogma, but by the belief that, like Blacks and Asians, they were resistant to assimilation. Furthermore, there was no distinction made, on behalf of Canadians, between refugees and immigrants. They were regarded as one and the same and both were unwelcome. The combination of religious, social, economic and political intolerance was especially potent in Quebec. Unlike other provinces in the country, the Catholic Church was a formidable force in French Canadian society. The academic debate over the definition as to who was a Quebecois was burgeoning through the efforts of Father Lionel Groulx and the French-speaking media. Groulx was a priest by training and a history teacher by profession. He has been described as the "...mentor of the nationalist movement of the thirties..." (Delisle, 1993, p. 32). If Fascism exalts nation and race above the rights of the individual, then Groulx was a believer. His research concentrated on the racial purity of French Canadians. Like his fellow Canadians, he viewed Jews, at the very least, with suspicion. Groulx wrote about Jews as if they were the enemy and oppressors of French Canadians. Jews were denying the 'real' Quebecois (Catholic majority) of their true identity and dignity (ibid.) .

How were the French Canadians being oppressed by Jews? by a supposedly suspicious relationship between the Jewish community and politicians. Provincial and federal politicians were described by Groulx as Jewish collaborators and enablers. According to him, "...the Jewish minority was profiting unduly from a biased electoral map. They lived in constituencies where election results were inevitable and criminally skewed..." There were clear "...collusions between Jews...and politicians..." (ibid., p. 60). Groulx's solution was to disenfranchise Jews. The rationalization was that "...political rights were redundant for citizens of Jewish persuasion in Canada because they were well-treated...It would be best simply to relieve them of these rights" (ibid.). He dismissed capitalism as a "...doubly heinous system because Jews both organized and embodied it" (ibid.). The newspaper, Le Devoir, was started in 1910 and its mission statement was to defend Catholic and nationalist doctrine. It promoted itself as "...the voice of the collective conscience of French Canadians..." (ibid., p. 34). Le Devoir had a relatively small circulation, approximately fifteen thousand readers, and a large proportion of its readers were "...the clergy, the university community, civil servants and from the liberal professions" (ibid., p. 36). As Dr. Delisle points out, there is something oddly skewed and ironic that such educated and well-informed persons read and professed of a Jewish mafia. Le Devoir went so far as to have accused its competition, La Presse, as being a Quebec artery of the "International Jewish Conspiracy" for having had a past editor-in-chief who was Jewish. Groulx held up as an ideal state, the models of Fascist Italy, Nazi Germany and the new Soviet Republic. If democracy was the "tyranny of opinion" then fascism was the embodiment of national mystique. French

Canada would undergo exhaustive national and political re-education and emerge as a “pure” state.

Quebec nationalists such as Lionel Groulx and others, presented a significant political threat to the federal government of MacKenzie King. While their numbers were not great, their power was enough to influence government policy concerning the resettlement of European refugees. Further compounding this was the fact that the Liberal party was no longer governing Quebec. Their 39 year old monopoly on power was finally defeated in 1936 by Maurice Duplessis’ Union Nationale. In order to ensure the party’s survival, they were encouraged to foster anti-Jewish sentiment. If the provincial Liberal party was perceived to be anything other than this, it risked closure under the Padlock Law. This federal law, with its unchecked discretionary powers, enabled all provincial Attorney-Generals the “...power to padlock the premises of any organization he declared subversive” (Abella and Troper, 1982, p. 18).

Many other organizations including the St. Jean Baptiste Society, various municipal councils, *caisse populaires* and the provincial Knights of Columbus wrote countless letters to King and the Immigration Branch urging the government to maintain its exclusionary policies. In 1938, the Quebec Liberal Member of Parliament “...delivered to the Commons a petition signed by nearly 128,000 members of the St. Jean Baptiste Society, opposing ‘all immigration and especially Jewish immigration’” (ibid.).

The Evian Conference (summer 1938) was conceived by President Roosevelt’s Secretary of State, Sumner Welles, as a response to Germany’s invasion of Austria. In

theory, the conference was organized to discuss potential solutions to Europe's growing numbers of refugees and displaced persons (Knowles, 1992, p. 110). A total of thirty nations were invited. Canada, after nearly two months of stalling, was a reluctant participant. The American invitation explicitly stated that "...no country...be called upon for major sacrifices...", or be asked to accept more immigrants than allowed by its existing legislation. Still, King and various senior Immigration officials felt that they were in a serious quandary over the mere prospect of having to attend the conference (Wyman, 1968, p. 43). Despite all of the evidence to the contrary, they were deeply concerned that Canada was going to be asked to reverse her policy towards Jewish refugees. Ultimately, King was forced to relent when his Under Secretary of State, O.D. Skelton pointed out that the only other absent countries would be (Fascist) Italy and (Nazi) Germany. This symbolic guilt by association would have been a careless move on Canada's part (Dirks, 1977, p. 58; see also Abella and Troper, 1982, pp. 21-22).

At the conference, Canadian delegates argued that if immigration laws were changed in order to grant protection to Jewish refugees, then Hitler would merely accelerate his program to expel Germany's undesirables. A far more effective strategy would be to keep the existing laws. Thus, Germany would realize that its Jewish and non-Aryan population would be stranded within her borders: these potential migrants would have nowhere to go outside of their country. The rationalization was that Hitler would have no choice but to succumb to this reverse pressure upon the realization that no Western European or North American country would provide temporary or permanent



shelter for those leaving. That the burden of the so-called Jewish problem would remain his and his alone, therefore forcing a domestic solution.

History remembers the Evian Conference as a rather vacuous diplomatic and public relations exercise. Canada did not have to assert herself particularly aggressively. This was because the final resolution stated that none of the participating countries were willing to assume the financial obligations necessary to assist and resettle Germany's, and, in fact, Europe's forced migrants. Abella and Troper write that "...delegate after delegate rose to announce that his nation was doing all it could to solve the crisis and that stringent immigration laws prohibited it from doing more." The Canadian delegation insisted that the nation was doing its part, "...that Canada had much sympathy for the impossible situation in which the refugees found themselves, but that it could do no more than it was already doing - which was a great deal." Canada was open to agriculturists, this opened and closed her contribution to the discussion (Abella and Troper, 1982, p. 31). The only tangible evidence that the conference was even held was that its participants created the Intergovernmental Committee on Refugees. The Committee's mandate was to study the problem of European refugees (ibid.). In the spring of 1943, representatives of Britain and the United States met in Bermuda to further discuss assistance and resettlement schemes for refugees and other displaced persons. Canada was not invited to participate. Like the Evian Conference, the meeting in Bermuda was rather fruitless as it offered only vague and, of course, non-binding requests that nations "...follow a courageous and independent role and bring some of the oppressed Europeans..." to their countries (Dirks, 1977, p. 94).

One might ask what the role of Canada's Jewish community was. It goes without question or doubt that they actively lobbied the government to help their relatives overseas. Offering their support to the cause were important members of the Protestant church, sympathetic newspaper editors and political and social commentators in English-speaking Canada, and, in particular, the Canadian National Committee on Refugees (Knowles, 1992, p. 113). Realizing the level of hostility against Jews, organizations such as the Canadian Jewish Congress adopted 'backdoor diplomacy' in their efforts to win government support. The

"Jewish community's refugee campaign was reserved, often low key, geared in the main to educating the public, cultivating the support of the press and the larger community, building a coalition with liberal and other pro-refugee interests, and winning the confidence of key politicians and public servants, while at the same time keeping both the disparate elements of the Jewish community in line and a lid on any activities likely to cast the community in a bad light" (Abella and Troper, 1982, p. 283).

They also believed that the three Jewish Members of Parliament, Samuel Jacobs of Montreal, Sam Factor of Toronto and A.A. Heaps from Winnipeg, would serve as further lobbyists in Ottawa itself. Ultimately, all groups were rather ineffectual in bringing significant numbers of refugees into Canada. Abella and Troper argue that, contrary to Groulx's beliefs, the "...Jewish community was not an important part of the domestic power equation" (ibid.). Therefore, "the blanket dismissal of the Jewish community as an important political force in Canada during the war years...is not a negative reflection on the tactics Canadian Jewry employed in its campaign." They further argue that "...mass demonstrations, civil disobedience, hunger strikes and protest marches to

Parliament Hill, although perhaps cathartic to a Jewish community seething with the anguish of rejection, would only have confirmed what many Canadians believed - Jews were a disruptive, selfish and dangerous group” (ibid., p. 284).

Those refugees lucky enough to make it to Canada had enormous amounts of capital and a business venture attractive to the Canadian government. An often-mentioned example is Thomas Bata, founder of the shoemaking giant, Bata Shoes (Knowles, 1992, p. 113). Canada was also subject to pressure from Britain to accept its wartime refugees. Canada became the reluctant home for over 2000 British enemy aliens; “...for the most part German and Austrian nationals, many of them highly educated Jews-who had been living in Great Britain when war erupted” (ibid., p. 114). Canada accepted children from Britain but created, at best, ridiculous regulations for Jewish children and orphans. None were ever admitted. There was also stalling on the part of the government as well. Initially, the country was going to accept 10,000 children “...as long as they were of British, French, Belgian or Dutch origin” (Abella and Troper, 1982, p. 102). The numbers are unclear but, in the end, perhaps 4500 children were temporarily resettled in Canada (ibid., see also Knowles, 1992; Dirks, 1977). The program was ultimately dropped as the fear of German submarine attacks in the Atlantic Ocean grew. As far as the Jewish children were concerned, the government insisted on health (mental and physical) standards and required that they be separated from their parents so to prevent them from attempting to join their children when fighting ceased. The government also appeared to have doubts about the severity of the immediate danger these children faced. No entry requirements existed for British children.

