

CANADIAN REFUGEE POLICY: THE POLITICS OF THE FRAME

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ABSTRACT

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Jo Anne Colson

This dissertation is an inquiry into the politics of the frame in Canadian refugee policy. It is focused on “framing,” thereby taking up the stance of critical policy studies while pressing the contribution of Donald Schön and Martin Rein in a critical and politically inflected direction. The dissertation unfolds as a political history of Canadian refugee policy that provides a “contextual mapping,” relevant to both inquiry and action in regard to the framing of refugees. The main argument is that twentieth- and twenty-first-century refugee policy in Canada is a story of three shifting meta-frames: beginning with humanitarianism (in the inter-War years and the post-World War II period); shifting to neo-humanitarianism (beginning in the late 1970s, in connection with the rise of neoliberalism); then shifting again (beginning in the 1990s) to securitization. The concept of a meta-frame here is analogous to that of a “metacultural frame” in Schön and Rein, but accents political rather than cultural dimensions. This concept is developed in a manner suitable to a political history by illustrating how meta-frames both become stable and change. With humanitarianism, the refugee was typically portrayed in ambivalent terms – both deserving of and entitled to protection, while also posing a burden for the national interest. In the context of neo-humanitarianism, this ambivalence began to wane, and the refugee was more typically portrayed as a potential criminal. With securitization, especially as it has become entrenched and intensified, the refugee has been more typically portrayed as a potential terrorist. The analysis includes a focus on the particular importance of ambivalence and contingency in the politics of the frame. Securitization has become so deeply entrenched since September 11, 2001 that it appears virtually fixed in place. However, it may still become possible in moments of contingency for refugee advocates to destabilize the securitization meta-frame and help shift the framing of refugees into a more hospitable register.

Keywords: refugee policy, Canada, politics, frame, meta-frame, humanitarianism, neo-humanitarianism, securitization, ambivalence, contingency, frame contestations, contextual mapping, Donald Schön, Martin Rein

To Yvonne Ingersoll

Dearest aunt, wise friend, loving matriarch

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Cartoon, by Ingrid Rice, originally published in <i>The Tyee</i> , January 5, 2011 (Reprinted with permission from the artist): “Preparing for the Next Boatload of Asylum Seekers”	

PROLOGUE – FRAMING THE DISSERTATION

*There is a crack in everything.
That's how the light gets in.*

Leonard Cohen, “Anthem”

§I

This dissertation is an inquiry into the politics of the frame. It offers a contextual mapping that unfolds as a political history of framings and reframings of the category of refugee and of refugee policy in Canada. As such, this project is intended to be a contribution to the field of critical policy studies.¹ I begin here by framing the dissertation, which includes introducing the key concepts that will be developed further. I invite a particular reading strategy – one that is oriented toward and receptive to multiple intersecting narratives having to do with the politics of the frame. I take the view that a narrative approach is best suited to exploring and mapping complex, manifold, and multi-dimensional evolving Canadian refugee policy discourses. Further, I understand the writing strategy itself as a political act – that is, as a process of making distinctions in order to tell a particular story by representing and interpreting intersecting story lines. Therefore, my project unfolds along multiple intersecting story lines, rather than in the form of a sustained defence of a single linear tracking of a particular story line. I attempt to do something more nuanced because it involves a critical interpretation

¹ On critical policy studies, see the journal, *Critical Policy Studies*, particularly Fischer, Griggs, and Mathur (2009, 1-2). See also Fischer (1980, 1990, 2003); Majone (1980, 1985, 1989); Yanow (1992, 1996, 1999, 2004, 2006a, 2006b); Hawkesworth (1988, 2006); and Orsini and Smith (2007, 1-16).

through mapping multiple and manifold relationships among many often mutually constitutive framings. Metaphorically, then, my writing strategy can be understood as a folding, unfolding, and refolding of story lines, told from different perspectives, all having to do with gaining an understanding of how the movements of refugees expose the inevitable cracks in refugee protection regimes. Such a project could only be undertaken in a narrative form. While my analysis of forced displacement and Canadian refugee policy is largely interpretative, it also addresses the effects – especially, power effects – of framing, so it is also critical.

To the extent that human beings are social and communal beings, they can experience forced displacement. Displacement as *refugeeness* (the conditions of subjectivity that characterize forced migrations) connotes the displaced person's experience of the simultaneity of naturalness and unnaturalness of place, of being both at home and a stranger (Nyers 2006; Colson 2006). Refugeeness is necessarily indeterminate because it is intrinsically unstable: it embodies the inability to fix a specific, commonly understood meaning of what counts as a refugee. Further, refugeeness refuses closure – it refuses to ascribe fixed identities or categories – because it “touches on all the various ‘ensembles’ of human life ... emphasizing how the ‘realms’ of culture, society, the economy and the politics all coexist on an immanent field of interaction” (Nyers 2006, xv).

