

Refugees Are
(NOT)
Welcome Here

The Paradox of Protection
in Canada

Azar Masoumi



UBCPress · Vancouver

Contents

List of Figures / ix

Acknowledgments / xi

Chronology of Significant Events / xiii

Introduction: States of Paradox, the Paradox of States / 3

Part 1: The Early Years, 1946–92

- 1 Forty Years of Beginnings: The Origins of Systematic Refugee Protection in Canada / 31
- 2 With Rights Came the Rightless: Bureaucracy and Restrictionism / 45

Part 2: The Middle Trenches, 1993–2006

- 3 A Nice Symbolic Gesture: The Making of the Gender Guidelines / 61
- 4 The Losing Game of Protection: Administrative Failure and Restrictionist Salvage / 77

Part 3: Recent Times, 2007–17

- 5 Pivoting on Gay: Sexual Rights and Migration Restriction / 95
- 6 Protection on Life Support: Bureaucracy, Intersectionality, and SOGIE Protection / 111
- Conclusion: For Whose Protection? / 129

Appendix A: Information Received from the IRB Communications Office in Ottawa / 146

Appendix B: Written Interview with an IRB Manager / 152

Notes / 157

List of References / 182

Index / 201

Figures

- 1 Refugee Claims Accepted by the IRB, 1989–2021 / 18
- 2 Refugee Claims Accepted by the IRB, 1989–2012, Trendline / 19
- 3 Acceptance Rates of SOGIE, Mexican, and Mexican SOGIE Claims / 126

Forty Years of Beginnings

The Origins of Systematic Refugee Protection in Canada

There are several points of origin to Canada's history of systematic refugee protection. Despite, or perhaps because of, its tragic record of inhospitality to refugees during and before the Second World War,¹ Canada became heavily involved in the international efforts to develop universal standards for refugee protection through the 1951 *Convention Relating to the Status of Refugees (Refugee Convention)* in the late 1940s.² Yet Canadian political authorities refused to join the *Refugee Convention* for nearly two decades after it was opened for signing. Even after Canada signed the *Convention* in 1969, it took several years to harmonize domestic immigration laws with the international provisions of refugee protection, a task finally achieved by the 1976 *Immigration Act*.³ Canada's first cohesive system of refugee protection was established over a decade later in 1989. In short, systematic refugee protection in Canada emerged over forty years of stacked beginnings.

This chapter traces the paradoxical articulation of Canadian refugee protection back to this staggered history. I place the genesis of the contemporary regime decades prior to its formal establishment to highlight the foundational paradoxes of state-controlled refugee protection. As I will show, the confused and confusing lags between Canadian

enthusiasm for, and hesitation about, refugee protection were the result of involved histories of tension between several incommensurable agendas. These included a statist desire for political control, a humanitarian aspiration for universal rights, a judicial interest in administrative justice, and an administrative attachment to pragmatic feasibility. Far from a pre-determined historical outcome, the Canadian regime was the product of decades of conflictual struggle between these competing and relatively autonomous forces.

This chapter provides a genealogical account of the contemporary regime of refugee protection in Canada. The first section explores Canada's ambivalent relationship with universal refugee rights. I show that the ongoing paradoxes of Canadian refugee protection find their roots in Canada's convoluted relationship with the *Refugee Convention*: a co-creation of Canada that was, nonetheless, not formally adopted for nearly two decades. As this historical analysis demonstrates, the desire for unhampered immigration control disrupted years of international leadership in devising a universal framework for refugee rights. Canada's ambivalence toward the *Convention* in these early years encapsulated a much larger paradox: the irreconcilability of statist desires for exclusionary migration control with the universalist impulses for equality of rights and international cooperation.

The second section examines the developments that eventually led to the establishment of systematic refugee protection in Canada. I show that the exceptionally expansive legislative and jurisprudential environment of the late 1970s and the 1980s were instrumental to the creation of a cohesive regime of refugee protection. These legal developments provided unprecedented levels of protection for refugees. In this new era of refugee rights, the practices and preferences of bureaucratic authorities were drastically disjointed. Hence, Canada's regime of refugee protection came at the cost of enduring tensions between legal and bureaucratic forces. These tensions were even further exacerbated by the advent of economic logics of neoliberal governance. Thus, the Canadian regime emerged from structurally paradoxical demands that were to haunt it for decades to come.

Paradoxical Origins (1946–69): Canada and the Genesis of International Refugee Law

Days into the United Nations (UN) conference in Geneva where the *Refugee Convention* was first presented for signature in July 1951, Leslie G. Chance, the consular official and Canadian delegate, was obliged to perform a spectacular act of pivoting. Having led the drafting of the *Convention* the previous winter, Chance had arrived in Geneva with the understanding that he was soon to sign the instrument on behalf of his government, albeit subject to minor modifications.⁴ Of course, he had not anticipated the quick turn of events that were to lead to a suspenseful week of uncomfortable diplomatic manoeuvrings, followed by an eventual retraction from the *Convention*. Chance's career never fully recovered from this acrobatic episode (Girard 2019). Canada's last-minute pivoting during the 1951 conference was particularly surprising because it followed years of active Canadian participation in developing global cooperation on matters of displacement and statelessness. In the immediate postwar years, Canada joined efforts to resettle displaced Europeans⁵ and advocated for the establishment of an international refugee organization in the UN's Social and Economic Council.⁶ When the International Refugee Organization (IRO), the precursor to the UN High Commissioner for Refugees (UNHCR), began its five-year mandate in 1946–47, Canada was an early and avid member.⁷

Of course, Canadian enthusiasm for global cooperation on refugee matters was neither uniform nor unconditional. In the late 1940s, Liberal Cabinet members periodically haggled over the amount of financial contribution asked of Canada for the upkeep of the IRO⁸ and restated every desire to prevent an erosion of state control over who and how many migrants entered Canada as refugees.⁹ These concerns, however, did not override the broader support for a formalized international initiative, particularly when such an initiative was unlikely to clash with Canadian foreign policy.¹⁰ In these years, Canada freely advanced its own geopolitical interests through refugee protection and resettlement – for instance, by prioritizing the resettlement of “democratic anti-communist refugees.”¹¹

The closing years of the 1940s imposed an urgency on the international collaborations for refugee protection. While the temporary mandate of the IRO was scheduled to draw to a close by the end of 1951, the “refugee problem” was nowhere near a permanent resolution. With growing realization that statelessness and displacement had become persistent global problems, the UN was keen to establish a permanent framework that would ensure a universal minimum of rights for those outside of the bounds of a nation-state. In this spirit, the UN Social and Economic Council mandated an ad hoc, multinational committee to draft an instrument of refugee rights, a document that was to become the cornerstone of refugee law. Canada participated fully in this international collaboration, and its delegate, Consular Chance, was elected as the chair of the ad hoc committee. The committee met for five weeks in Lake Success, New York, in 1950 and produced a draft convention that was then presented for evaluation.¹² After eighteen months of study by the UN and its member states, the *Refugee Convention* was opened for final drafting and signature at the 1951 UN conference in Geneva. As expected, Canada was represented by Chance, who was soon instructed to abandon his previous position as an ardent supporter of the *Convention*.¹³