Racism is an ideology that attempts to legitimize inequality. Such inequality is not related to one's personality or character traits for they are rarely known. Rather, it is solely based on physical features, (be it skin colour or otherwise) religion, race and ethnicity. Racial inequality is rationalized in terms of preconceived prejudicial notions (i.e. Jewish physical features, Asians not practicing good personal hygiene). During this era, Canadian public policy as far as it related to refugees, was shaped by racism. Professor Bob Miles of Glasgow University states that the racist imagination is creative; that its power lies in the collective strength of the belief (Miles, 1996). Otherwise, how could Nazi Germany plan and carry out its pogrom against its Jewish population or, for that matter, could Canada have been so successfully consistent in its policy not to admit the ensuing refugees? There was also a clear class distinction as those few Jews admitted had the means to invest in Canada and were therefore good for the economy. However, as the next section explains, Canada underwent further 'growing pains' and was ultimately forced to re-evaluate its position vis-à-vis refugees and the rest of the world. The second part of this chapter does not claim to do justice to postwar immigration policy, it only attempts to provide a general overview of what the trends were. More importantly, it serves to show what kind of help Canada was willing to offer postwar refugees.

## **Part II: A New Beginning**

Karl Marx believed that every society was built on an economic base. He wrote that a country's economy could only fully function either in the preparation of war or

during war itself. This was, of course, because all of its sectors would be working to capacity and there a high demand for labour would exist. Naturally, immigrants and refugees could help fill the labour pool. However, as mentioned, immigration (refugee or not) to Canada during World War II was difficult unless one was of a particular ethnic group or occupation. Canadian postwar refugee policy wore two hats. There were dual parallel themes: one, that Canada slowly started to accept and resettle refugees and, two, that policy remained wholly ad hoc and spontaneous. James Hathaway has called it a situation specific approach to refugee protection (Hathaway, 1992). Canada began to respond to refugee emergencies as they appeared on the world's stage. There was no legal enshrinement of refugee policy and procedure until the 1976 Immigration Act. This section will trace how Canada reacted to Europe's postwar refugees and other refugee crises that occurred during the time leading up to the 1976 Immigration Act. It will also discuss the politics of refugee policy and attempt to explain why Canada waited almost two decades to enact any kind of coherent policy.

In the spring of 1947, Prime Minister King gave a speech on immigration matters to Parliament. History has judged his speech as a watershed on postwar immigration and refugee policy. Dirks has referred to it as "...the foundation upon which immigration policy rested for the next decade" (Dirks, 1977, p. 147). King's address was the product of a momentum that had been growing in both the Department of Labour and the Department of External Affairs. While Canada experienced a postwar recession, the long-term prospects were judged to be positive. Canada would have to expand her labour pool. Canada would also need "...immigrants necessary for the development of the

economy...” who were “...willing to perform tasks which Canadians were either reluctant or untrained to do”(ibid.). Some examples of these jobs were the extraction and harvesting of natural resources (forestry and mining), construction and related industries. The Department of External Affairs preoccupation was “...that Canada should do as much as was realistically possible in resettling European refugees” (ibid.). External Affairs married humanitarianism with the desire to “...obtain the best immigrants as future Canadians” (ibid.). Despite the fact that refugees were in a category solely unto themselves, there was a rather clear inference that their admission would be determined with similar economic criteria as regular immigrants: what were their qualifications and how could they contribute to the economic welfare of Canada? There could be no mistake from Prime Minister King’s words.

The Canadian government would recruit the “...permanent settlement of such numbers of immigrants as can advantageously be absorbed into our national economy” (House of Commons Debates, 1947, p. 2644). Canada would help “...in the resettlement of displaced persons and refugees...” but Canada had no commitment “...as a result of membership in the United Nations or under the constitution of the international refugee organization, to accept any specific number of displaced persons” (ibid.). Finally, after years of stalling there was “...a moral obligation to assist in meeting the problem, and this obligation...”, Canada was “...prepared to recognize” (ibid.). Using economic forecasting as a measuring rod, the government would determine how many refugees could be immediately employed. This was because the government wanted to guarantee that those displaced persons admitted into Canada would “...make good citizens” (ibid.). This

desire was reinforced with the words that a general opinion existed "...with the view that the people of Canada do not wish, as a result of mass immigration, to make a fundamental alteration in the character of our population"(ibid.). Despite the obvious limitations of his speech, King had offered a shred of hope to not only the Canadian relatives of Europe's refugees but to the victims themselves.

Canada did not begin to admit war refugees until the summer months of 1947. The government sent officials and Royal Canadian Mounted Police to Europe to interview potential applicants. The R.C.M.P.'s sole purpose was security screening. In theory, they were to look for and prevent suspected Nazi and communist sympathizers from gaining entry into Canada. As recent events have shown, they were not entirely successful in their mission.

Hobsbawm writes that "...by 1945 there were perhaps 40.5 million uprooted people in Europe, excluding non-German forced labourers and Germans who fled before the advancing armies" (Hobsbawm, 1994, p. 51). Many finally resettled in the new German Federal Republic and others in Palestine. But "three years after the cessation of Hostilities in the European theater of World War II, there remained over a million refugees for whom solution had not been found" (Gallagher, 1987, p. 579). Despite pronouncements about the role immigrants and refugees would assume in postwar Canada, it is widely accepted that the federal government yielded slowly to resettle anyone.

After the war, the issue of Jewish refugees became clouded. The numbers remain difficult to trace, but out of the more than 100,000 refugees granted Canadian residency,

perhaps only a few thousand were Jewish. The rest were Christian. Furthermore, the government did not approach Jewish aid groups, it was the opposite. The small numbers of Jewish refugees was consistent with the government's "...public commitment to preserve the traditional fabric of the nation" (Sauer, 1993, p. 227). Those who managed to enter Canada were sponsored by such predominantly Jewish-dominated industries as clothing manufacturing, the fur trade, shoes and textile production. Many non-Jewish refugees started their Canadian lives as miners, steel and woodworkers, railway personnel and domestic help (see Dirks, 1977, Appendix H). As well, war orphans were admitted though Jewish children were subject to medical examinations and visas (Abella and Troper, 1982, p. 274).

There was, still, one group that received no help in the form of resettlement from Canada. They were the so-called 'hard core' refugees. Their illnesses and/or physical handicaps made them unattractive immigrants for the government. The International Refugee Organization appealed to humanitarianism. There were thousands of tuberculosis victims being treated in inadequate facilities. Canada was repeatedly asked to treat and, in the long, run resettle 1,000 of them. The request was consistently refused with the explanation that immigration rules prohibited "...T.B. victims from entering Canada until they have been cured for at least two years" (Dirks, 1977, p. 173). Discussions between the federal government and the I.R.O. lagged on for approximately two years but every proposal and compromise was rejected by Canada. As Dirks writes, "...the Canadian posture fell somewhat short of humanitarianism" (ibid.). The barring of an immigrant or refugee for health reasons remains very much a standard policy.



In contrast to its wartime posturing, “Canada’s policy towards refugees and immigrants in general swung sharply to a more liberal position following World War II...” (Dirks, 1980, p. 11). Between the years of 1947 and 1952, Canada permanently resettled approximately 165,000 refugees and other displaced persons (ibid.). Hungarians, Czechoslovakians, Ugandan Asians, Chileans and the Vietnamese have subsequently been granted asylum in Canada since the end of World War II. The case of the Vietnamese shall be referred to in Chapter Three as they were admitted into Canada after 1976 and well into the next decade. Howard Adelman writes that “...many scholars have pointed out that refugees escaping communism...have generally been more welcome in Canada than, for example, left-wing dissidents fleeing rightist regimes” (Adelman, 1991, p. 191). This opinion seems to carry some weight when evaluating at least three of these groups, the Hungarians, the Czechs and the Chileans.

Canada’s response to the refugees fleeing the Hungarian uprising of November 1956 could not have been more of a contrast to her inaction during the Second World War. Rather than being called refugees, the Hungarians were freedom fighters and public opinion was highly supportive of helping them. The Minister of Immigration, J.W. Pickersgill, created the Hungarian Immigration Branch and travelled to Austria to personally manage the screening and admittance process (ibid.). By the end of 1957, slightly over 37,000 Hungarian refugees had been resettled in Canada. It is important to also mention that, at the time, the Canadian economy was buoyant and there was a demand for skilled labour.

