Politics of immigration and the controversial refugee reforms

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The Refugee Reform Act
In recent years, Canada’s refugee system has balanced an international reputation for generosity with a national discourse of “broken system.” The Balanced Refugee Reform Act of 2010 is characterized by a dualistic and moralistic discourse opposing generosity and illegality. Despite the numerous critiques of immigration and refugee advocates, the Act was accepted as a compromise by many sides of the political spectrum, opposition parties included. Who, after years of public discourse about the broken refugee system, would not favour a faster and fairer determination process?

The positive changes in the Act are mostly limited to repairing the current procedural inefficiencies and structural apathy. Such is the case for the overdue implementation of the Appeal Division by 2012—initially part of the 2001 Immigration and Refugee Protection Act that was never delivered. Newly appointed public servants are slowly tackling the estimated backlog of 60,000 applications. A timid budgetary increase (the first in ten years) and a small expansion of resettled refugees (predominantly associated with private sponsorships) are cause for brief excitement. Timelines expediting the refugee determination process have been (unrealistically) shortened, but rights to representation and appeal provisions on humanitarian and compassionate grounds have been seriously eroded.

The Minister of Citizenship, Immigration, and Multiculturalism, Jason Kenney, proudly spoke of the achieved amendments on procedural reforms as the result of the “remarkable spirit of cooperation,” which led to the legislation. Refugee advocates, however, deplored the sparse consultation and its associated non-disclosure condition. In spite of these critiques, the Act appears to assuage both public opinion and political powers, bolstering the urgency for expeditious and fair policy reform. However, the most serious and unpredictable provision of the Act remains the unprecedented concentration of discretionary power in the hands of the Minister of Citizenship, Immigration, and Multiculturalism—especially in light of the current minister’s hortatory language and prejudicial rhetoric about bogus refugee claimants.

Bogus Refugee Claimants
Prime Minister Harper and Minister Kenney have unfailingly and openly condemned so-called bogus refugee claimants. From US war resisters to Mexican and Roma refugee claimants, Harper and Kenney have reiterated the presumption that alleged “bogus refugee claimants” enter the country “illegally,” “jump the immigration queue,” and clog up the system by adding to the alarming backlog. Kenney repeatedly associated “real” refugee claimants as being overseas in refugee camps while labelling claimants at port of entry as “fake,” and consequently less worthy or even unworthy of protection. Kenney unambiguously suggested that port-of-entry refugee
For many, the imposition of visa requirements was seen simply as a national embarrassment that revealed the Conservatives’ “tough generosity.”

IS THE REFUGEE SYSTEM BROKEN?

Harper and Kenney have both mastered the neoliberal doublespeak, switching from pre-emptively identifying bona fide refugees and criminalizing the others, to claiming that the Canadian refugee determination system is generous yet broken. They contend that the system has been rendered inefficient by the Canadian legislative system, pointing particularly to the 1982 Canadian Charter of Rights and Freedoms and the 1985 Singh v. Minister of Employment and Immigration landmark decision by the Supreme Court. Paradoxically, it was the Singh decision that led to the creation of the current Immigration and Refugee Board and entitled refugee claimants to an oral hearing in accordance with international law. In other words, the Singh decision ensured the right of refugee claimants in Canada to life, liberty, and security of the person.

Conservative politicians, especially those with roots in the defunct extreme-right Reform Party and its successor, the Canadian Alliance with Harper and Kenney leading the crusade—have consistently cried their dislike of the 1985 court decision. For them, the extension of the protection of the Charter of Rights and Freedoms to refugee claimants resulted in excessive provisions and delays. Hence, following the events of 9/11, Kenney advocated overriding the Singh decision and detaining all undocumented arrivals until their identity was verified. Already then, Kenney defended the need for a refugee system that assists “legitimate” refugees rather than the assumed lawbreakers and queue-jumpers.

As they did in the United States, the events of September 2001 provided an astonishing opportunity and justification for conservatives in Canada to conflate immigrant/refugee control and security/risk management. Under this new regime of control, immigration and refugee regulation has been more exclusionist—that is more preoccupied with defining who should be allowed into Canada by keeping out those deemed “undesirable.”

THE REFUGEE CLAIMANT U-TURN

Nowhere is that exclusionary shift more apparent than in the Balanced Refugee Reform Act. The problem with ministerial power to determine allegedly “safe” countries is that such an approach infringes on international law that requires individual (rather than collective/national) assessment of protection needs. By moralizing the politics of risk, in the name of national security, fiscal responsibility, and accountability to stand up to the abuse of Canadian generosity, the Conservatives directly curtail the rights of refugee claimants from alleged “safe” countries by attempting to dissociate refugee rights from the most basic human rights. No matter how much procedural reform is proposed, by questioning the legitimacy of refugee claimants, deterring claims through visa requirements, and designating safe countries, thus pre-empting due process, Kenney and Harper have eroded human rights provisions in the immigration and refugee system.

Therefore, what is presented as “balanced” reform is actually quite fundamentally biased—Harper and Kenney will have more discretionary power while allegedly “safe” refugee claimants will have fewer rights. Although discretionary authority has always been part of the immigration and refugee control regime, this additional discretion inevitably exerts further political tension on a system already subject to neoliberal market efficiencies and exclusionist policies. In the unstable context of a minority government, it might be politically less hazardous to blame a few refugees for breaking the system than it is to mend the system. This is particularly so when the rhetorical spin benefits from a vigorous narrative in the United States of security and the criminalization of immigrants.

Moreover, in the current political context, where none of the parties dare to take a strong position on immigration/refugee policies, the targeting of “illegals” and “bogus” claimants as undesirables that place national institutions and economies at risk, justifies a wide range of punitive and pre-emptive actions to mend the “broken system.” Ultimately, such a restrictive approach does not make Canada any safer; it just creates vulnerability, unpredictability, and insecurity, which can later be used to opportunistically construct an immigration and refugee crisis.