Displacement is fluid in its transversals of unnatural places where connections are made and broken in unanticipated and uncontrollable ways. It interrupts and disrupts patterns of motility that depend in part on the free and independent ability to make judgments about when, how and where to move, and with whom. The quality of motility

– the direction, speed, intensity, and interval of our preferred movements – is reduced by displacement (Colson 2006). Refugees live in conflicting conditions of displacement that comprise involuntary movement, cultural dislocation, social disruption, material dispossession, and political disenfranchisement (Hyndman 2000, 2; Colson 2006).

In this dissertation, I use the term *refugee* in a non-essentialist register, in order to speak about the individual's becoming-other that arises with having no other alternative than to leave one's home and cross international boundaries to seek protection and safety elsewhere. Often without verifiable identity documents, refugees embody multiple, complex and conflicting identities as they reside outside their countries of birth, but have no citizenship status in their new countries or places of residence. Refugees as non-citizens do not belong. They are marginalized, with little power of access to the formal institutions within their countries of residence.²

The legal construct *Convention refugee* denotes an individual who has attained official refugee status in a receiving state, according to the state's obligations under the 1951 United Nations Refugee Convention³ (hereafter, the Convention). This definition of a refugee, which is the cornerstone of the modern Convention regime (see for example, Solomon 1991; Skran 1995; and Loescher 1993) built upon earlier accords and treaties.⁴

The refugee is any person who,

² Individuals or collectivities that manage to travel, frequently by means that are dangerous and unsanctioned, to the frontier or the border of a country of potential refuge are often called *asylum-seekers*.

³ *Convention Relating to the Status of Refugees*, adopted July 28, 1951; 19 UST 6259, 189 UNTS 137 (entered into force April 22, 1954).

⁴ Art. 1(A) (1) of the *Convention Relating to the Status of Refugees* provides that "For purposes of the present Convention, the term "*refugee*" shall apply to any person who: (1) Has been considered a *refugee* under the Arrangements of 12 May 1926 and 30 June 1928 or under the Convention of 28 October 1933 and February 1938, the Protocol of 14 September 1939 or the constitution of the International *Refugee* Organization ...".

... as a result of events occurring before 1 January 1951 and owing to a 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.⁵

Although the scope of the definition was later broadened beyond its original focus on pre-1951 European refugees (see Chapter 2), the original Convention definition, particularly its emphasis on individual persons, and the phrase “owing to a well-founded fear of being persecuted,” continued to dominate western policy discourses of the refugee, and underpins the social, political, and legal constructions that we now recognize as *refugeeness* (Malkki 1995a; 1995b, 1996; Nyers 2006).

Refugees and Convention refugees are two categories of the broader category of forced migration that I take also to include people who must move outside of their homelands in order to survive by finding work elsewhere, or who must flee across international boundaries in order to escape persecution, violence, natural disasters, social breakdown, or development-induced environmental disasters. In this sense, migration movements are understood to be much broader than those encompassing economic migrants, although this category of migrant is the most prevalent (Betts 2009). As a forced migrant, the refugee arises as a burden for the state in part because of the conceptual disagreement about the causes, management, and meaning of refugee, and

⁵ Art. 1(A) (2) of the *Convention* adopted 28 July 1951 and entered into force 22 April 1954.

because the migration of refugees is by definition irregular migration. Emma Haddad illustrates these complexities by drawing on William Connolly. She writes:

... the term ‘refugee’ can be described as an ‘essentially contested concept.’ It causes disagreement, first because it is appraisive in character and involves value judgements; second, because it is internally complex, comprising a changing set of ingredients that are themselves relatively complex and open-ended – persecution, state, international, force and protection, for example; and third, because the rules applying to the definition of the concept are relatively open, making a ‘full and definitive resolution’ hard to achieve (Haddad 2008, 26; citing Connolly 1983, 36).

As I will show, the category of refugee is framed in a multiplicity of ways, through discourses of power, in different social-historical contexts connected with changing relationships of power associated with the management of irregular migration.

The complex story of Canadian refugee policy as I see it involves three shifting discursive frames or, more precisely, what I call meta-frames:⁶ humanitarianism, neo-humanitarianism, and securitization (introduced in more detail in chapter 1, and discussed in subsequent chapters). Within each chapter, and overall, I build the argument as a set of movements – from broad contextualizing passages through to specific discussions of selected cases to positing certain conclusions about the politics of the frame with respect to Canadian refugee policy. Indeed, intrinsic to contextual mapping in critical policy studies, as I understand it, is the deliberate and reflexive shifting of researcher perspectives – from broad, contextual orientations to the specificities of the situation or event being studied, and back again, in a sustained attempt to portray the multiplicity of dimensions of a given issue. This was my approach to the writing of the dissertation.