Canadian commitment to the *Refugee Convention* crumbled over the first week of the Geneva conference. In the weeks preceding the conference, Canada appeared to be on an uncomplicated path to acceding to the *Convention*. In their meeting on June 20th, Canadian cabinet ministers believed it largely “possible and desirable” for Canada to become a signatory, pending relatively minor reservations.¹⁴ The following week, Cabinet continued to believe the *Convention* to involve no “points of substance that need cause concern” except for one.¹⁵ Hence, the Canadian delegation was authorized to attend the conference in Geneva and contribute to the drafting of the final text of the *Convention*, while the minister of citizenship and immigration examined the instrument more closely. However, soon thereafter, the tone of deliberations changed dramatically. On June 29th, only three days after Canada’s participation in the conference had been approved, the minister of immigration and citizenship announced to his Cabinet colleagues that “it would be inadvisable for Canada to accept [specific articles of the *Refugee Convention*]

in their present form.”¹⁶ As a result of the minister’s reservations, the decision to accede was postponed pending further investigation.

The Cabinet’s hesitation in committing to the *Refugee Convention* was expressed in a telegram dispatched from Ottawa on June 30th to Consular Chance. Chance, who had just arrived in Geneva, was instructed to withhold any definitive indication on Canada’s position until further notice.¹⁷ Having received this disheartening instruction at the opening of the conference,¹⁸ Chance tactfully resisted the expectation that he would, following his leadership in drafting the *Convention*, also chair the conference. While awaiting final instructions, Chance pleaded for approval, writing in a telegram on July 3, 1951, to the secretary of state for external affairs: “I hope, however, that you may shortly be able to tell me that the Cabinet will approve of the signing of the Convention.” “Any turning back on our part now,” Chance telegraphed, “might create very unhappy situation [sic],” particularly as Canada had been “regarded throughout as taking forward attitude, somewhat in contrast to that of the United States.”¹⁹ Chance further suggested that most other delegates had been authorized to sign the document. These pleas, however, were unsuccessful in turning the quickly rising tide of political opposition. By July 4th, the decision to refrain from signing the *Refugee Convention* was firmly made.²⁰ Canada was to drop the *Convention* as swiftly as it had joined its drafting. Chance was not even allowed to press for amendments that would potentially resolve concerns and make the *Convention* acceptable for Canada’s accession.²¹ As Chance later recounted in his report to the Privy Council, this put him in a position that was “a little embarrassing.”²²

The Cabinet’s decision to withdraw from the *Refugee Convention* was, in general terms, due to growing concern about the implications of the *Convention* for existing laws and practices in Canadian migration control. From the Cabinet’s perspective, joining the *Convention* had always been contingent on the assumed possibility of doing so “without making any changes in Canadian law.”²³ In effect, somewhat paradoxically, Cabinet was only prepared to commit to making no commitments: the *Convention* was acceptable so long as it made no demands on the status quo of refugee policy or practice. As the Geneva conference drew near, the Canadian Cabinet grappled with the implausibility of undertaking a consequence-free commitment to universal refugee rights. Suddenly,

the *Convention* began to be regarded as far more than a simple statesman's agreement between party countries. In fact, cabinet ministers came to suspect that the *Convention* was likely to "give rise to misunderstanding" about the legal entitlements of refugees; as they noted, "there would almost certainly be a general feeling that [the *Convention*] *did confer individual rights* [to refugees] or, alternatively, that *legislation should be passed* giving parallel individual rights under domestic law."²⁴ Acceding to the *Refugee Convention* seemed out of course with a state unprepared to confer rights to refugees or change existing statutes and protocols. Ironically, the main goal of the *Convention* in establishing a minimum standard of universal rights for refugees was precisely why it could not be adopted: universal equality of rights was incongruent with the interests and priorities of the exclusivist state.

The general incommensurability of state interest and refugee rights was anchored in reservations about specific articles of the *Refugee Convention*. In particular, the stipulated prohibition against deportation to countries of persecution was a significant source of anxiety. In addition to constraining the state's hand in immigration matters, this prohibition complicated the geopolitical and ideological interests of the Canadian government in the Cold War era. If deportations and removals were prohibited, Canada could, in theory, become a haven for communists fleeing the United States; by signing the *Convention*, the Cabinet feared that "Canada would be undertaking an obligation not to expel a communist, for example, to a country which has declared the Communist party illegal or [where, like in the United States] ... communists have recently been sentenced to imprisonment." This level of protection for "communists or other persons who believe in the destruction of fundamental human rights and freedoms" was unfathomable to the political and ideological sensibilities of the Canadian state.²⁵ Universal refugee rights could not be adopted precisely because they were universal. The equality of rights was predicated, ultimately, on the condition of liberal political opinion and, arguably, subjecthood.

Canada was not alone in objecting to the protections proposed by the *Refugee Convention*. By 1951, the spirit of international conversations on refugee matters had shifted considerably from the immediate postwar years. In the increasingly security-concerned climate of the Cold War,

states insisted on control over borders and migration and were unwilling to relinquish the authority to impose restrictions against foreigners at will. Concerns about security and border control were raised so widely at the Geneva conference that some advocates considered the international atmosphere “just not right” for the introduction of a universal instrument on refugee rights (Hoffman 1951, 3). Refugee rights, in short, were emerging at a bad time.

The first few days of the 1951 conference made the implausibility of achieving global consensus on refugee rights plainly evident: only twenty-four of the forty-one countries that had originally supported the idea had sent delegates (*Globe and Mail* 1951). To make matters worse, nearly every government found some aspect of the *Refugee Convention* objectionable. Yet the promise of universal refugee rights had been in the making for years, and the *Convention* could not be flatly rejected without risking moral reprimand. Thus, state parties manoeuvred the moralized politics of refugee protection in a general atmosphere of “obfuscation and dilatoriness” (*Ibid.*, 2). The extent and volume of negotiations was such that the conference had to be extended five additional days beyond the original schedule. At the end, twelve countries signed the *Refugee Convention* in Geneva.²⁶ Canada was not one of the twelve.

