Politics of immigration and the controversial refugee reforms

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STRICTER MIGRATION ENFORCEMENT

Conservatives have stepped up immigration enforcement and refugee admissibility by "playing tough" on the alleged abuse of Canadian generosity. Stephen Harper's government has restricted programs, reformed laws, and introduced stricter control schemes and penalties for infringements to immigration and refugee laws. Legislative changes have given greater discretionary powers to the minister and officers of citizenship, immigration, and multiculturalism to select, limit, and fast-track new immigration applications for those deemed desirable migrants—and consequently to hinder and deny consideration for undesirable others.

New visa requirements, lifts on the removal moratorium, workplace raids, cuts to service organizations and family reunification programs, and anti-smuggling legislation that penalizes the smuggled rather than smugglers have been among the most recent priorities of the Harper government. Conservatives also defended policies justifying security certificates and rendition to torture. Temporary migrant programs have been extended from agriculture to the construction and tourism sectors. Canada, in its increasing self-indulgent generosity, now welcomes about four times more temporary residents than permanent residents. These measures and trends have squeezed particular migrants out of the legal and permanent provisions of immigration laws as they have been rendered inadmissible and "illegal." Bill C-11, also known as the *Balanced Refugee Reform Act*, now officially extends the discourses of illegality and criminality to refugee claimants by legislating the discretionary power of the minister to develop a list of designated "(un)safe" countries of origin dictating the (in) admissibility and meanings of desirable and undesirable refugees.

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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 the 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

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claimants are fraudulent and opportunistic asylum seekers. He then indiscriminately enacted travel visa requirements on Mexico and the Czech Republic in order to deter "bogus" refugee applications.

Harper defended his minister's visa requirements and the need to maintain such measures until refugee reform fully becomes law. Their rhetoric is, however, denounced by immigration and refugee advocates as political interference and as prejudicial to the Immigration and Refugee Board of Canada, the independent administrative tribunal that high-placed officials would normally be expected to defend rather than undermine. For many, the imposition of visa requirements was seen simply as a national embarrassment that revealed the Conservatives' "tough generosity."

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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 opportunely construct an immigration and refugee crisis.