⁶ The three meta-framings are discussed in detail in subsequent Chapters. “Humanitarianism” and “securitization” are no doubt familiar concepts; my contribution to this literature lies in my particular formulation of the concept of “neo-humanitarianism” (Chapter 2).

My contextual mapping addresses key events that affected the Canadian state's policy responses to refugee crises, at two key junctures: (1) the post-World War II response to the plight of Jewish refugees after the Holocaust, and (2) the period from the late 1990s to the decade following the attacks of September 11, 2001. I chose to foreground these two periods of globalized crisis in order to examine the possibility of discursive links between the period of the Holocaust and the period surrounding the attacks on the US on September 11, 2001 – two periods that I consider to be watershed moments in the development of Canadian refugee policy. Not only do I find links between these two periods (discussed in Chapter 5), I demonstrate that the seeds of late twentieth-century securitization of refugee policy were actually sown much earlier, beginning in the Canadian state's responses to European Jewish refugees fleeing the Holocaust. This is not to suggest that other events were unimportant; indeed, I also map in context other refugee-related policy crises in Canada in order to illustrate the ways in which meta-frames were operating, and continue to operate, and some of the contestations that occurred as the state redefined its priorities.

Frame contestations are by definition complex, multi-faceted, multi-dimensional, temporal, and often ephemeral relationships that can have profound consequences. In unpacking the competition and connections among the meta-frames of humanitarianism, neo-humanitarianism, and securitization, I depict a series of shifts in Canadian refugee policy from greater to lesser ambivalence, or more precisely, ambivalent tendencies,⁷ around the figure of the refugee – a figure that now has become regarded primarily as a security threat. In doing so, I demonstrate the role played by contingency in shaping

⁷ “Ambivalence,” which I discuss later in the prologue, and in more detail in Chapter 1, is a central concept in my story of the three shifting meta-frames of refugee policy.

policy responses and identify moments when the discourses of securitization were present within earlier periods. In other words, I show discursive connections among the meta-frames and how, in particular, the neo-humanitarian meta-frame supported the shift to securitization.

I conceive of discourse as the deployment of language – more precisely, perhaps, as semiotic structure or structure of meaning, which constitutes the ‘world’ (in Arendt’s sense), both enabling and constraining action. Actors deploy language in the context of discursive patterns or formations that are not of their own making and that can also be understood as frames. Discursive contestation over framing, moreover, involves “struggles to create and control systems of shared social meanings” (Fischer, et al. 2009, 2). In my approach to contextual mapping and discursive contestations, I emphasize *action* over questions of agency. In this approach, I adopt a particular orientation to the question of action, following Hannah Arendt, who writes:

... the stories, the results of action and speech, reveal an agent,⁸ but this agent is not an author or producer ... The perplexity is that in any series of events that together form a story with a unique meaning we can at best isolate the agent who set the whole process into motion ... we can never point unequivocally to him as the author of its eventual outcome (Arendt 1958, 184-5).

Here context is crucially important because, as Frank Fischer maintains, the meanings of words depend on the “social context” in which they are deployed, particularly in relation to the “positions or arguments against which they are advanced” (Fischer 2003, 73). Moreover, following David Howarth and Steven Griggs (2012, 308-309 and 317-321), I take discourses to be radically contingent, historical and social

⁸ Arendt uses “agent” and “actor” interchangeably. However, her political and philosophical orientation is clearly and consistently toward that of action, not of agency as such. I share this orientation.

constructions. As such, they are “always vulnerable to those political forces excluded in their production, as well as the dislocatory effects of events beyond their control” (Howarth and Griggs 2012, 309). In other words, discourses as the deployment of language are not complete systems, but depend as much on the exclusion as the inclusion of elements. Therefore, discourses are always incomplete and subject to being reframed through frame contestations – through politics.

In my approach to the framing and reframing of discourse, I make a distinction between policy discourse and public discourse⁹ and between the state and government. These are not binary relationships in the sense that they are mutually exclusive pairings of political formations. Rather, they are mutually constituted formations deploying political power and involving policy actors at all levels of development and promulgation of policy.¹⁰ In this dissertation, however, I foreground how official policy discourses that circulate both at the level of elected party politics and within the bureaucracy (in which discursive frames can circulate over longer periods than the typical life-span of a government) shape and frame the nature of contestations about refugee policy. I do this through contextual mappings of various state discourses, and particular government discourses, which are undeniably powerful, in order to develop understanding of the consequences of such framings during periods of so-called refugee crisis. My primary

⁹ Torgerson (2003) draws a distinction between policy discourse and public discourse and indicates as well the interplay between them.