Canadian authorities continued to examine the repercussions of joining the *Convention* the following year and came close to signing the instrument while it remained open for signature at the UN headquarters until December 31, 1952.²⁷ By this time, the concerns that had originally prevented the adoption of the *Convention* were considered largely resolved, invalid, or inconsequential, particularly as it was correctly understood that delegatory signature, unlike formal ratification, did not impose immediate legal obligations on Canada.²⁸ Furthermore, it was considered possible to mitigate the few remaining issues via formal instruments of reservation.²⁹ Despite this possibility, immigration officials resisted adopting the *Convention* without a more thorough study of both the *Convention* itself³⁰ and the reservations made by other countries.³¹ The unending processes of study and examination continually deferred the calls for accession.³² The *Convention* eventually came into force in 1954 when Australia became the sixth country to deposit its instruments of ratification.³³ Canada was yet to become a party.

Canadian accession to the *Refugee Convention* remained an open topic that periodically resurfaced in political and administrative discussions throughout the 1950s and early 1960s.³⁴ Accession was often encouraged, if not actively pursued, by the Department of External Affairs (DEA), particularly following news of other countries' accessions.³⁵ Some delegates of the DEA, not unlike Consular Chance himself, were especially keen on brokering Canada's accession, particularly because, in their eyes, accession improved Canada's international standing.³⁶ For instance, the Canadian delegate to Geneva in 1957 wrote passionately to the DEA about the virtues of accession, concluding that "it would not cost us very much and would add to Canada's good name in the refugee field if Canada were to accede."³⁷ Despite these pressures, the Department of Immigration remained unapproving of any accord that could impose restrictions on migration control practices or legislation.³⁸ In fact, immigration officials repeatedly ignored or flatly refused the early attempts of the head (or the high commissioner) of the UNHCR to encourage Canadian accession. Following a meeting with the deputy minister of citizenship and immigration in 1953 in Ottawa, the high commissioner reported that he had been told that "there was not the slightest chance of Canada acceding to the Convention."³⁹ In effect, the Canadian state was of two conflicting minds on the question of accession: the fractions of the state concerned with Canada's international reputation in the realm of humanitarianism were firmly in favour of becoming a party, yet the portion of the state in charge of immigration control wished to retain as exclusive and unhampered authority as possible. These internally paradoxical interests kept accession in chronic suspense, propelled by unending arrays of studies and investigations.

Canada eventually signed the *Refugee Convention* in 1969, nearly two decades after the Geneva conference. The decision to accede was made without controversy in the Liberal Cabinet of the newly elected Prime Minister Pierre Elliott Trudeau.⁴⁰ By then, Trudeau had generated great public appetite for universalist human rights. In fact, at that time, the Canadian government was in the process of acceding to a whole host of international treaties, including the *Refugee Convention* (see *Globe and Mail* 1968, 6). The concurrence of growing interest in international humanitarianism and a unified political will at last eclipsed state-centric reservations.

Canada finally became a party to the *Convention* that it had actively worked to create. Nonetheless, signing the *Convention* did not put an end to the dissonances between international refugee rights and Canadian immigration control. Although by the late 1960s much of Canada's actual practices were in line with the provisions of international refugee law, the *Convention* still involved significant discords with existing legislation. Most notably, the *Refugee Convention* considered persecution based on race and political opinion as grounds for protection (Article I) and required state parties to apply protection provisions irrespective of race, religion, or country of origin (Article III). However, the 1952 *Immigration Act* (formally in force until 1978), allowed the exclusion of non-Euro-Americans as well as (communist) political dissidents from admission to Canada.⁴¹ In other words, the *Convention* offered protection based on forms of racial and political exclusion that were endemic to the Canadian law itself.

The discord between the racially inclusive sentiments of international refugee law and the racist provisions of Canadian immigration legislation did not evade the notice of Canadian officials. In 1953, the director of immigration noted one such discord in an internal memorandum to the deputy minister of citizenship and migration; the director wrote that "refugee, defined in Article I A [of the *Refugee Convention*], could include some Asiatics; in such event the provisions of P. C. 2115 [the 1923 *Chinese Immigration Act*⁴²] would be applicable and they may be deemed to conflict with the provisions of Article III [of the *Convention*]."⁴³ The director's assessments were, to be sure, somewhat erroneous: the *Chinese Immigration Act* had been repealed in 1947, six years prior to this correspondence and, hence, did not pose a problem to the implementation of the *Convention*. However, the director was correct to register a larger unease between refugee law and immigration legislation. While the 1962 and 1967 Orders in Council Immigration Regulations had notably reduced the weight of race in the selection of immigrants, the *Immigration Act* itself remained unequivocally racist (and anti-communist). Curiously, race had become a basis of refugee protection before it was removed as a category of immigration exclusion. Thus, from a purely legalistic standpoint, protecting refugees of non-European origins was somewhat oxymoronic. Canadian immigration law was yet to be brought in line with the universal equality of refugee rights.

Refugees Enter the Law (1970–89): The Irony of Neoliberal Refugee Protection

However painfully achieved, acceding to the 1951 *Refugee Convention* had little immediate effect on the state of refugee rights in Canada. Canada was still decades away from establishing a cohesive system to administer refugee protection. In fact, for much of the 1970s, the term “refugee” did not even exist in Canadian law. As a result, refugee rights were outlined solely in the text of the *Convention* and, hence, were largely unenforceable in the Canadian judicial system (Dirks 1984). In other words, refugee rights existed in theory (and as a matter of international stance), but they were largely inaccessible in practice (and in the context of the judicial system). In the absence of legally binding standards, refugee protection amounted to little more than the sum of the administrative practices that government officials could be convinced to implement. And these were minimal: there did not even exist a formal procedure for making refugee claims outside of an immigration inquiry. This meant that refugee claims could only be made as a last resort against deportation and removal after migrants had already found themselves in trouble with immigration law.

In the immediate years following accession, refugee claims were processed much in the same way as they had been before: on an ad hoc basis and through makeshift procedures that granted refugee status by way of Cabinet Orders in Council (Dirks 1984). Over the ensuing years, some improvements were made to the claim-processing proceedings. In 1973, refugee claim adjudications were formalized through the establishment of an interdepartmental advisory committee comprised of officials from the Department of Immigration (then called the Department of Manpower and Immigration) and the DEA (Plaut 1985). The committee reviewed refugee cases without any direct contact with the claimants and based solely on second-hand textual accounts prepared by senior immigration officers who interviewed applicants under oath. The committee’s recommendations were then sent to the minister of immigration.⁴⁴ The minister held the ultimate authority over refugee decisions (Dirks 1984) and could deny refugee status based on security or related concerns (Plaut 1985). This procedure, of course, left refugee

decisions open to the influence of political and foreign policy interests and lacked gravely in transparency, oversight, and consistency.⁴⁵

To ameliorate these issues, multiple levels of review and oversight were added to the adjudication process over the years (Plaut 1985; Dirks 1995). While well-intentioned, these alterations made for increasingly convoluted proceedings. By the mid-1980s, the procedures had grown excessively inefficient and slow: it took from two to five years to process refugee claims. Lengthy processing times generated a large and growing backlog. The inefficiency and inadequacy of the ad hoc system reflected poorly on the Canadian state and its humanitarian agenda. Canadian refugee protection was in dire need of an overhaul.