A little over ten years later, in 1968, when a liberal minded Communist government attempted to infuse a bit of freedom and openness into (Communist) Czechoslovakia, the Soviet Union's tanks were dispatched to pay a visit. While there was not the violence and economic chaos of Hungary, an exodus was created. Over the next year, Canada processed nearly 12,000 Czech refugees. Again, as in the case of Hungary, these refugees were easily integrated into the Canadian economy. The majority were educated with technical and professional experience (ibid.).

In the cases of both the Hungarians and the Czechs, the federal government was fairly involved in not only helping these refugees come to Canada, but to establish themselves as well. Financial assistance was provided through grants, French or English language courses were available as were manpower re-training for those needing it. Reg Whitaker describes Canada's reaction to the 1973 overthrow in Chile of Salvador Allende as "...melancholy..."(Whitaker, 1987, p. 260). Allende's coalition party, Popular Unity (the first democratically elected Marxist government in the world), claimed victory in 1970. In September of the next year, the Chilean military overthrew the government, killing Allende and many of his supporters. The coup grew out its growing uneasiness with Allende's policies which included "...an attack of the holdings of the huge landowners and the nationalization of foreign (mainly American) companies operating in Chile" (ibid.). Allende's mandate had already been vindicated when Popular Unity won mid-term congressional elections. Popular Unity's demise was exceptionally violent and "...supporters of the Allende regime, people of leftist views, trade union organizers and

so on...were in immediate physical danger. Some sought refuge in foreign embassies...including the Canadian..." (ibid., p. 256).

Canada acknowledged the new military government and did not protest the overthrowing of a democratically elected government. For months, it displayed a basic unwillingness to accept, let alone, consider processing, any Chilean refugees. Only months after the coup did Canada send a team of immigration officers to Santiago. This was partially the result of intense lobbying on the part of the Canadian Council of Churches, the small Chilean community and other special interest groups. In November of 1973, a special program for Chileans was announced but with obviously smaller numbers than past postwar refugee emergencies. The initial target figure ranged from 300 persons to 1,000 (Adelman, 1991, p. 195). Freda Hawkins writes that "...Canada's senior policy makers were uncertain about the whole affair" (Hawkins, 1972, p. 169). This was due to the fact that the United States openly supported Chile's new rulers "...and they were nervous about the possibility of admitting hundreds of Marxist-Leninists who might-as some saw it-try to establish a revolutionary base in Canada" (ibid.).

After more than 14 months, the program numbers were revised to accommodate up to 5,000 Chilean refugees. Ultimately, the whole plan was amended "...to designate the source of refugees to include anywhere in South America and increased the target figure from 5,000 to 6,000, with a reserve of an additional 1,000 at the discretion of the Minister" (Adelman, 1991, p. 195). Clearly, the entire process was staggered and the extensive use of security screening (discarded in the case of Hungary and

Czechoslovakia) complicated the situation and served to deter potential applicants. The Chilean experience had come only one year after Canada had processed and accepted 7,000 Ugandan Asians.

In August of 1972, Ugandan President Idi Amin expelled all Asian citizens holding British passports. They were given three months to leave the country. Approximately 50,000 Asians had chosen to retain their British passports when Uganda claimed her independence from Britain in 1962 (Hawkins, 1972, p. 166). The British government declared her willingness to accept the refugees but sent a clarion call to other Commonwealth countries to share the responsibility. Before the end of the month, Canada had decided to accept a portion of the refugees. Publicly, there were two reasons: first, that it was a clear case of humanitarian need and, Canada had a duty to help and, two, Britain could not accommodate them with its already overcrowded cities (Dirks, 1980, p. 16). While this was the first time that non-Europeans were granted refugee status in Canada, a cynic could point to some of the outstanding qualities of the refugees. They were, overall, well educated, spoke good English and it was an affluent community. Nearly all would have qualified for entrance into Canada through regular immigration streams.

Through these cases, one is able to learn about Canadian postwar refugee policy. While Canada generally respected the 1951 Convention, it did not actually sign until 1968. The Chilean refugees were perhaps further victimized by Canada's reluctance to recognize them as Convention refugees, something that they clearly were. They were afraid of being persecuted for their political beliefs and, as it is written in the definition,

actual persecution need not have occurred. Only a justifiable fear must exist. As noted above, James Hathaway refers to postwar policy (and until the early 1970's) as situation-specific. This was because there was a very particular "...strategic orientation..." The Hungarians, Czechs and the Ugandan Asians demonstrated that there existed "...an evolving willingness on the part of the government to respond directly to refugee flows" (Hathaway, 1992, p. 72). However, the granting of asylum to them "...was consonant with more general political objectives." Except for the clear political bias at play with the Chileans, these other major movements were quite in keeping with the fundamental "...underlying economic determinants of Canadian immigration policy, as the majority of refugees were educated and skilled and were thus poised to make a positive contribution to Canada's economic prosperity" (ibid., p. 73).

### **Concluding Remarks**

This section closes with an examination of Canada's relationship with the 1951 Convention. As alluded to, Canada did not legally adopt the definition of a Convention refugee until the 1976 Immigration Act. The road to this adoption was long and, despite the precedence set after World War II, no meaningful initiative to become a full partner existed until the election of Lester B. Pearson as Prime Minister in 1963. In fact, it was a dead issue for years before being revived.

Canada headed the committee that actually drafted the refugee definition. However, when the opportunity arose to actually commit, the Canadian delegation received instructions not to ratify it. This was because the Department of Citizenship and Immigration felt that "...the convention would unduly limit authorities when dealing with

the deportation of aliens” (Dirks, 1977, p. 180). Section 1 of Article 33 of the Convention states that

“No contracting state shall expel or return (“refoule”) a refugee in any manner whatsoever to the frontiers or territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion” (U.N.H.C.R., 1992, p. 70).

The general consensus was that this would infringe upon Canada’s freedom to refuse entry to possible undesirable immigrants. There was a movement with the Immigration Department to actually re-script a refugee definition exclusively for Canada. This definition would only refer to the displaced of World War II and to those ideological refugee fleeing the newly-united East Bloc countries. Apart from the fact that this galling idea was actually entertained, the mere thought of it totally undermined the years and discussion and work which went into the 1951 Convention. It is a good example of the seclusion mentality that still existed long after the war had ended and new international relationships had been formed.

Only the Department of External Affairs recognized the political dimensions of the refugee question. There was a desire to “...advance Canada’s role as a major player in the field of human rights law” (Hathaway, 1992, p. 74). Citizenship and Immigration saw no need to sign any document since Canada already began to grant asylum. By not signing, Canada could behave as a sole actor exercising complete discretionary power and was not subject to the potential limitations of any international agreement. Decades earlier, Canada had responded in much the same manner when she challenged the

legitimacy of the Nansen Passport. The passport was named after the first High Commissioner for Refugees of the League of Nations, Dr. Fridtjof Nansen.

The issues of passports and travel documents had started to gain in popularity around the start of this century. Countries like Canada and Great Britain discovered the value of such papers when it came to discouraging or encouraging the entry of prospective immigrants. Asians who wanted to immigrate to Canada required passports while those coming from Britain or America did not. The Nansen Passport was the first multi-national attempt to provide travel documents for refugees, specifically the 1.5 million persons displaced after the Bolshevik Revolution. In 1921, their citizenship had been revoked by the "...All Russian Central Executive Committee which revoked Soviet Citizenship for those who had resided abroad for more than 5 years and for those who had left Russia after November 7, 1917 without the permission of the Soviet government" (Kaprelian-Churchill, 1994, p. 283). In the following year, the League of Nations held a meeting to attempt to create travel documents for these refugees. The Nansen Passport was granted to any Russian national who did not have the protection of the new Soviet government and not acquired any other nationality. They were stateless persons. The passport was valid for one year and was renewed annually. It "...not only stated the holder's identity, nationality, and race but also provided some freedom of movement" (ibid.).

As with the United Nations, Canada participated in the League of Nations and, in 1925, a Canadian senator, Raoul Dandurand, was elected to chair it. Even before Dandurand had been nominated, Canada had displayed a basic unwillingness to accept

the Russian refugees under the provisions of the Nansen Passport. Canada had signed the agreement but deliberately failed to ratify it in Parliament. This was because Canada wanted the right to deport refugees if just cause was found during the first five years of their Canadian residency. The government argued that "...Canada would not risk an immigrant's admission, unless assumed that the country or origin or of last residence would agree to the return" (ibid., p. 285). National interests and international responsibilities could not be reconciled. Also, Canada did not want any refugees becoming the responsibility of the state.

If Canada's terms had been agreed to, the refugees would have been considered and subjected to the same rules as voluntary migrants. The Russians would have to pay the landing money tax (\$250.) and meet the continuous journey regulation. The continuous journey meant that anyone wanting to come to Canada could only travel directly from their country of birth (or citizenship) with a ticket purchased either in that country or prepaid in Canada. For the Canadian government to apply such rules to refugees was not only ridiculous but clearly mean-spirited. As Kaprelian-Churchill writes, Canada's behaviour towards the Nansen Passport "...provides an interesting profile of the relationship between international isolationism and racist immigration policies" (ibid.).