¹⁰ Following Oivind Fuglerud (1997), I conceive of the state in socio-political terms as a multiplicity of manifold and interrelated systems that emerge in different contexts over time, each “working under their own incentives and limitations.” As he explains, “the state comes into being as a structuration within political and public practice; it starts its life as an implicit construct of action and then acquires a life of its own as *res publica*—a public reification” ... it is the “coming together of two entities: on the one hand the *idea* of the State, produced and transformed under specific historical circumstances, and on the other, public and political practices carried out *in the name of* the State” (Fuglerud 1997, 459; author’s italics).

interest is in examining the politics of the frame. Nonetheless, it is my hope that developing an understanding of the nature of political contestations among state representatives and refugee advocacy groups as enactments of the politics of the frame – that is, as frame contestations – could also contribute to the work of refugee advocates.

§II

As I have mentioned, I situate my project within the field of critical policy studies, which has developed since the early 1980s as a challenge to the positivist orientation and democratic legitimacy of conventional approaches. Proponents initially called the new approach “post-positivist” (for example, Torgerson 1986a) and especially opposed the “objectivist” presuppositions of the technocratic language typical of the policy field (Orsini and Smith 2007, 3). Objectivism was countered by an emphasis on the necessarily interpretive character of policy studies, as particularly maintained by Dvora Yanow: “... the human sciences, including policy analysis, yield an interpretation of their subject matter rather than an exact replica of it” (1997, 3). This interpretive character, some maintained, meant not only that policy studies could not be “value-neutral” (Hawkesworth 1988, 54), but also that it was based on the reciprocity of communication and thus was involved in the policy process in a way that was “inherently democratic or communitarian in intent” (Healy 1986, 387; *cf.* Dryzek 1982). Further, interpretive approaches to policy studies enabled, in my view, the ability not only to account for ambivalence, but to understand how ambivalence is a necessary condition for the existence of politics as such.¹¹ However, those concerned to maintain an explicit critical orientation argued that interpretation, although necessary, was not sufficient

¹¹ This is a core theme that I pursue in more detail beginning in Chapter 1.

because it neglected the objective character of power (see, for example, Torgerson 1986b).

In its early development, critical policy studies was significantly influenced by Jürgen Habermas, who had argued against the limitations of an approach to social research that was based strictly on interpretation. In his seminal critique of Gadamer's hermeneutics, Habermas maintained that it was not enough to ask about meaning because that would be to treat the deployment of language simply as a medium of understanding: "Language is also a medium of domination and social power. It serves to legitimate relationships of organized force" (Habermas 1988, 172). For Habermas, a key focus for a critical approach to inquiry was to draw attention to the way such "legitimations do not articulate the power relationships whose institutionalization they make possible" (172). Although the development of critical policy studies has by now been influenced by a large range of theoretical figures besides Habermas – including Michel Foucault – a concern with power, conceived in different ways, remains a key focus for the field (see, for example, Howarth and Griggs, 2012; Hawkesworth, 2012; Torgerson, 1992).

This critical concern with power informs the conceptualization of naming, framing and meta-framing that I advance as a necessary step toward developing some understanding of the institutionalization of power relationships through refugee policy discourses. This conceptualization is based on the important work of Donald Schön (1993, 1983) and of Schön and Martin Rein (1994) in regard to the practices of policy analysts and the resolution of policy controversies. Schön's approach, discussed in more detail in Chapter 1, greatly influenced the development of critical policy studies, but his approach has tended to remain within an interpretive orientation. Schön's insights about

reflection-in-action, and generative metaphors and how they allow us to see things anew, were central to my thinking about reflexivity, my role as a researcher and story-teller, and about the power of metaphors to shape or undermine frames. Also important was work Schön did with Martin Rein, particularly their 1994 book, *Frame Reflection*, and later, on frame-critical policy analysis and frame-reflective policy practice – which opened up the problem of perspectives and inspired my approaches to the concepts of naming, framing, and frame contestations.¹²

My theoretical orientation is one of engagement with the problems of reflection and action. Through Schön, I examine how various policy framings constitute a particular object of administration (in this case, the category of refugee) but, in turn, are not necessarily explicitly examined by actors as ways of thinking and acting. Framing, as Schön argues, depends on implicit and explicit metaphors deployed in the telling of stories. In a policy context, moreover, such metaphors become “generative” metaphors in the sense that they tend to produce both problem definitions and apparently plausible solutions (Schön 1993, 138):

Problem settings are mediated ... by the ‘stories’ people tell about troublesome situations – stories in which they describe what is wrong and what needs fixing. When we examine the problem-setting stories ... it becomes apparent that the framing of problems often depends upon metaphors underlying the stories ... Under the spell of metaphor ... [a] sense of obviousness depends very much on the metaphor remaining tacit. Once we have constructed the metaphor which generates the problem-setting story ... we can spell out the metaphor, elaborate the assumptions that flow from