The persisting problems of Canada's makeshift refugee status determination system was in large part due to the precarious status of refugees in Canadian law. Without the force of law, there was simply not enough urgency to tackle the complex task of refugee protection in a more systematic fashion. The need for legislative change was not lost on Canadian political authorities. Since the late 1960s, immigration ministers had flirted with the idea of defining the refugee category in immigration law and producing a cohesive protection policy (Goldblatt 1969). However, formalizing refugee protection through legislation was a contentious political endeavour (Hawkins 1988). Change required strong public support and even stronger political will. With growing public interest in humanitarianism and the appointment of Robert Andras as the minister of manpower and immigration in 1972, the scene was set for legislative change; Andras and his team of immigration authorities took to the task of revising and liberalizing Canadian immigration through the 1976 *Immigration Act* (Dirks 1984).⁴⁶

The 1976 *Immigration Act* changed the legal landscape for refugees substantially. By defining the term "refugee" in Canadian law, the *Act* made refugees a relevant judicial category. Furthermore, the *Act* granted full legislative force to the provisions of the *Refugee Convention*, including stipulations of political and racial neutrality. While greatly influential, the 1976 *Act* was not alone in revolutionizing the state of refugee rights in Canada. Another decade of expansive legal and jurisprudential change was on its way to permanently reconfigure Canadian refugee protection.

In the 1980s, procedural fairness and administrative justice were gaining more weight than ever in Canadian jurisprudence and the judicial system. While the 1982 *Canadian Charter of Rights and Freedoms* established due process as a constitutional right for citizens (Hamlin 2014),⁴⁷ the Supreme Court of Canada decision in *Singh v Minister of Employment and Immigration* in 1985 extended *Charter* rights to all persons residing inside Canada, irrespective of their citizenship status.⁴⁸ Consequently, inland refugee claimants became entitled to standards of administrative justice that were on par with those of Canadian citizens. Procedural fairness, consistency, and transparency became legal requirements of refugee status determination. The ad hoc system, which sorely failed on these grounds, was effectively ruled out of line with the Canadian Constitution.

In addition to upholding standards of administrative justice, the *Singh* decision forced significant changes on the existing system of refugee status determination. Most importantly, the decision established in-person hearings as a necessary component for refugee status adjudications. Refugee decisions, the Supreme Court of Canada argued, could not be made with sufficient fairness without direct contact between claimants and adjudicators, particularly because documentary evidence is rarely enough to substantiate the merit of claims.⁴⁹ Thus, refugee adjudication proceedings were obliged to allow claimants to present their cases in hearings.

The *Singh* ruling found a disgruntled audience in state officials, who considered in-person hearings grossly impractical, inefficient, and cumbersome (Dirks 1995). Indeed, the judicial and bureaucratic forces diverged widely in their visions of refugee protection. While legal actors prioritized safeguarding principles of procedural justice, bureaucrats were preoccupied with considerations of administrative convenience and feasibility. The *Singh* decision delivered a determinative strike in this battle of priorities; perhaps anticipating the dismay of administrators, the decision concluded that “a balance of administrative convenience does not override the need to adhere to [principles of natural justice and procedural fairness].”⁵⁰ The law had ruled, and state bureaucrats had no choice but to comply.

Thanks to these successive legislative and jurisprudential changes, refugee claimants became unprecedentedly rightful subjects in Canada.

Forms of protection that were until then haphazardly administered as matters of discretionary authority were now legal entitlements. The old system of refugee-claim processing had become virtually untenable. The legal expansions of the late 1970s and early 1980s had created a normative legal environment (Edelman 1990) that prioritized the quest for universal equality above and beyond administrative and statist interests. In this new environment, an independent and non-adversarial model of refugee status determination was endorsed and eventually accepted.⁵¹ The new model brought an abrupt end to the largely unhampered reign of immigration officials over refugee admissions. As such, the new system was created at the cost of considerable loss of jurisdictional authority for the Department of Immigration (Hathaway 1993). By prioritizing refugee justice, the law had inadvertently sown the seeds of long-standing tensions between the agendas of refugee protection and immigration control.

The tensions between legal and bureaucratic forces unfolded in a context of rapid economic and political change. Although Canadian law was resolutely expanding refugee rights, the drive for inclusivity was not unfettered. The 1976 *Immigration Act* itself encapsulated the paradoxical impulses for universal equality and statist restrictionism. On the one hand, the *Act* made refugees a legal category and removed race as a criterion of immigration exclusion. On the other hand, it heavily imbricated economic calculations in immigration admissions. In the newly liberalized vision of Canadian immigration, racial logics were replaced by economic ones (Bauder 2008); skills, education, profession, language proficiency, and compatibility with the occupational needs of Canada became the criteria for immigration admission. Canada was no longer blatantly racist, but, arguably, no less exclusivist.

The increasing prominence of economic logics in Canadian immigration was not an isolated or exceptional phenomenon. Across the globe, governments of advanced industrial countries were overtaken by neoliberal economic-centred rationalities. With the full-blown rise of Thatcherism and Reaganism only a few years ahead, governments were reformulating how they operated and perceived their functions. The New Public Management was on its way to restructure the welfare state (Aucoin 1995; Ferlie 1996; Lane 2000; Connell, Fawcett, and

Meagher 2009). Fiscal responsibility, cost-revenue analysis, and lean management were emerging as buzzwords in public administration discourses. It was in this rapidly neoliberalizing context that the Immigration and Refugee Board of Canada (IRB) was set up to begin the work of systematic refugee protection on January 1, 1989.

It is perhaps a historical irony that the legislative and jurisprudential push for systematic refugee protection in Canada came at a time poorly suited to the task of unreserved humanitarianism. The law had established refugee protection as a humanitarian obligation, detached from economic and political considerations. Thus, unlike immigrants, refugees could not be admitted or rejected based on their professional and educational skills, their compatibility with the Canadian labour market, or their ability to become self-supporting residents without prolonged public support. Moreover, the cost and inconvenience of administering a well-conceived system of refugee protection was ruled insignificant compared to the weight of the ideal of universal equality. Yet this normative vision of refugee protection was at odds with the neoliberal logics that were rapidly restructuring government operations. A non-revenue generating, costly, and unpredictable operation for the good of non-tax-paying, non-voting non-citizens was not an easy fit with the demands of fiscal restraint. Indeed, refugee protection presented an opening outside of the economy-centred streams of neoliberal immigration. Hence, it created a delicate dilemma: to administer a strong corpus of refugee rights (as imposed by the law) and, simultaneously, to diminish the economic cost of protection (as required of and by the bureaucratic actors). Although the new regime was in large part the result of the overpowering force of the law in exercising expansions, state bureaucrats continued to exert considerable restrictive influence on Canadian refugee protection. The new regime was, from the outset, stretched between these contradictory forces and had no choice but to find articulations that allowed their mutual, if negotiated, fulfillment.