Pearson was somewhat more of a political visionary than his predecessor, John Diefenbaker. As "...a leading architect of the United Nations and former president of the General Assembly...", he "...was anxious that Canada play a major role in the promotion of multilateralism through the United Nations system" (ibid.). Therefore, it was not a



great surprise when, in 1966, the White Paper on Immigration "...suggested that legislation to systemize procedures governing and regulations affecting the status of refugees in Canada might be introduced in Parliament" (Dirks, 1977, p. 182). While nothing happened for close to a decade, the move towards official recognition of the definition had started. It is also important to mention that parts of the world had begun to dramatically change character as colonialism was fast becoming passé and new, independent states were born. Canada was potentially carrying a risk of appearing out of touch with reality and dated in its outlook on international relations. The White Paper on Immigration "...also heralded the total end to racial discrimination in immigration policy" (Supply and Services Canada, 1975, p. 3). Canada's long-standing bias towards European immigrants began to appear unrealistic and prejudicial. Such bias was, of course, extended to refugees. As Europe's prosperity increased, its citizens found fewer reasons to emigrate. Immigration and refugee flows were starting to shift towards Asia and Africa. Political realities could not be ignored and were reflected with the admission of the Ugandan refugees.

In 1972, the Liberal government of Pierre Trudeau, started another examination and overhaul of immigration (and refugee) policy in anticipation of a revised Immigration Act. The Green Paper on Immigration was a collection of four discussion reports. While the Green Paper did not mention refugees in detail, critical legislation was borne of it. A legal commitment was made to grant asylum to Convention refugees and they were to be treated as a distinct class from immigrants. The 1951 definition was included in the new Immigration Act and, along with this, Canada would create other

special classes of refugees (this will be further explained with reference to the Vietnamese in Chapter Three). The Refugee Status Advisory Committee was established to process claims. Finally, reasonable and accommodating procedures were provided for refugee sponsorship (Hawkins 1972, p. 175), an idea that was popular with those Canadians who sponsored Vietnamese refugees.

This chapter has attempted, in a compact manner, to give the reader an overview of Canadian refugee policy from its hesitant beginnings before World War II to its development thereafter. One can fairly state that Canada evolved and matured, not only in her perception, but handling of refugees. Certainly though, contradictions were obvious and as the next chapter will illustrate, far greater challenges lay ahead. Marxist Chilean refugees were as much victims as Hungarians or Ugandan Asians. The Chileans unintentionally challenged an uncertain and conservative Canadian bureaucracy in a way that the Jewish crisis was not able to. Their political beliefs and Chile's economic relationship with Canada, exposed a vulnerability in the Canadian process, a weakness that has never completely been abandoned. Chapter Three builds upon the information presented in Chapter Two. It describes the newly formed refugee bureaucracy on the 1970's and illustrates how it responded to an even more complex world of the 1980's.

**Two Steps Forward, One Step Back?**

**Chapter Three**

## **Introduction**

The Vietnam War was an American campaign against the threat of Asian Communism. It was a war that received little support from the general population of the United States. The Vietnam War was regularly broadcast into people's homes through their televisions, giving it the name of the 'television war'. Television brought an entirely new angle to modern warfare. Over time, it exposed the point that the United States had plunged itself into a doomed war. It is an event that is impossible to understand or justify outside the spectre of the Cold War. It was fought in a country whose history, culture, religions and values were dissimilar to that of the United States. The actual goal of American involvement was never clear as Vietnam had not actually threatened the United States. Furthermore, "...not a single one of America's European Allies sent even nominal contingents of troops to fight alongside the US forces" (Hobsbawm, 1994, p. 244). Unlike the Korean War, Canada did not send troops to reinforce the American effort. However, Canada became the adopted home of an untold number of American war resisters-frequently referred to as 'draft dodgers' and 'deserters'. In theory, those men who opposed the Vietnam War on philosophical grounds, could have been regarded as refugees. American conscientious objectors became an uncomfortable issue for the Canadian government. As an intimate political and economic ally of the United States, there was controversy over about Canada accepting the entry of men whom refused to fight for their country (Dirks, 1977, p. 237). None claimed political asylum and all were ultimately processed as regular immigrants.

Vietnam was a nation that had long struggled with self-determination. Canadians knew it as a country that had been forcibly split into a Communist north and a democratic

south. This uncomfortable partition was the result of conflict between France and Vietnamese nationalist and Communist guerrillas. France had a rather long history of an unstable colonial relationship with Vietnam. After nearly ten years of civil war, France recognized her defeat by the Vietnamese insurgents in the spring of 1954. A few months later, an armistice was negotiated resulting in the division. North Vietnam, unhappy with the result of the peace talks, aggressively sought to reunify the country. In 1956 violence began again only without French involvement. What started out as a regional conflict, became an international issue when the United States started bombing North Vietnam in 1964.

As in all conflicts, the inevitable forced migration of civilians began. Vietnamese nationals fled their country using whatever transport was available; hundreds of thousands risked (and lost) their lives because of poorly constructed and overcrowded boats. It is not known how many Vietnamese drowned in waters known to be inhabited by sharks. The Western media renamed these refugees 'boat people'. Those boat people who did survive, ended up in refugee camps in Malaysia, the Philippines, Indonesia and Hong Kong. Some even ended up as far away as Australia. More escaped by walking across the border into Thailand, Cambodia and China. Thailand, the Philippines, Malaysia and Hong Kong suffered the brunt of the exodus. American and Canadian news broadcasts were filled with scenes of these desperate people. Television brought the images of refugees into the living rooms of North America.

### **Part I: The Boat People**

In 1975, the South Vietnamese capital city of Saigon fell to North Vietnamese forces. That same year witnessed the reunification of Vietnam. After these two dramatic

events, there was “...an ever increasing flow of former South Vietnamese...” leaving their country over land or in dilapidated boats” (Dirks, 1995, p. 66). The nearby countries of first asylum (eg. Thailand, Malaysia) were already “...economically overextended...” and “...were both unwilling and unable to cope with this onslaught of humanity...” Thailand and her South East Asian neighbours “...called on UNHCR and other international agencies and national governments to assist in resettling the Indo-Chinese elsewhere” (ibid.). The appeal did not make any noticeable impact on countries like Canada until the close of the 1970’s. After the capture of Saigon, Canada agreed to resettle only 5,000 Vietnamese. Howard Adelman suggests that the government of Pierre Trudeau, never sympathetic to the American involvement in Vietnam, felt that because “...the refugee flows immediately following the war stemmed directly from the alliance with the Americans...” therefore, “...the refugees were...the responsibility of the United States” (Adelman, 1991, p. 198).

This was not an uncommon sentiment. However, as Freda Hawkins writes “it was the boat people...who drew the attention of the media world-wide and excited the most sympathy from the international community” (Hawkins, 1988, p. 173). Still, Canada did not accept significant numbers of these refugees until 1979. In 1976, a mere 180 ‘boat people’ were resettled in Canada. In January of 1978 “...it was decided in Ottawa to establish a program in which 50 boat families a month would be admitted” (ibid.). These were rather insignificant figures considering what the magnitude of the crisis was. Some such as Valerie Knowles believe that the momentum for larger scale resettlement occurred in November of 1978 when Canada admitted some 600 abandoned refugees. These refugees were stranded because the freighter that they had been travelling on, the Hai Hong, was refused permission

Malaysia (Knowles, 1992, p. 165). The ship was quite literally stuck in international waters until the UNHCR could find homes for her occupants. The 600 refugees accepted by Canada represented 25 per cent of the total.

Ultimately, the Indo-Chinese became the largest intake of refugees in Canada's history. Despite an initial slow response and resistance from within Cabinet, an estimated 100,000 were given the chances to start their lives over again in Canada. This number was truly astounding given Canada's history on immigration and refugee matters. It cannot be denied that the Canadian public response was unprecedented in its compassion. What distinguished this resettlement of refugees from others such as the Hungarians or Ugandan Asians, was the sponsorship programme. It was a partnership "...between the Canadian government and private individuals, groups, and organizations" (Adelman, 1991, p. 212). Groups of five persons or more (be it neighbourhood associations, families or service clubs) could sponsor a refugee. It is interesting to note that "...only the Mennonites and the Christian Reformed Church came forward to sign umbrella agreements and initiate programs to encourage private sponsorship among their parishioners" (ibid.). The Anglican Church of Canada outright rejected any involvement in the scheme. The government would match every privately sponsored Indo-Chinese refugee. The plan shifted a large part of the responsibility into the hands of the private sector. It was a creation of the recently elected Conservative government of Joe Clark. Under the previous Liberal governments, refugee programmes had been the sole responsibility of the state. This 'mini-privatization' of policy was the first experiment of its kind in the history of Canadian refugee policy.