¹² I am aware of other critical approaches to framing by scholars such as Carol Bacchi (1999, 2009), Mieke Verloo (2005, 2007, 2009), Petra Meier (2009), and Emanuela Lombardo (2009). For purposes of this study, however, my approach was first to situate myself in relation to what I perceived as key *foundational* works associated with the reflexive turn in policy studies and the inauguration of the field of critical policy studies, particularly works by Harold Lasswell, Donald Schön, Martin Rein, and Douglas Torgerson whose contributions included stressing the importance of Hannah Arendt to this field.

it, and examine their appropriateness in the present situation.¹³

In developing such insights in the context of the historical development of naming and framing in Canadian refugee policy, I build on Schön's work but I shift the emphases in order to foreground power relationships at key junctures.¹⁴

I resist the core Foucauldian presupposition that we cannot extricate ourselves from power relations. Put another way, I hold that an analysis of power that denies the possibility of empowerment is inimical to action. Instead, I rely primarily on Schön because he offers the foundation for building a more nuanced understanding of politics as action – in the form of frame contestations – within plurality, or more precisely, in the world as we find it (Arendt 1958). Contextual mapping is necessary for action – by advocacy groups, by governments, by actors as such. Schön focuses on how professionals think in action, which also has implications for advocacy groups. While Foucault is most certainly influential on questions of discourse in the disciplinary society, his conceptualization of power does not allow us explicitly to address the politics of the frame understood as *action*, which is my goal in this project.

The point of my project, then, is to demonstrate the fluid nature of refugee policy frames, by looking at how and when they are developed, and with what effects. I do this in order to isolate the specific tensions and dynamics among and within shifting frame contestations, with an Arendtian orientation – as noted above – toward action as distinct from agency. Yet, merely recognizing the conditions of conflict is not sufficient. Instead,

¹³ This quotation combines material from two sequential paragraphs.

¹⁴ While it is not the focus of this project, I recognize the critical importance of pursuing the question of intentionality (see, for example, Hajer and Laws 2006 and Bacchi 1999, 2009). These and cognate issues may be thematized as part of future research projects.

I accent the continuities, discontinuities, and multiplicities of frames as a means of orienting action in order to make visible various relations of power. This is the value of working in a Schönian register – one that foregrounds frames and how they are manifested – because this approach holds open the possibility of making the necessary distinctions precisely in order to act. Foucault’s interest was not in problems of action. Schön, on the other hand, offers an approach to understanding action in context – that is, to understanding action as a form of innovative practice.¹⁵

§III

Ambivalence arises in Canadian refugee policy because the refugee is typically framed both as a rights-bearing person in need of protection *and* as a potential danger to social order and national security. The generative metaphors that sustain these conflicting framings underpin the naming and framing of refugees as a particular kind of policy problem, thereby pointing to specific solutions that, in turn, set in motion contestations among framings. In this dissertation, I tell a story about the shifts among meta-frames in order to show that politics, in which contingency and ambivalence play important roles, is in part a contestation among frames. The politics of framing is here situated in changing historical contexts in order to examine the nature and substance of discursive shifts.

It is mainly since the period of World War II, when humanitarianism emerged as the dominant framing, that the refugee became a significant burden for the Canadian state. The refugee became a profoundly contradictory figure – one deserving of refuge

¹⁵ My orientation also emerges from the particular understanding of politics as a form of innovative action developed by Arendt in *The Human Condition* (1958).

while at the same time potentially threatening national interests. The Canadian response to Jewish Holocaust refugees is a key event that, as I will show, exhibited ambivalence over the contradictory figure of the refugee. Ambivalence is evident during this period in the deployment of contrary framings that work both to affirm and to deny a particular categorization, and ambivalent tendencies persist throughout most of the twentieth century. The framing of Jewish refugees during this period can be seen as a prelude to the advent of securitization, which takes shape during the 1990s, long before the attacks of September 11, 2001.

The economic crises of the 1970s and later at the end of the Cold War gave rise to a neoliberal orientation to refugee policy in which ambivalence begins to fade (discussed in Chapters 1 and 2). This is the period of neo-humanitarianism, a regime notable for its criminalization of the figure of the refugee and for a growing emphasis on interdiction and deportation as ways of preventing altogether the arrival of refugees in countries such as Canada (Chapter 3). In neo-humanitarianism were sown the seeds of the securitization frame that arises in the 1990s and that flourishes in the aftermath of September 11, 2001 (Chapters 4 and 5). More than a decade after the attacks of September 11, 2001, securitization has become so firmly entrenched in Canada that the ambivalent tendencies characteristic of earlier periods seem to have come to an end (Chapter 6). The figure of the refugee has been fully securitized – framed by the state primarily as a danger to national security and public safety – especially pictured in the form of the terrorist. The dominant framings of the category of refugee, therefore, shifted – in terms of protecting national interests – from that of a burden (humanitarianism); to that of a criminal (neo-humanitarianism) and finally, to that of a terrorist (securitization).