With Rights Came the Rightless Bureaucracy and Restrictionism

2

On the eve of the 1976 *Immigration Act* passing into Canadian law, the Liberal immigration minister J.S.G. Cullen formulated the paradoxical arrangements that were to articulate the emerging regime of refugee protection.¹ After highlighting some unprecedented expansions in refugee protection, the minister emphasized that Canadian protection was not open to all. In particular, protection was not for those who fled economic hardship: “We cannot open our borders to all economic refugees, *such as citizens of third-world countries*, and we can’t do anybody a favor if we bring people to Canada who will not be able to establish themselves” (*Globe and Mail* 1978, 8; emphasis added). Although remarkably expansive, Canadian refugee protection was not boundless. Indeed, the limits of Canadian protection were delineated by an exclusive focus on the civil and political sphere of citizen-state relations; hence, economic refugees, identified offhandedly by the minister’s classed and racialized reference to “citizens of third-world countries,” were excluded from the otherwise expanding realm of rights. This classed and racialized exclusion constituted systemic avenues for articulation of restrictionism in the Canadian regime of refugee protection.

This chapter provides a close account of the bureaucratic operations of Canada’s first systematic regime of refugee protection in its earliest

years to explore how restrictionism was operationalized despite, against, and through the legal expansions of the preceding years. Systematic refugee protection in Canada was born out of exceptional legislative and jurisprudential expansions in refugee rights. These expansions, nonetheless, were at odds with the emerging neoliberal logics of governance and the long-standing bureaucratic visions of protection. Thus, despite the exceptionally expansive legal environment that created the new regime, restrictionism remained a central impulse in Canadian refugee protection. In fact, restrictionism became a matter of structural necessity: the claim-processing bureaucracy actively and effectively limited the impact of legal expansions only to ensure its own survival. In other words, restrictionism was articulated in and through the bureaucracy.

Shortly after its establishment in 1989, the IRB faced major administrative challenges in its handling of large and growing volumes of caseloads. These challenges primed the claim processing bureaucracy to pursue systemic deterrence and rejections. In these early years, the new regime's chances of survival relied heavily on administering restrictive control over who and how many claimants could access the inland refugee system. Thereby, despite the normative legal quest that had fuelled the new regime, the pragmatic requirements of claim processing articulated a clear impetus and need for restriction.

The need for systemic restrictionism, in turn, mobilized bureaucratic procedures and practices that aimed to curb access to Canadian refugee protection. The emerging administrative methods of mass deterrence and rejection were often formulated around claimants' nationality. These methods had devastating consequences for those who became their targets. Importantly, in administering these methods, the bureaucracy diverged from standards of refugee law, in particular undermining the supposedly "universal" right of the displaced to seek protection. The restrictionist bureaucracy, in short, acted of its own accord and in relative autonomy from the law.

The Battle of Numbers: The Bureaucracy and the Necessity of Restrictionism

During a seminar with the Canadian press in 1989, Gordon Fairweather, the chairperson of the newly formed Immigration and Refugee Board

of Canada (IRB), offered a response to an anticipated question: “You are entitled, of course, and will be asking us what are the challenges [sic] in the next couple of years. They are just one word, *numbers*.”² Fairweather’s remark accurately summarized the most significant and chronic challenge of systematic refugee protection in Canada: processing the large number of claims that continuously inundated the claim-processing bureaucracy since the earliest days of its operation. The young IRB’s battle with numbers was situated in a charged moral and political context. Given the growing humanitarian consciousness in Canada, the work of refugee protection was steeped in a heightened sense of morality. Operating a morally cogent system of refugee protection was critical to the legitimacy of the new regime. Therefore, the IRB officials laboured to establish and maintain a laudable record that advanced Canada’s humanitarian reputation. For instance, the IRB regularly participated in shaping the refugee systems of other countries³ and boasted of international praise from the United Nations High Commissioner for Refugees (UNHCR) and other states where possible (see IRB 1991, 11; 1992, 32; 1993, 34; 1994, 6–7). These moral contributions in part substantiated the value of the new bureaucracy.

Yet the IRB’s institutional worth was not exclusively assessed on moral terms. Despite its highly moralized agenda, the IRB was, at its core, an administrative body. As a new and somewhat precariously placed state entity in the era of neoliberal restructuring and cutbacks, the young IRB had yet to earn its full standing as a member of the federal government of Canada.⁴ The IRB’s taxed relationship with the Department of Immigration only exacerbated these political pressures. To solidify its status, the IRB had to deliver a strong performance under the scrutiny of politicians and government officials who were yet to be convinced that the board was worth the resources devoted to it. In short, the IRB was expected to be both laudably humanitarian and administratively reasoned.

As the young IRB soon learned, handling the administrative realities of inland refugee claim processing was a daunting task. The work was challenging from the outset: on the day that the IRB began its work, it inherited a monumental backlog of eighty-five thousand cases from the previous system. Some of these cases had already been in the processing

pipelines for several years (IRB 1990, 19). Unfortunately, clearing the backlogs was only one small part of the IRB's troubles. The much larger issue was the unpredictable and unrestrained flow of freshly made claims that entered the adjudication procedures.⁵ It did not take long before the trouble with caseloads reached a crisis point. Before the end of its first year of operations, the IRB found itself confronted with an incoming stream of cases almost double the number it had the capacity to handle: while the IRB had been designed to process about fifteen hundred claims per month, the last three months of 1989 produced caseloads that averaged around three thousand claims per month (IRB 1990, 15). The young bureaucracy was wildly unprepared to manage this volume of input. The situation suddenly became grim: by the end of 1989, eight thousand new claims had not even entered the first stage of the then two-staged adjudication process. The second stage of adjudication was also completely overrun by pending cases. To make matters worse, and as the IRB officials had correctly forecasted, the high rates of incoming claims were to continue into the following year. The IRB was quickly losing ground in its battle with unfavourable odds.

The IRB's struggles with the unexpectedly high volume of incoming claims were cause for serious anxiety about the future of the board. These struggles betrayed the high hopes invested in the IRB's ability to end the chronic dysfunctions of Canadian refugee protection (Dirks 1995). Officials across the immigration regime watched the growing caseloads with fearful eyes. As the immigration deputy minister warned in an interdepartmental letter in January 1990, "total current volumes are such ... that, unless we make changes, the system could again be totally overloaded in about a year."⁶ Like its predecessor, the IRB was at risk of collapse.