The programme was announced in July of 1979 but by the beginning of December, it was cancelled. It had been a bureaucratic success: a small fortune was saved through the private sponsorship and, overall, the programme had been efficient. The problem was that it was too successful. Within its first four months, "...the 21,000 refugees assigned to the general public for sponsorship...had all been taken up..." (Dirks, 1980, p. 22). It is clear that there were conflicting pressures on the programme. There were significant pockets of resistance to it in the public domain. Government and newspapers received letters expressing the usual fears that the Asians would rob Canadians of jobs and raise the tax burden. Dirks cites the National Coalition—a lobby group that claimed Canada would soon be overpopulated with Asians and their extended families. Only weeks after the sponsorship programme was announced, the group bought large advertising spaces in newspapers across the country. Amongst other accusations, the Coalition claimed that each of the 50,000 (sponsored) refugees would result in up to 15 additional relatives entering Canada as sponsored relatives (ibid.). It is odd that, despite the fact that "...Ottawa continued to receive applications from private groups...eager to participate in the sponsorship scheme...", "...letters opposing the large numbers of refugees were being received by members of Parliament and immigration officials at a rate well ahead of those supporting the operation (ibid.). In the end, government involvement in sponsorship was dropped claiming the need to divert more emergency funds to Cambodian refugee relief efforts in Thailand. However, the public could continue to be involved. The Conservative Party lost the 1980 federal election. The Liberal government reinstated state sponsorship of Indo-Chinese refugees



The Indo-Chinese were admitted as a Designated Class. This was one of the two categories created and defined in the 1976 Immigration Act. As opposed to the first category, Convention Refugees, a member of a Designated Class was one who did not necessarily satisfy the refugee definition but someone who was in a refugee-like situation. Other Designated Classes were Oppressed Persons, Political Prisoners and Self-Exiles. All refugees allowed to stay in Canada according to categories were Humanitarian (refugees). One is more likely to see this term used in the media rather than Designated Class. The term 'Humanitarian' serves to remind Canadians that their country is willing to grant exceptions to the stream of Convention refugees. All refugees, be they Convention or otherwise, were expected to be able to successfully re-adapt (i.e. be self-supporting) to life in Canada. In other words, Canada would remain reticent to the idea of accepting a refugee likely to be a cost to the state either in terms of health care or other social services.

The Immigration Act recognized that refugees would continue to arrive either one of two ways. The most bureaucratically favoured manner would be, and remains, overseas processing by Canadian embassies and consulates. It is preferred because it is a system that is organized and efficient. Embassy officials along with their Foreign Affairs counterparts, are able to maintain absolute control and order over prospective asylum seekers. The inland refugee determination system was devised for those who announced their presence on Canadian territory either by land (walking), air or sea. Over the last 10 to 15 years, the inland system has attracted the most attention be it from politicians, senior bureaucrats, the media or the general public. It is a process that appears wildly out of control, is highly politicized and the source of constant debate. It is perhaps because of these tensions that there will

probably never be another ethnic group admitted into Canada like the Indo-Chinese. They were the largest group resettled in postwar Canada. Perhaps they represented the end of an era.

The inland determination system functioned well for a few years after the 1976 Immigration Act. But just as the world underwent major changes after the Second World War, the 1980's proved to be a decade of migration. Many were the political victims of wars in regions such as Central America and Africa. Others were the economic victims of not only strife but of their country's failure to be able to create a stable environment in which their citizens could, at least, support themselves in an adequate manner. There is also the prevailing fundamental belief that one's life can be improved through migration.

The inland determination system did not allow for an asylum seeker to have an oral hearing until 1985. The right to an oral hearing was an idea that had been bandied about by the Immigration Ministry and refugee lobby groups for a number of years. Refugee advocacy groups believed that the claimant had the right to plead their case in person to the members of R.S.A.C. while the ministry's primary concerns revolved around keeping the determination system straightforward (Adelman, 1991, p. 201). The government's consensus was that having a procedure such as the oral hearing would enlarge the system because it would attract too many false claims. All claims would then have to sifted through to decide which were (or were not) genuine. The primary overriding concern was that the granting of an oral hearing would create an uncontrollable backlog. By inference, there would exist a loss of state control over the system. This backlog would solely consist of prospective asylum seekers waiting to have their case heard. The ministry lost this important

battle when the Supreme Court of Canada rendered its decision allowing the oral hearing in April of 1985. The decision revolved around the case of seven Sikh rejected refugee claimants. Through their lawyer, they appealed their cases on the right to be judged under Canadian law. In Canadian refugee circles, it is commonly referred to as the 'Singh case'.

## **Part II: Floods and Tidal Waves**

In November of 1986, Canada was awarded the Nansen Medal by the U.N.H.C.R. The medal was awarded in recognition of not only the large numbers of Indo-Chinese who were allowed to resettle in Canada, but of what Dirks describes as "...humane..." and "...enlightened..." course of action towards refugees and other persons in distress (Dirks, 1995, p. 66). Apart from the Asians, Canada had accepted large numbers of Poles fleeing their government's crackdown on the Solidarity movement and the subsequent imposition of martial law.

Around the time that Canadians were presented with the Nansen Medal, the country's refugee determination system was starting to undergo (some radical) changes. The reasons for some of these changes were as complex as the very sources of most refugee movements. The inland refugee processing system functioned adequately on a small scale of perhaps only a few hundred applicants a year. The 1980's were a decade of migration. The traditional economic, political and social push/pull factors went into 'high gear' as tens of thousands of persons fled dismal and seemingly hopeless lives. Those who could not re-establish themselves in Europe (with proper documentation or not) were deflected to Canada and the United States. This situation was articulated by Richmond when he writes that:

**"A central paradox emerges from an analysis of international migration in the last decade. The actual numbers crossing international borders, legally and**

illegally, rose substantially. One response was to offer amnesty, an adjustment of status, to *de facto* immigrants who had established themselves. At the same time, public opposition to immigration increased and, in some countries, precipitated violent protests and attacks on foreigners. Governments responded by tightening controls in an attempt to stem the flow. In doing so they labeled as 'illegal' or 'undesirable' people who earlier, would have been welcome either as useful workers or as escapees from oppressive regimes. It now seems that a generous policy towards refugees was a cold war luxury, and even then one mainly reserved for Europeans. This is why new policies can be described as a form of *global apartheid*' (Richmond, 1995, p.xv).

"Global Apartheid" is a highly loaded expression considering the fact that such policies are designed to be free of race and/or colour biases. Yet one may speculate that the three amendments to the 1976 Immigration Act which were passed during the late 1980's, contributed to such an outcome. This is because the cumulative effect of Bills C-55, C-84 and C-86 was to challenge and impede the physical presence on Canadian soil necessary to make a claim for refugee asylum. Changes to the system had started with the 1985 release of the Plaut Report. Canada's new determination system was just that: it was untested and any difficulties with it would have to be addressed and re-addressed as time went on. A central issue that emerged in the Plaut Report was the claimant's right to an oral hearing.

The oral hearing was a rather sensitive issue between refugee advocacy groups and the government, concerned about the potential for long delays such hearings could create. As the number of claimants grew by the late 1970's and early 1980's, a waiting period had inevitably started. The government maintained that a backlog of claimants represented a loss of control over the system. It also meant that there was a possibility of persons 'falling out of the system' and disappearing into the almost untraceable underground economy.

Furthermore, a backlog would prove to be a financial albatross for the state would have to finance the claimants' waiting period. However, the backlog that existed before the recommendations of the Plaut Report was not entirely a creation of factors outside the government's sphere of influence. Dirks writes that as early as 1979, R.S.A.C. members had a weekly caseload of perhaps only eight applicants (Dirks, 1995, p.83). The committee's members "...spent between seven and ten hours reading the necessary documentation on each case" (ibid.).

The Plaut Report grew out of pressure from "...within and beyond the government for the adoption of a more humane yet efficient procedures for the settling of refugee status claims. In certain cases, the media publicized the circumstances confronting claimants, embarrassing the immigration bureaucracy and its minister" (ibid., p. 83). The report's themes were fairness and efficiency. For example, not only should the determination system "...meet Canadian standards of natural justice and comply with legal standards of natural fairness" but the process itself "...must be expeditious-greater justice is not necessarily achieved by additional appeals or reviews" (Plaut, quoted in Nash, 1989, p. 46). An important recommendation was the claimant's right to a hearing before the newly created Immigration and Refugee Board. This independent board was the replacement of R.S.A.C. The claimant would have the option of having their hearing in private. The Plaut Report's recommendation of the hearing was reinforced by an important decision by the Supreme Court of Canada in the spring of the same year.

As mentioned above, the case revolved around seven Sikh claimants whose claims for refugee status had been denied. After approximately one year of deliberations, the Court

decided that the Canadian Charter of Rights “...applied to everyone, regardless of their status in Canada” (Jackman, 1991, 324). This having been established meant that respecting natural justice, “..the Canadian Bill of Rights and the Canadian Charter of Rights and Freedoms required that they (claimants) be permitted to present their case before the I.R.B. (Immigration and Refugee Board) reached a decision (Nash, 1989, p. 48). Therefore, regardless of whether a refugee applicant’s claim for asylum had been rejected upon first review, the claimant had the right to appeal the initial decision in person. This meant that even if an asylum seeker was stranded in, for example, the Port of Montreal or Pearson Airport in Toronto, they were protected by the Charter and Bill of Rights. The seven members of the Supreme Court were unanimous that “...fundamental natural justice requires that a refugee claimant’s credibility be determined by a full oral hearing at some stage of the refugee determination process” (Knowles, 1992, p. 174).