As ambivalence waned in state policy, so too did the influence of many refugee advocates (Chapter 6). The shifts from humanitarianism, to neo-humanitarianism, to securitization were often associated with unexpected events, or contingent moments. The discourses associated with these contingencies tended either to reinforce dominant framings or to destabilize them, thereby opening up the possibility of a significant shift in orientation. After late 2011, the refugee burden was framed by the new majority Conservative government primarily in terms of the protection of national security and public safety in a manner that signaled a culminating moment for securitization. Nonetheless, the continuing efforts of refugee advocates and the potential role of unforeseen contingences mean that a future framing of refugees in a more hospitable register cannot be ruled out. I will address this question further in the Conclusion to the dissertation (Chapter 7).

As I stated at the outset, the contextual mapping that I offer is one that will unfold as a political history. The reference to history is of crucial importance because, as the concept of “contextual mapping” has been developed,¹⁶ there can be no question of arriving at a final, fixed map that could be reduced to a chart or a diagram. Instead, contextual mapping is a particular practice, beginning with an implicit sense that becomes increasingly explicit in the form of an enhanced orientation to practice generally. Conceived initially as a practice for social scientific inquirers, especially policy professionals, contextual mapping “involves a deliberate task of mapping self-in-

¹⁶ In this account of “contextual mapping,” I am following Douglas Torgerson’s explication of this aspect of the work of Harold Lasswell as providing a reflexive, historically oriented approach to understanding what Lasswell refers to as the “self-in-context” (quoted in Torgerson 2006, 19; *cf.* Torgerson 1985; see also Torgerson 2007). Torgerson seeks to correct the reputation of Lasswell as a technocrat by showing that he anticipated much of the orientation of critical policy studies with his proposal for contextual mapping. See also Heinz Eulau (1958) on Lasswell’s “developmental analysis”; and see Harold Lasswell’s *A Pre-View of Policy Sciences* (1971, Chapter 2, 4). On critical policy studies, see fn. 1 above.

context whereby inquirers orient themselves to the overarching context in which they are located – and of which they and their work are a part” (Torgerson 2006, 19). A project of contextual mapping, in this regard, appears as necessary for inquiry, understood as a particular form of practice, but it can also be understood as important for actors as well as inquirers in the policy arena – as important, in fact, as a source for the orientation for political action more generally. For those involved in action as well as inquiry, a project of contextual mapping can thus offer an orientation to practice, but it is one that never comes fully to completion: “Always unfinished, the project develops through one’s continuing effort to come to grips with a vast, complex, and at times bewildering world” (Torgerson, 2005, 20). This unfinished aspect of the project is in part due to the fact that the context is “inexhaustible in its scope and complexity,” but a further complication is that “it is also constantly changing” (Torgerson 2006, 20). In other words, the context to be mapped is historical. More to the point, contextual mapping involves historical models – called “developmental constructs” – that are oriented to both the past and the future. The significance of this point will be discussed in the Conclusion.

§IV

I rely upon both primary and secondary sources. Among the primary sources are Hansard, minutes of Senate Committee meetings, special Senate reports, Parliamentary committee reports, ministerial speeches and press conferences, position papers by refugee advocacy organizations (particularly by the Canadian Council for Refugees), the William Lyon Mackenzie King Diaries, and news media reports. In addition, a wide range of secondary sources was brought to bear from literature in migration studies, refugee studies, history and historiography, Canadian studies, political science, political and

cultural theory, sociology, and postcolonial studies. Specifically, the dissertation builds upon the work of such key scholars as Howard Adelman (1980, 1982, 1994); Irving Abella and Harold Troper (1983/2000); Sedef Arat-Koc (2006); Yasmeen Abu-Laban (1998); Sharryn Aiken (2001, 2002, 2009); Catherine Dauvergne (2003, 2005, 2008); Frank Fischer (1980, 1990, 2003); Cynthia Hardy and Nelson Phillips (1999, 2002); Lisa Jakubowski (1997); Ninette Kelley and Michael Trebilcock (2000); Gerald Kernerman (2007, 2008); Marie Lacroix (2004); Audrey Macklin (2001, 2004); Liisa Malkki (1995a; 1995b, 1996); Alexandra Mann (2009); Peter Nyers (2006); Anna Pratt (2005); Sherene Razack (2000); Anthony H. Richmond (2001); and Reg Whitaker (1991, 1998).

These and other works illustrate the degree to which my approach to contextual mapping is interdisciplinary. I attempted to bring together – to bring into dialogue – different, multi-dimensional, and often discontinuous flows, from different perspectives. I agree with Paula Saukko who posits that the “piecing together” of multiple ways in which “we may perceive this common world” is “best imagined in terms of ‘montage’ or agonistic dialogues” that attend to both the form and content of perspectives while “aiming to bring them into conversation with each other” (Saukko 2003, 196). This piecing together is in part how I understand contextual mapping – attending to both the form and content of perspectives – and it is why my approach is both reflexive and narrative. The research orientation, therefore, entails certain presuppositions about the evidence, the nature of knowledge, the situatedness of the actors engaged in frame contestations, and the situatedness of the knower in relation to the collection and analysis of various forms of data. My orientation is not empiricist. Rather I seek to develop a

critical understanding of the nature and effects of pivotal frame contestations that have shaped Canadian refugee policy in the twentieth and twenty-first centuries.