The IRB's administrators monitored the flow of incoming claims with anxious vigilance. They were keenly aware of the need to absorb the unexpected volume of work. Officials employed multiple strategies: they increased the number of hearing rooms in their busiest offices, enhanced hearing room booking practices, and explored expeditious methods of reviewing and adjudicating claims (IRB 1991). Much attention, analysis, and creativity were devoted to running the IRB against the threat of accumulating backlogs. Practically every stage of the claim adjudication

process came under scrutiny and surveillance. Regular statistical reports closely monitored the flow of claims through all stages of the adjudication process; reports were issued weekly, monthly, and quarterly, allowing analysis of the IRB's performance, workload, and progress in short and long terms.⁷

To cope with the strain caused by the increased workloads, the IRB requested additional funds before the end of its first year of operation. In 1989, the IRB's \$42,297,000 operating budget was increased by supplementary funds of \$10,643,000 (IRB 1990, 25). The following year's \$61,788,000 budget was supplemented by \$18,112,000 (IRB 1991, 32). These supplementary funds were critical to increasing the IRB's adjudication output. The funds were used to hire new adjudicators and open a new office in Toronto (IRB 1992, 12). However, these funds did not increase the IRB's budget in proportion to the rise in the volume of claims. As a result, the IRB's operations had to be substantially modified to cope with the increase in caseloads. Naturally, the IRB officials turned their attention to increasing the productivity of adjudication procedures. Two procedures – the “expedited process” and the “simplified inquiry process” – were designed and implemented in 1989 to alleviate the work of claim processing. These procedures allowed positive decisions to be issued via informal meetings rather than through full two-person adjudications, enabling the IRB to conclude a larger number of cases more quickly and with fewer resources.⁸ The two procedures were further developed and heavily utilized in the following years (IRB 1990, 15; 1991; 1992, 17–18).

Although improving productivity was integral to managing workloads, procedural efficiency alone was not enough to resolve the IRB's larger trouble with numbers. The volume of caseloads was simply too large to be sustainably handled by the new regime. Orderly bureaucratic conduct required exercising restrictive control over the number of claims that entered the Canadian system. Of course, the IRB had no way of controlling the global events that produced displacement. However, as state officials believed, Canada could be made less attractive as a destination for the displaced (see, for instance, IRB 1991). In other words, to protect the IRB against collapse, refugees needed to be deterred from making claims in Canada. As the strain from workloads grew, deterrence

became a more pronounced objective in discussions of refugee claim processing.⁹ Of course, the emphasis on deterrence was a far cry from the humanitarian mandate of the IRB. In the moralized logics of refugee protection, persecuted individuals could not be justifiably deterred from making claims in Canada. Deterrence required subjects who could be relegated to positions of excludability.

In this fraught context, the IRB began to promote a rigid dichotomy between “real” refugees (who deserved protection) and “fraudulent” claimants (who needed to be deterred). The narrow provisions of refugee law provided easy avenues for this polarization. The law’s exclusive focus on the individualized realm of citizen-state relations meant that experiences of generalized violence, such as those of poverty and dispossession, could be dismissed as grounds for protection. Hence, those suspected or accused of making claims based on economic motivations, however desperate their circumstances, were considered legitimate targets of deterrence. Despite occasional acknowledgment of the connection between economic deprivation and displacement (IRB 1990, 12; 1993, 12), the IRB officials remained largely unsympathetic to economically deprived groups of claimants. Economic refugees, as Cullen had suggested, had no claim to the expanding regime of rights in Canada. In fact, rejecting these claimants was considered integral to minimizing the “abuse” of the Canadian system: swift rejection of these claims, Canadian officials believed, sent a clear message to those who were supposedly using the refugee protection system to buy themselves time in Canada.¹⁰

The growing emphasis on deterrence in Canadian refugee protection coalesced with and mobilized concerted interest in immigration restrictionism and border control. The IRB (1991, 11, 25; 1992, 23) even began to call for the stronger enforcement of removal and deportation provisions in regard to rejected refugee claimants; the lack of rigorous border enforcement, the IRB officials pleaded, undermined attempts to deter “fraudulent” claims. Deterrence could only be achieved through well-coordinated interdepartmental cooperation.¹¹ “Fraudulent” claimants needed to be rejected and quickly removed from Canada.

The growing interest in deterrence and restrictionism anchored emerging politics around refugee acceptance rates. The first year of the IRB’s (1990, 15) work had produced an acceptance rate of 76 percent,

which was considerably higher than the approximately 30 percent rate of the previous ad hoc system.¹² Officials across the immigration regime considered the new acceptance rates a “problem area” that needed management. In their eyes, high acceptance rates were a “pull factor” that attracted overwhelming numbers of claims to Canada.¹³ Controlling the flow of incoming claims required dropping acceptance rates considerably. Canada had to become less attractive as a humanitarian destination for the displaced.

Under immense political and administrative pressure, the Canadian regime of refugee protection became increasingly restrictionist. The impact on acceptance rates was immediate and substantial. In 1990, the overall acceptance rates dropped to 70.3 percent (IRB 1991, 19).¹⁴ The following two years saw steady declines to 64 percent and 57 percent respectively (IRB 1992, 21; 1993, 20). Acceptance rates at the full hearing stage of adjudications, which was under the exclusive authority of the IRB, also declined rapidly.¹⁵ In the span of only six months, these rates dropped from 88 percent in 1989 to 75 percent in July 1990.¹⁶ Evidently, the IRB adjudicators had begun to reject larger portions of claims even when they were not directly pressed by immigration officials; restrictionism was not simply imposed from above but also internalized and ingrained in the bureaucratic operations of refugee claim processing. The bureaucracy had become an independent force of restrictionism.

Whom to Reject: National Groupings and Systemic Deterrence

Restricting the flow of incoming claims required the administrative ability to identify those who could be rejected and deterred. Of course, from a strictly legal perspective, claims could only be rejected based on individual assessments of their merits within the parameters of refugee law. However, as the first year of the IRB’s work had evidenced, independent and individual adjudications were not by themselves conducive to a strong program of restrictionism. Turning the tides of rising numbers called for more systematic methods that would ensure not only fast claim processing but also larger rates of rejection. Rejections had to be systematized.

To fulfill the need for systemic rejections, the IRB turned to classifying “fraudulent” claimants based on their countries of origin. National

groupings proved a workable means to restrictionist ends; not only did a claimant's nationality offer an administratively convenient way of categorizing caseloads in large blocks, but national classifications could be made with some consideration for the provisions of refugee law. After all, the determination of refugee status routinely involved assessing conditions in countries of origin. These assessments, as the IRB administrators discovered, could facilitate wholesale rejection of claims from some of the countries that featured prominently in the IRB's statistics. For instance, an absence of well-documented political and civil crises in poor countries could be taken to invalidate claims of persecution. Of course, using country conditions as the method for determining refugee status was hardly consistent with the law. In fact, refugee law mandated that claims be evaluated based solely on individual merits and without regard to race, ethnicity, and nationality.¹⁷ Yet country conditions could be framed as the (systemically disadvantaging) background for (supposedly individualized) adjudications. Hence, the IRB could reject large numbers of claims without blatantly violating the legal requirement of individual assessment; country conditions, in other words, offered the struggling bureaucracy a way to negotiate the stringent standards of the law with the administrative need for restrictionist control.