Predictably, the government was dismayed but as Jackman writes, had realized its probable defeat long before the announcement. Ultimately, the government had no choice but to enlarge the Immigration and Refugee Board; the oral hearing was placed at the status redetermination phase. A pragmatic decision, yet politically controversial. The government was caught in a position with little room to maneuver. Opposition members and refugee activists complained that the “...government was pre-empting its promised consideration of modifications to the refugee status determination process” (Dirks, 1995, p. 82). One can only speculate what the reactions would have been had the oral hearing been placed at the beginning of the process. Regardless, the Singh decision was another watershed in Canada’s determination process.

The oral hearing upon appeal affected the period during which a claimant's file would be processed. It was inevitable that it would create further delays and add to the overall cost of the system itself. Controversy appeared to grow and, within a couple of years, it became the source of chronic debate. This debate is challenging to unravel and understand because it appeared as much politically inspired as pragmatically. It is also important to remind the reader what changes the Canadian political culture was experiencing in the latter half of the 1980's. In 1984, after decades in office, the Liberal party lost the election to the Progressive Conservatives. Before becoming Prime Minister, Brian Mulroney had been a Member of Parliament for only one year. His political leadership and governing abilities were contested and unknown to most Canadians. As early as it might be after his 1993 retirement from public life, already history has not judged his (or his peers) governance kindly. The Conservative party had presented itself as a believer in 'clean government'. This strategy was conceived as a response to the former Prime Minister Pierre Trudeau, who along with his brief successor, John Turner, indulged in large numbers of political patronage appointments in their dying days of power. The debate over these 'pay-offs' changed the direction of the campaign and added to the defeat of the Liberals.

It is difficult to briefly encapsulate the nine years that the Progressive Conservatives dominated the Canadian political scene. It suffices to say that Canada was administered in a radical fashion that cannot be compared to any other era of Conservative domination. This was because the government was notably more right leaning and therefore, consisted of an entirely different perspective on the role of the state and its central governing bodies. This government was business-oriented: its cornerstones were inflation control and deficit

reduction. It was, at the least, an unusual time in Canadian politics. No government ministry was spared as the federal government embarked on a massive austerity programme. This trend was not confined to Canada as both Great Britain and the United States had already elected the neoconservatives Margaret Thatcher and Ronald Reagan.

What then, was the effect of a conservative, monetarist agenda on immigration and refugee policy? Perhaps one of the most important changes to Canada's immigration policy was the creation and promotion of the Business Class migrant. Business migrants (persons wanting to invest and resettle) had always been welcome in Canada but, before the Conservative government, there had never been an actual policy or guidelines. Under this administration, Business migrants shared the attention along with Family Reunification as a foundation of immigration policy. Stasiulis writes that "immigration policy is a key plank of any national government's policy on race" (Stasiulis, 1991, p. 236). This statement, when paired with Adelman's belief that refugee policy is the litmus test of the concept of justice in a society, provides a framework around which to discuss the Mulroney government's tinkering with the refugee status determination system.

Within academic circles, there has been on-going debate as to whether the government allowed the backlog to grow at an unreasonable rate in order to legitimize substantial changes to the determination system. It is a perspective that is somewhat challenging to document but remains worthwhile mentioning. As Adelman writes, "no smoking gun is available to prove...what happened was a Machiavellian plot on the part of senior mandarins; but there is a great deal of circumstantial evidence to demonstrate that they did little to help and a great deal to damage the system" (Adelman, 1991, p. 210). The claim



of circumstantial evidence was based largely on the Immigration Ministry's using visas as a means of controlling the entry of persons into Canada. Essentially, scholars such as Adelman, Simmons, Basok have suggested that the government imposed visa requirements against refugee producing countries such as Guatemala, Bangladesh and Haiti. Persons from these countries wishing to submit a claim for asylum would first have to apply (and wait weeks, possibly months for it to be granted) and remain within their country in the interim. Meanwhile, the Immigration Ministry was receiving persons claiming to be refugees from Portugal (4,000), Brazil (800), Chile (1,300) and Turkey (2,000) (ibid., p. 209, see also Dirks, 1995, p. 88). Almost one year passed before visas were imposed on all of these countries except Portugal. The tale of the Portuguese refugees is remarkable when compared to the claimants from other countries. All of the Portuguese claimed to be Jehovah's Witnesses suffering religious persecution in their native country. Despite outward signs that they were, in fact, not Jehovah's Witnesses but Roman Catholics, their claims were taken seriously and not rejected outright (for a detailed discussion and analysis, see Malarek's Haven's Gate). In explaining the lack of visa control, the government cited the close relationship between Canada and Portugal. The Canadian Portuguese community was, and remains, an important ethnic voting block in Toronto and Montreal. The unrestricted travelling to Canada from Portugal remains in effect today.

Because of stories such as the Portuguese refugees concern over the possibility of widespread abuse of the system began to receive national media attention. Phrases such as 'human floods', 'bogus refugees' and 'illegal migrants' became commonplace even amongst politicians and senior bureaucrats within the Immigration Ministry (Stern, 1991, p. 45). The

government's mandate to reform the inland determination system was given an unexpected boost by the fortuitous discoveries of a number of small boats off the shores of Newfoundland and Nova Scotia in the summers of 1986 and 1987. The 154 Tamils and 174 Sikhs became the source of national pandemonium. All of them claimed to be refugees. As the story unraveled, it turned out that they had actually started their journey in Western Europe. Each had paid a ship's captain for passage across the Atlantic whereupon they disembarked on life boats and were left to fend for themselves in Canadian waters. The government's reaction to these people displayed an unusual amount of anger. Prime Minister Mulroney declared that Canada was the victim of a 'refugee crisis', the House of Parliament was recalled from its summer recess to address the situation through companion legislation to C-55, Bill C-84.

Jeffrey writes that the Conservative government showed its "...true colours..." (on immigration and refugee policy) in its handling of these refugees (Jeffrey, 1992, p. 99). The decision to hold an emergency session of Parliament appears rather dubious because the same government, only three years later, did not give the same degree of importance to the Oka crisis of 1990. It was an armed, sometimes violent, confrontation between Mohawk Native Indians and the residents of Chateaugay, Quebec. Despite the presence of Canadian defense forces, the situation lingered for months.

It is difficult to imagine Canada encountering any kind of refugee emergency beyond having a large backlog of claimants. This is solely due to Canada's geographic isolation from all of the refugee-producing regions of the world. Canada is the 'last stop' so to speak. On the other hand, the United States has had to cope with large numbers of undocumented

migrants, be they immigrants or refugees, from Mexico, South and Central America, Cuba and Haiti. In May of 1992, President George Bush issued the 'Kennebunkport Order' allowing its Coast Guard to intercept and forcibly return boatloads of Haitians to Port-au-Prince (see Schoenholtz, 1993). Joe Stern, the former chairman of R.S.A.C., has referred to the approximately 4,000 Haitians arriving on the shores of the southern United States as a "...real crisis..." (Stern, 1993). He also attributed the government's response to the Tamils and Sikhs as the need to "...put a spin..." on the situation in order to legitimize the advent of new legislation. It remains open to debate whether the same events would have unfolded had boatloads of Russian Jews or East Germans been discovered rather than the Asians. Refugee advocacy groups and other interested parties accused the government of not only pandering to public concerns (and generalizations) over the racial composition and legitimacy of refugees, but of fostering an increased level of antipathy. Despite the fact that few of the Tamils and Sikhs were actually refugees, the government's reaction was unwarranted.

Legislation, which at its inception, was supposed to simplify and, indeed, allow for more efficient justice, took on a much broader context. In the summer of 1988, Bills C-55 and C-84 became law. For the sake of brevity, it is not possible to discuss every aspect of the legislation. Instead, this section will conclude by examining the overall theme and content of them as they pertained to the inland determination system. This is also relevant for Bill C-86. Bill C-55 provided for the overall simplifying of the system. It would consist of only three stages: the credibility assessment, the authenticity of the claim and, lastly, the appeal. The ever-controversial oral hearing was placed at the second stage. The applicant would plead their case before the new Immigration and Refugee Board. What this meant was that

cases would be decided rapidly resulting in a higher 'turn-over' rate. It also translated into greater powers in the hands of immigration officers who worked at Canada's borders. They would decide immediately whether a person's story held any credible basis. If not, the individual could be turned away immediately. A very contentious aspect of C-55 granted Canada the right to return a claimant to a so-called safe third country. If a refugee came to Canada from their native country through, for example, Germany or France, then the person could conceivably be returned to make a claim in Europe instead of Canada. The idea was subsequently dropped as a result of strong lobbying. Simply returning a refugee to a point of departure did not ensure that the other country would not do the same in turn. Also it was somewhat of a violation of the Convention's Article 33 on refoulement. The 1951 Convention provides that a signatory cannot return a refugee to a country where their life or freedom may be threatened.