While I do not engage directly with Foucault for the reasons stated, scholars working in a Foucauldian or neo-Foucauldian register are among those who have influenced my efforts to build on Schön. For example, Nelson Phillips and Cynthia Hardy (2002) conducted a discourse analysis through comparative case studies of refugee determination systems in three countries between 1990 and 1995, looking at three “broad groupings of stakeholders” – government, non-governmental organizations (NGOs), and refugees (2002, 45-6). Working with Foucauldian concepts of power and discursive formations,¹⁷ they identified a “high degree of discursive struggle” around “central concepts” in the refugee systems, noting in particular the contention “between human rights and sovereignty” and “between paternalism and empowerment which produced contradictory views concerning refugee identities” (Phillips and Hardy 2002, 45). Their assessment of three refugee systems was that, far from being objective, clear, and “true”, the processes were “rather more ambiguous and tenuous” (2002, 45). Their particular focus was on understanding the ways in which discursive struggles operated in order to construct refugee *identity* in different contexts (which is not my focus), thereby

¹⁷ A number of other scholars with whom I engage in this study work in a Foucauldian or neo-Foucauldian register (e.g., Engin Isin, Peter Nyers, Gerald Kernerman, Mark Salter). However, while I recognize the potential for adopting a Foucauldian methodological orientation to the study of refugee policy (as many others have already done, including Phillips and Hardy) this is outside the scope of my study. Instead, I want to do something that would not merely echo or attempt to replicate these exemplary works. I am committed to exploring the potential of adopting an more interdisciplinary methodological orientation as one way of making a contribution to the field of *critical policy studies* that draws instead upon one of its most influential and innovative early contributors, Donald Schön, with a focus on the potential for action.

influencing the organizational practices of each group of stakeholders.¹⁸ Despite its different orientation, their project can be understood to coincide with the concerns of this dissertation in that their work is implicitly about framing.

In contrast, another scholar whose work is a distinct counterpoint to my development of the three meta-frames is J.A. Sandy Irvine. In his recent study¹⁹ of Canadian refugee policy, Irvine examines the role of international bureaucratic networks in domestic “paradigm change” (Irvine 2011, 14).²⁰ He identifies such changes in regard to two significant periods of policy development (focusing on the period from the mid-1970s to the summer of 2001) and claims that a major shift occurred during this period – from a “protection paradigm” to a “security-control paradigm” (2011, 6). In doing so, Irvine draws on Stuart Hall’s notion of “policy paradigms” (Hall 1993),²¹ which in turn is based on Kuhn’s work on “scientific revolutions” that advanced a conceptualization of “paradigm change” in the practices of a discernible and discreet scientific “community”

¹⁸ According to Phillips and Hardy, the “interplay between text, discourse, and context helps us to understand not only how an individual comes to be a refugee, but also how the broader ‘reality’ of refugee policy and refugee determination procedures is constructed and experienced” (2002, 5).

¹⁹ Irvine’s original report was presented after the conceptual scheme of this dissertation was developed. Subsequently his report was published in 2012 as part of a collection of essays on policy paradigms (Irvine 2011, 2012).

²⁰ It is useful, according to Rodman (1980) to distinguish among three forms of paradigm: one an “interdisciplinary paradigm”; another, a “disciplinary paradigm”; and (what is relevant here) a “cultural paradigm” or “dominant social paradigm” (that includes “basic beliefs, values, political ideals, and institutional practices of a cultural epoch”) (Rodman 1980, 75, n. 1). Irvine’s paradigms or “ideal types” (2011, 6) most closely resemble the latter.

²¹ In his use of Kuhn, Hall explicitly conceives of a policy paradigm as an “interpretive frame” (1993, 277) for the formulation and implementation of a policy. Hall’s paradigm includes normative and cognitive elements and encompasses ideas about policy goals as well as theories about what constitutes the material world and about preferable policy instruments and practices. For Hall, when change “encompasses shifts in the locus of authority over policy” (1993, 280), the dominant ideas about the nature of a policy problem are altered. This shift in the ideational framework is what Hall calls “paradigm change.”

(Kuhn 1970, 91-94). Irvine further characterizes as “ideal types” (2011, 6) the two distinct and oppositional paradigms that he identifies.