In the early years of its operation, the IRB relied heavily on country conditions to process caseloads. A UNHCR visiting consultant to the IRB's documentation centre in August 1989 reported concern over how IRB adjudicators were approaching and using documentation on country conditions. To the consultant's alarm, Canadian adjudicators were commonly treating country reports as clear and straightforward measures of credibility.¹⁸ Instead of using these reports as the broad backdrop for examining the unique circumstances of each claim, adjudicators were looking to country documentation for directions on whether to decide for or against claimants. Consequently, acceptance rates were highly polarized: nearly all claimants from some countries were accepted as refugees, while claimants from other countries were rejected en masse. Refugee status was practically decided based on the country of origin rather than the content of claims.

The use of country conditions in refugee claim processing was intimately in sync with the administrative needs of the IRB: at any given time

and across geographical jurisdictions, administrators focused their restrictionist efforts most intensely on countries that posed a risk to the orderly conduct of refugee claim processing. Thus, the first countries that became targets of systemic rejection were those that had long been considered threats to Canadian refugee protection. Chief among these were Jamaica, Trinidad, and Portugal.¹⁹ Given that claimants from these countries were considered to have contributed to the collapse of the previous system, the IRB administrators were strongly inclined to reject and deter them. The work of refugee protection was to begin, somewhat ironically, with protecting the bureaucracy against refugees.

The early years of the IRB were dark times for refugee claimants from Jamaica and Trinidad. At the end of 1989, the IRB (1990, 15) reported an acceptance rate of 0 percent for both groups.²⁰ Notably, Jamaican and Trinidadian claimants were overwhelmingly rejected at the initial stage²¹ of adjudications: in the first half of 1990, 0 percent of Trinidadian and only 17 percent of Jamaican claimants were even referred to a full hearing. In contrast, 95 percent of all claims were allowed to proceed to full adjudications.²² Rejecting Jamaican and Trinidadian claimants at the initial stage made for quick and inexpensive case processing: claimants were removed from the adjudication process before they had a chance to present their cases fully. This left claimants with minimal recourse to legal protection and appeal. Thus, despite the expansive array of rights, Jamaican and Trinidadian claimants were kept away from the new regime and in a state of near rightlessness. Importantly, their rightlessness was achieved through the multilayered stages of the bureaucratic process. Not only had the IRB become a force of restrictionism, but restrictionism was also advanced in and through decidedly administrative means.

Remarkably, despite the moralized politics of refugee protection, the harsh treatment of Jamaican and Trinidadian claimants in refugee claim proceedings came at no cost to the legitimacy of the IRB. In fact, rejecting these claimants was not considered a contentious matter; Jamaicans and Trinidadians were widely disbelieved across the immigration regime. Indeed, in the initial stage of assessments, most Jamaican and Trinidadian claimants were rejected based on the credibility of their claims rather than their ineligibility to receive refugee status.²³ In 1990, out of the fifty-nine Jamaican claims concluded at the initial stage, only one was rejected

based on ineligibility; conversely, forty-two eligible Jamaican claims were rejected for supposedly lacking a credible basis. Similarly, only three of the fifty-one concluded initial claims by Trinidadian claimants were found to be ineligible; thirty-seven eligible claimants were rejected due to credibility issues.²⁴ In other words, Jamaicans and Trinidadians were not necessarily ineligible for protection; rather, they were simply not believed to be “real” refugees.

To make matters worse, in the rare instances when a claimant from Jamaica or Trinidad received an initial positive assessment, the immigration minister was keen to intervene and challenge the decision.²⁵ While 95 percent of positive initial decisions from the so-called legitimate countries were conceded, ministerial representatives were steadfast in opposing positive outcomes for Trinidadians and Jamaicans: in 1990, no cases from Trinidad and only one positive initial decision from Jamaica was conceded by the minister.²⁶ In short, several actors across the multi-staged adjudication process worked to ensure Trinidadians and Jamaicans had nearly no chance of acquiring refugee status in Canada. The resolve to reject and deter these claimants was held in wide administrative consensus.

Because of the widespread disbelief of Trinidadian and Jamaican claimants, the claim-processing bureaucracy had much to gain from their wholesale rejection. Indeed, the plummeting chances of Jamaicans and Trinidadians in securing refugee status in Canada was endorsed as evidence of the IRB’s administrative competence. A review of the adjudication procedures in July 1990 reported the low referral rates and concluded: “So, the initial hearing stage is continuing to perform its basic function of culling out claims from countries that are clearly not sources of convention refugees and ensuring that claimants from countries that are known to be in upheaval get sent on for a full hearing.”²⁷ Similarly, in his letter to the clerk of the Privy Council and the secretary to the Cabinet in January 1990, the associated deputy minister of the Department of Immigration expressed approval of the IRB’s work by directly equating the deterrence of “unfounded” claims with the IRB’s success in diminishing the number of claims from countries such as Trinidad: “[The IRB] reduced significantly the number of manifestly unfounded claims; that is, we have reduced to a trickle individuals

(such as Turks, Portuguese, Trinidadians, etc.) who are not refugees but who used to arrive in large numbers under the old system.”²⁸ Jamaican and Trinidadian claimants were supposedly only poor migrants who had unduly overwhelmed the Canadian system for years. Thus, by rejecting them, the IRB showcased its capability in handling the work of refugee protection. Mass rejection of Jamaicans and Trinidadians only solidified the status of the board.

Of course, country conditions were not used solely against claims from Jamaica and Trinidad. National groupings provided an exceptionally adaptive method for systemic rejections. Organizing claim processing around claimants’ nationality allowed administrators to produce and isolate target groups in accordance with situated institutional needs, including those of various regional offices. For instance, in the IRB’s office in British Columbia, where a large proportion of claims came from China, Chinese claimants were rejected at considerably higher rates.²⁹ In 1990, full hearings of Chinese claims in Quebec produced 277 positive and 241 negative decisions, a relative acceptance rate of 53 percent.³⁰ The same hearings in British Columbia produced 81 positive and 167 negative decisions, a considerably lower relative rate of 33 percent. Nationally, 485 Chinese claimants received a positive decision at full hearings, while 600 claimants were declined, constituting a relative acceptance rate of 45 percent. In other words, Chinese claimants had a far smaller chance of receiving protection in British Columbia than in other jurisdictions. Needless to say, given that Chinese claims constituted over one-quarter of caseloads in British Columbia,³¹ their high rejection rates were consequential to managing the workload of that office. The scale of these rejections was so large that it accounted for the disparities in acceptance rates across the IRB offices: while acceptance rates were 81 percent and 86 percent in Ontario and the Prairies, respectively, they were only 55 percent in British Columbia, thanks primarily to the low acceptance rates of Chinese claimants in this region.³²

Furthermore, using claimants’ nationality to manufacture excludable subjects allowed the IRB to dynamically produce target groups in response to changing patterns of incoming claims. The volume of claims that entered the IRB proceedings fluctuated based on international circumstances that produced displacement. Controlling this unpredictable

caseload required timely and targeted responses to sudden changes in numbers. Thus, the IRB administrators monitored international developments as well as the numbers of incoming claims from various source countries. Although refugee law was precisely meant for the protection of displaced persecuted populations, an uncontrolled flow of the persecuted to Canada was not compatible with the administrative needs of the board. Hence, IRB officials had every incentive to prevent and contain unexpected hikes in the number of incoming cases, despite the *de jure* right of the displaced to seek refugee protection.