Bill C-84 also had provisions that had to be discarded. The most notorious one was granting the Canadian Coast Guard the authority to turn back a ship suspected of carrying economic migrants. This was an additional breach of the Convention and, even more so, a reminder of the St. Louis episode decades earlier. In 1939, the St. Louis, a ship chartered by Jews trying to escape Germany, sailed towards North America. No country in the Western Hemisphere, including Canada, would allow it to dock. The ship was forced to return to Germany, the fate of its probably doomed passengers known.

The bill also "...permitted undocumented migrants claiming refugee status to be held in detention for up to 28 days..." (Dirks, 1995, p. 91). It is not entirely uncommon for refugees to take flight without having the opportunity to collect their personal papers.

However, the government felt that this measure would serve as a deterrent to those claimants who had destroyed their papers en route. Perhaps the most lasting legacy of C-84 was the implementation of carrier sanctions. These were fines (ranging in the thousands of dollars) payable by any transport carrier found to be carrying undocumented migrants.

Bill C-86 was "...the first total overhaul of...immigration legislation since our existing Act was tabled in 1976" (Adelman, 1992, p. 1). It was introduced in June of 1992 and was formally passed before the end of the year-a rapid pace compared to its predecessors. Some felt that this was a deliberate strategy on the government's part. There was little chance for proper debate as Parliament would not be in session and many interested parties would be on their summer vacations. Nor would there be cross-country public hearings. Those able to make presentations were given only ten minutes before the House Committee. The bill further streamlined the inland determination system by removing the first stage, the credible basis hearing. It was replaced by the Personal Information Form. It also introduced proper training programmes for members of the I.R.B. This was due to the fact that the appointments had become little more than political patronage appointments. It was recognized that there was a need for Board members to be more educated on refugee issues.

But the legislation was a mixed blessing. Refugee claimants were now to be fingerprinted and photographed upon arrival. If their claim was successful, then these records would be destroyed. Further penalties were levied against transport companies. For example, an airline could be forced to pay the deportation cost of a failed applicant. Canada would be able to negotiate and sign bilateral and multilateral agreements that would approach refugee claims within a burden sharing framework. In one sense, this could allow

Canada to respect her Convention obligations more equitably. In another, it would permit Canada to participate in treaties which could make asylum truly a scarce resource.

### **Concluding Remarks**

Francois Crepeau writes that, in less than 15 years, public opinion regarding refugees had turned completely from the "...real openness showed towards Indo-Chinese boat-people to the definite reluctance to allow in refugees from Bosnia in 1993-1994" (Crepeau, 1996, p. 2). He also believes that governments "...succeeded in denigrating the image of the asylum-seeker to that of a defrauder" (ibid., p. 3). Certainly within the Canadian context, it became commonplace to hear the words 'refugee' and 'terrorist' within the same sentence. The legislation mentioned in this chapter remains largely untouched by the current Liberal government of Jean Chretien. Some modifications have been made such as the granting of work permits to waiting claimants. Appointments to the I.R.B. are made more thoughtfully and one no longer sees the reckless appointments made under the Conservative government. Public opinion has remained on the conservative side and the government does little to educate Canadians as to what really motivates immigration and refugee policy. Therefore, many stereotypes remain unchallenged.

Canada is not alone in her efforts to re-assert and maintain increasingly vigilant control over her borders. The United States, Australia and 'Fortress Europe' have complementary visions of how the refugee question should be addressed. Sadly though, some of these 'visions' have had lethal consequences. In May of 1996, four Romanian stowaways were found on the Taiwanese freighter, the Maersk Dubai. The ship had just left a Spanish port and was headed for Halifax, Nova Scotia. It is known that the two men were "...forced into the wave-swept ocean

aboard a makeshift raft of oil drums...” (Appleby, 1997, p. A13). The third was believed to have been stabbed to death and his body thrown into the Atlantic Ocean.

These incidents would not have come to light had they not been witnessed by many of the Filipino crew. They hid the fourth man until the ship reached Halifax and he was turned over to the R.C.M.P. The story became increasingly complicated as four of the crew applied for refugee status in Canada and tensions grew over where the Taiwanese sailors accused of the murders would be tried. Romania lost to Taiwan its legal fight to extradite and prosecute the sailors. Canada supported the Romanian effort. The Taiwanese captain and sailors will not be tried for murder but abandonment. However, all of the men are free on bail and no charges have been laid.

These men died because had they been discovered by the Canadian port authority, the owner of the Maersk Dubai, Yangming Marine Transport Corporation, would have had to pay a penalty of \$7,000 for each stowaway. Rather than complying with official company policy of notifying the head office of the presence of these men, the ship’s officers made a decision to dispose of them. The fact that no one is being prosecuted implies that their actions reflect a ‘business as usual’ attitude. The ship itself was renamed and sold to a Danish company. The interest the Canadian government showed in holding the Taiwanese officer’s accountable was ironic and somewhat hypocritical for Canadian policy of carrier sanctions is indirectly responsible for the deaths of the Romanians.

## **Central America and Canadian Refugee Policy**

French political scientist, Gerard Chaliand, has been referred to as a participant-observer of Third World conflict. His nearly 20 years of living in parts of Asia, Africa and Central and South America culminated in the 1977 publishing of his book, Revolution in The Third World. What has made the book unique is its analysis of the turmoil and violence which has marked most of these regions. Rather than describing the birth of such violence, Chaliand takes his argument further and probes its political culture. Chaliand does not believe that Asia, Africa or Latin America will smoothly produce democratic societies. He offers two reasons: first, that none of these regions have experienced a “...bourgeois democratic revolution produced by the Enlightenment...” Second, the alternative to the status quo has been a version of Marxism that did not empower labour but, “...omnipotent and totalitarian bureaucracies” (Chaliand, 1989, p. xii). He has described the social, political and economic climates of Central and South America as being, in theory, most favourable to revolutionary change. He describes these governments as being “...inefficient and unstable...” and “...heavily oppressive...”, and that “...none seemed designed to promote economic development or the modernization of political and social structures” (ibid., p. 42).

### **Part I: The Have and Have Nots**

These conditions have created massive wage gaps between rich and poor. It became commonplace for an extraordinarily small minority of the population to own most of a country's land and natural resources. For example, most of the population in Central America is rural-based. By the mid-1970's in El Salvador, “...three quarters of rural families [who made up about two thirds of the total population] were landless, and less than 40



percent had access to piped water” (Donnolly, 1993, p. 105; see also Kowalchuk and North, 1994, p. 21). There was also a high rate of infant mortality and at least 50 percent of rural peasants “...lacked the income necessary to purchase a minimum healthy diet” (ibid.). Statistics of such desperate poverty are rife throughout the entire region.

Understandably, levels of disenchantment rose amongst not only peasants, but workers and students. Peaceful demonstrations were met with state-approved violence. Burkholter writes of an El Salvadoran priest referring to his country’s armed forces as a “...juridically backed...” “...killing machine...” (Burkholter, 1983, p. 4). It was one that could be “...activated or deactivated at will” (ibid.). Subversion, as defined by the government, meant membership in a trade or teachers’ union, a peasant organization or political opposition party. One did not actually have to be guilty of anything, suspicion was enough to warrant “...abduction, incommunicado detention, torture and indefinite imprisonment without a trial” (ibid.).

Gavin refers to Nicaragua was a “...kind of geopolitical mind-altering substance” (Gavin, 1992, p. 38).. After many decades in power, the Somoza family fled to the United States in 1979 when the Sandinista National Liberation Front seized power. The revolutionary, pseudo-Marxist government proceeded to re-invent Nicaraguan society creating the ‘New Man’. The resistance that they met ultimately translated itself into a long civil war. This conflict garnered considerable international attention due to the United States’ decision to finance and train the anti-Sandinista resistance movement. Perhaps the hardest hit by the war were Nicaragua’s Native Indian population, the Misquito Indians.

Misquito Indians fought against the Sandinista government. Indeed, their guerrilla leader, Eden Pastora, was a disillusioned former Sandinista.

Guatemala has been described a country seeking "...an exit from hell" (Scobie, 1983, p. 2). Even more than a decade after this was written, the country remains a frail and poorly tested democracy. Again, civil conflict arose from massive economic disparities. It has been referred to as one of the poorest countries in the Western Hemisphere. Guatemala did not possess a moderate political voice for many years. In the early 1980's, "...nearly every significant academic, labor, political or professional figure with moderate to left wing political views was silenced, exiled or killed. The government security forces were responsible for this reign of terror. These assassinations and kidnappings in the city and countryside atomized much of Guatemala's social and political base" (ibid.). Central America was a major human rights concern throughout the 1980's. Despite the fact that peace agreements have been brokered, respect for them has, at times, been tenuous. Even as late as 1994, there remained 127 Guatemalan refugee camps in southern Mexico. There remain another 150,000 Guatemalan nationals simply scattered throughout Mexico who have not become wards of the U.N.H.C.R. or the (Mexican) government itself (Geggie, 1994, p. 18; Zerber, 1994, p. 25). Thousands of Salvadorans and Nicaraguans spilled into other regional countries, the United States and Canada.

Over 100 years ago, the United States asserted herself as a hegemonic power in Central America. The type of severe human rights abuses described above were largely ignored by the American government. While human rights were placed on the foreign policy agenda during the mid-1970's, exactly what weight their role would play, depended largely

on the "...security, political, economic or ideological objectives..." (Donnolly, 1993, p. 104). Donnolly writes that it "...is only a small exaggeration to say that..." when human rights clashed, in even a minor fashion, with any of these objectives, they would lose (ibid.). The United States supported the ultra-Conservative government of El Salvador and Guatemala and indulged in a covert war to overthrow the left-wing Sandinista government. The American government went as far to plant mines in all of the strategic harbours of Nicaragua (Miranda and Ratliffe, 1993, p. 158). The Contras were borne out of the former Somoza government's national guardsmen. By 1983, they had received at least \$100 million from the American government (Donnolly, 1993, p. 109). The Contras favoured economic and political terrorism which included attacking "...farms, schools, and health clinics, indiscriminate attacks on civilian economic targets, kidnappings and assassinations" (ibid.).

Adelman writes that U.S. foreign policy towards Central America "...has greatly affected what Canada has been willing and able to do" (Adelman, 1991, p. 217). Despite the fact that most Central American refugees have been contained within the region, their presence, albeit temporary, have not been necessarily welcomed by countries such as Honduras. As is usually the case, these refugees were perceived as an element of instability. Approximately 300,000 Central Americans have sought refuge within Central America, the United States and Canada seeking resettlement (Dirks, 1995, p. 71). Under the special measures provision of the refugee determination system, Canada accepted refugees from Nicaragua, Guatemala and El Salvador. However, the actual numbers resettled were considerably smaller than those admissions for other groups such as the Poles or the Indo-Chinese. Dirks attributes this not only to Canada's wish to respect "...America's backyard..."

but "...an absence in Canada of a Latin American community of any size or political significance..." and a "...low-level of awareness among Canadians generally about events in the Western Hemisphere south of the United States..." (Dirks, 1995, p. 71). Between 1984 and 1993, Canada resettled about 29,000 Nicaraguans, Guatemalans and Salvadorans. All of these refugees were chosen by Canadian officials in the respective countries. Less than 5,000 Central Americans (specifically Salvadorans and Guatemalans) were accepted through the inland determination system. These figures are a bare contrast to the nearly 60,000 Poles and 40,000 Vietnamese resettled in Canada during the same period (International Refugee and Migration Policy Branch).

Despite the fact that the forced migration of persons in Central America had started at least three years earlier, Canada did not announce any special programmes until 1981. The ministry decided to permit students and visitors from El Salvador already in Canada to remain indefinitely. Dirks and others cite the lobbying that interested church groups and N.G.O.'s engaged in for the government to reach this decision. It is also important to remind the reader of the government's decision in 1984 to restrict the entry of Guatemalans through a visa requirement. Whitaker begins his book, Double Standard, with a story of how this visa requirement failed at least one person. He describes how Beatriz Eugenia Barrios, a law student and mother, had been receiving death threats. She had applied for a visa to enter Canada. The visa was granted but the embassy would not issue it for two weeks. The night before Barrios was to leave, she disappeared, her body discovered with her hands amputated and face mutilated (Whitaker, 1987, p. 2).

## **Concluding Remarks**

A 1994 policy paper circulated within the Canadian Ministry of Foreign Affairs and International Trade described Canada's interest in Latin America as "...benign neglect" (Foreign Affairs and International Trade, 1994, p. 2). It cited Canada's relationship with the United States, Europe and the heightened emphasis on the Asian Pacific region as the primary reasons. As these few pages have illustrated, Canada, while not wholly indifferent to the plight of Central Americans, has not displayed the type of rapid responses that other refugee groups have experienced. Central American refugees were perhaps not as desirable either politically or economically. They were a mixture of urban and rural populations, language was considered an impediment as few spoke English. Furthermore, the Canadian government was also suspicious of dual applicants (often referred to as 'asylum shopping') since the claimants which arrived at Canada's borders would have already travelled through the United States.

Regardless, the admittance of Poles during the Solidarity crisis of the early 1980's provides an excellent contrast to the Central Americans. Canada intervened not only to relieve the burden of Austria but because there was increasing domestic pressure from Canadians of Polish heritage. The flow out of Poland did not suddenly materialize, it grew as the political climate grew restrictive and the economy deteriorated. In the end, as Dirks writes that "most of the Poles seeking to leave their troubled country in these years had not been singled out for persecution by the Communist Party or the military. For the most part, they were simply trying to escape the economic deprivation and political turmoil..." (Dirks,

1995, p. 70). The political dimensions of this are difficult to ignore as the Cold War was still raging. Accepting large numbers of persons from behind the Iron Curtain provided a convenient manipulative tool for the West as their arrivals in countries such as Canada and the United States would serve as further proof of Communism's failings.

## **Epilogue**



## **Epilogue**

This thesis has attempted to wrestle an enormous subject into a compact size. It has only briefly touched on subjects that others have devoted many pages to. Subjects such as the backlog, more elaborate details on Canadian wartime immigration policy, the removal of racial barriers from immigration policy, the oral hearing, the actual structure of the refugee determination system. The subject is vast and covers too much territory to be adequately discussed here. Instead, it is hoped that the reader will be able to grasp what the general trends have been over its 45 year span. It is difficult to arrive at an easy answer about Canada's participation in refugee resettlement. Like most other Western countries, she is caught in a quagmire of international humanitarian obligations versus sovereignty.

Refugees have become somewhat of a maligned lot in the last ten years. There has been great increases in rhetoric by not only the public but government, as well. The Canadian government seems to have done little to dispel certain myths about who refugees are and why they want to live in Canada. The granting of refugee protection is a slow process, it may take months or longer. The extent of the average Canadians' knowledge about it seems to begin and end with the welfare cheques which claimants are entitled to. However, what most people are not aware of is how small these cheques are and how difficult and lonely life may be for its recipient. Canadians must also learn to appreciate the reputation that their country has abroad. Canada is a country that is held in high regard. To a person living in rural Bangladesh or Africa, life in Canada is only a dream.

Refugee protection is on the defensive for as discussed in Chapter Three, as the gap between the North and South has deepened, genuine refugees have gotten caught in the



middle. For Canada, the solution was to tighten the system in an effort to become more vigilant in the search for dishonest applicants. While there was an increase of persons seeking only refuge from distressing economic conditions, it is unlikely that the decision to monitor the system did not have a political edge to it. It is also a remote concept that Canada will adopt a less restrictive attitude in the near future. Currently, there is an intellectual movement revolving around the revoking of permanent refugee protection. One of its forerunners is York University refugee law professor, James Hathaway. With a long-term view on repatriation, a refugee would be allowed to stay in Canada until the conflict that they are fleeing from is resolved. While it is in the abstract stage, it is dubious that such an alternative would be able to escape the enormous bureaucracy that has been created by the present system.

It is obvious to speculate about the future. As mentioned in Chapter Three, Francois Crepeau writes that in the space of only 15 years, public opinion has shifted from the genuine openness displayed towards the Indo-Chinese to clear reluctance. He refers to the protectionist attitude of not only North America but Europe as well. The road towards European integration provided the impetus for asylum sharing agreements such as the Dublin Convention of 1990 and the Schengen Agreement of 1985. While economic borders are dismantled, others remain. Both agreements put limits on the right to seek asylum. They also permit increased exchanges of information and policing such as a data base of fingerprints from applicants. Countries may have their airports declared as not being part of the state (refugees commonly ask for asylum after disembarking from airplanes). Canada has already imitated this and part of Montreal's Mirabel airports transit area is not considered Canadian

soil. In most European countries, visas are required for 121 acknowledged refugee-producing countries. The basic objective is to reduce the number of claims and it is achieved through law enforcement and cost reduction. Law enforcement may include increased deportations, safe countries of origin for deportation and the suppression of appeal procedures. In Canada a claimant does not appeal, they may only ask for an administrative review on points of law. Cost-reduction may comprise of the reduction of welfare benefits and access to a work permit. In Canada, after being accepted at the initial stage, a claimant is entitled to a work permit. This is a relatively recent decision announced shortly after the election of the Liberal government in 1993. The essential problem with agreements is that they are mimicked. Australia may copy Canadian approach while Canada and the United States may follow European models.

This thesis concludes by returning to its first chapter. Some of its themes may provide the reader with a sense of what is going on in the world: why are there so many refugees and where do they come from? The answer may lie partially with globalization. Globalization infringes on the topic but it goes beyond the spread of the free market economy. There have been literal revolutions in transportation and communications. Jets may carry more passengers over longer distances. The print media, something that at one time held only middle-class appeal, has become rivals with the visual media. Information that once took days to travel has become instantly accessible for everyone looking for their own piece of Heaven. Television accessibility in the Third World is greater than one in Canada might imagine.

Globalization has also defined rich and poor, democratic or not. Refugees do not come from Canada, America, France or Mexico. If a country is not democratic and capitalist, one has a slim chance of being accepted as a refugee. Only recently did Canada reinstate a visa requirement for Chile because there was a sudden burst of refugee claimants from that country. As Anne-Marie Demmer writes, approximately two thirds of the world lives in poverty and it remains a breeding ground for intolerance, totalitarianism and war.

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