From the administrators' perspective, managing the fluctuating volume of workloads required, above all, restricting the access of claimants from regions and countries that sent large numbers of claims to Canada. In the early 1990s, the most concerning of these regions was Eastern Europe. Following the dissolution of the Soviet Union, the number of refugee claimants from Eastern European countries was on a steep rise. Although the IRB (1991, 13) positively characterized the fall of the Soviet Union as "democratization," it initially recognized the inevitable displacement produced by political and economic instability and ethnic and nationalist tensions. However, the sympathy for Eastern Europeans was quickly dampened by the arrival of large numbers of refugees in Gander, Newfoundland. The so-called Gander situation pushed the IRB's caseloads to unprecedented highs: the IRB received forty-two hundred claims in January, thirty-three hundred claims in February, and thirty-eight hundred claims in March 1990.³³ These numbers presented a major administrative crisis. Hence, Canadian officials urgently implemented a comprehensive array of strategies to contain and reduce the number of Eastern Europeans who could access the Canadian regime.³⁴

The strategies implemented against Eastern Europeans were multi-faceted and multi-departmental. First, Eastern Europeans, particularly those from Czechoslovakia and Poland, began to be rejected at higher rates at both stages of the adjudication process: referral rates of Polish claimants dropped from 83 percent in 1989 to 64 percent in the first half of 1990. The referral rates of Czechoslovakian claimants were reduced from 98 percent to 58 percent in the same period. At the full hearing stage, acceptance rates dropped even more sharply: Polish claimants

were accepted at a rate of only 18 percent in the first half of 1990, compared to 73 percent in 1989. Czechoslovakians saw their rates drop from 75 percent to only 12 percent.³⁵

Moreover, the Department of Immigration began to challenge the positive decisions of Eastern European claims regularly. While positive initial decisions on claims from countries such as Sri Lanka, Somalia, and Iran were almost never contested, in the first quarter of 1990, positive initial decisions of Czechoslovakian and Polish claimants were contested at rates of 41 percent and 64 percent respectively. Moreover, ministerial challenges against these claims were likely to reverse the positive initial decision: in the first quarter of 1990, 75 percent of contested claims from Czechoslovakia and half of the contested claims of Polish claimants overturned the positive initial decision.³⁶ With these concerted measures in place, Eastern Europeans' chances of receiving refugee protection in Canada dropped dramatically. As a result, large numbers of claimants, particularly those from Poland, withdrew or abandoned their claims. Additionally, the Department of Immigration imposed visa restrictions against Eastern Europeans to curb their access to the inland system. Visa restrictions proved highly effective in driving down the numbers. In a matter of months, the number of Eastern Europeans who entered the Canadian case-processing proceedings dropped considerably.³⁷ With these claimants successfully kept away from the Canadian regime, the IRB began to see noticeable drops in the number of its incoming cases by March 1991.³⁸ Bureaucratic control had been achieved at the cost of blocking the supposedly universal right of the displaced to protection.

In sum, despite the exceptional legal expansions that had produced the new regime, the first years of systematic refugee protection in Canada involved significant measures of restrictionism. These measures, which were often delivered through administrative means, actively curtailed the impact of legal expansions. Importantly, bureaucratic restrictionism was a matter of structural necessity; soon after the IRB began its work, managing the administrative realities of neoliberal state-controlled refugee protection was predicated on restricting access to the inland system. To achieve this goal, the claim-processing bureaucracy

devised and advanced systemic methods of mass rejection, often by using national groupings. As a result, the work of refugee protection quickly devolved to an institutionalized battle against dynamically manufactured groups of “fraudulent” claimants. Although strategies of mass rejection were instrumental to guarding the struggling bureaucracy from collapse, they undermined the humanitarian principles of refugee law. In effect, the supposedly “universal” right of the displaced to seek refuge was undermined to ensure bureaucratic survival.

In the earliest years of its operation, the contemporary regime of refugee protection in Canada managed the conflictual demands of state-controlled refugee protection through articulated arrangements that allowed their simultaneous and negotiated advancement. While the law acted as a force of expansionism, the bureaucracy enforced restrictions. Further, legal expansions and bureaucratic restrictions were articulated around supposedly distinct categories of claimants. Hence, while convention refugees became rightful subjects, “economic migrants,” who were often delineated by classed and racialized categories of nationalities, were placed outside of the expanding bounds of right. Thus, despite legal expansions, the bureaucracy operationalized restrictionism. The dynamic interplay between the fields of law and bureaucracy allowed the new regime to be, in principle, humanitarian, and yet administratively calculating. In short, the Canadian regime persisted in and through its paradoxes.

© UBC Press 2024

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, without prior written permission of the publisher.

Library and Archives Canada Cataloguing in Publication

Title: Refugees are (not) welcome here : the paradox of protection in Canada / Azar Masoumi.

Names: Masoumi, Azar, author.

Series: Law and society series (Vancouver, B.C.)

Description: Series statement: Law and society | Includes bibliographical references and index.

Identifiers: Canadiana (print) 2023053029X | Canadiana (ebook) 20230530397 | ISBN 9780774868716 (hardcover) | ISBN 9780774868730 (PDF) | ISBN 9780774868747 (EPUB)

Subjects: LCSH: Refugees – Government policy – Canada. | LCSH: Refugees – Legal status, laws, etc. – Canada.

Classification: LCC JV7282 .M37 2023 | DDC 325/.2140971 – dc23



BRITISH COLUMBIA
ARTS COUNCIL



BRITISH
COLUMBIA

UBC Press gratefully acknowledges the financial support for our publishing program of the Government of Canada and the British Columbia Arts Council.

This book has been published with the help of the UBC Press First Time Authors Fund.

UBC Press
The University of British Columbia
2029 West Mall
Vancouver, BC V6T 1Z2
www.ubcpres.ca