Irvine maintains that there was a shared understanding within the community of refugee policy bureaucrats and elected officials who participated in the study that a paradigm change had indeed taken place. Further, he argues that the paradigm change occurred because of the significant role played by global government networks in influencing domestic policy norms and practices and socializing the participating bureaucrats to changes in international norms. Irvine concludes that “key domestic officials interpret the domestic environment in light of ideational commitments obtained in the international realm,” a point that suggests that transnationalism can provoke paradigm change “where it otherwise might not have occurred” (Irvine 2011, 14).

In contrast with Irvine’s, my approach, through a contextual mapping of the emergence and effects of meta-frames, offers a more concrete explication of the processes of change and of contestation. Irvine does not, moreover, address the possibility that frame contestations may involve obfuscation or appropriation of language and core concepts in the interests of attaining preferred outcomes. As I conceive them, shifting meta-frames differ significantly from Irvine’s “paradigms shifts,” and key aspects of my analysis can be clarified by way of contrast with Irvine’s.

As noted before, I argue that there have been three (rather than two, as Irvine argues) discernible periods of Canadian refugee policy, broadly characterized here in terms of the meta-frames humanitarianism (in which human rights ideals tended to dominate official discourses), neo-humanitarianism (a neoliberal orientation that ushered in a criminalization of the refugee), and securitization (that framed the refugee almost

exclusively in terms of potential danger to national security and public safety). Frame contestations take place in the context of such overarching meta-frames, which tend to dominate discourse, as actors struggle for control over shared meanings (*cf.* Fischer *et al* 2009, 1-2; Fischer 2003, Ch. 3). Unlike Irvine's paradigms, my conceptualization of meta-frames is that they are mutually constitutive and overlapping, and each contains elements of the others.

The three meta-frames in my study are not posited as "ideal types." To do so would preclude the possibility of ambivalence and deny the relevance of contingency²² – two characteristics of the politics of the frame that, I argue, play a role in the development of Canadian refugee policy. The "ideal type" was conceived by Max Weber in the sense of a "one-sided *accentuation*" that forms "a unified analytical construct": "In its conceptual purity, this mental construct ... cannot be found empirically anywhere in reality. It is a *utopia*" (Weber 1949/1968, 90; emphasis in original). The problem with ideal types is thus that they do not leave room for ambivalence. In my analysis, meta-frames are meant to capture the dynamics of a concrete context; they represent tendencies of inclusion and exclusion and do not emerge in their entirety as new "paradigms" that entirely supplant their excluded predecessors.

While the presuppositions underpinning one meta-frame may coalesce into a dominant framing of state refugee policy during a particular period, the origins and ambivalence of the dominant framing can be linked to earlier meta-frames. Discourses overlap and are often contradictory in their categorization of refugees. Ambivalence

²² My approach to "contingency" in this study focuses on the role of unexpected events. Nonetheless, I also hold the view that contingency more radically understood is always present in frame contestations. As Howarth and Griggs explain, "... even the most sedimented practices, objects, and categories of policy making are ambiguous and radically contingent entities, whose meaning can be articulated in various ways by differently positioned social actors" (2012, 306-7).

provides opportunities for political contestations and is present in all three meta-framings. Even if the role of ambivalence is diminished and appears to come to an end – as I argue with regard to the present securitization meta-frame – this outcome depends upon the state of contestations and is not something that is presupposed conceptually or that is taken to be necessarily permanent.

Meta-frames are complex and manifold; they emerge neither in policy vacuums, nor solely in the context of the highly specialized activities of a discrete community of policy bureaucrats interacting with their counterparts in international meetings (see Chapter 1, 1.1). Contingencies occur, and while frame contestations play out, policy ambivalence provides opportunities for different outcomes to occur. The greater the ambivalence, the greater are the opportunities to challenge and alter the dominant framings. As ambivalence dissipates and framings become more firmly entrenched, opportunities to dislodge an entrenched meta-framing become rare. For these reasons, I explore the question of ambivalence at particular junctures. Especially after September 11, 2001, ambivalence wanes in official characterizations of refugee policy proposals. As ambivalence wanes, opportunities for frame contestation diminish and the framings associated with national security and public safety trump most other ways of framing the category of refugee. In such a climate, the capacity of advocates to shift refugee policy into a more hospitable register is very limited.

Always at play in Canadian refugee policy is tension between the altruistic urges of hospitality toward strangers in need and the demands of state sovereignty, social cohesion, public safety, and resource allocation. Hospitality and humanitarian concerns tend to dominate the responses by non-governmental organizations, such as faith-based

groups, to the plight of refugees. For example, in the 1960s and early 1970s, the United Church of Canada sponsored many US war resisters seeking refuge in Canada and continued a massive sponsorship program to bring many thousands of South Vietnamese refugees into the country. These actions influenced immigration and refugee policy and resulted in the state's easing certain restrictions on sponsorship (Hagan 2001). In contrast, the state's approach to refugee questions tends to be manifested in terms of sovereignty-as-border-control. In this mode, the state has protected sovereignty by making decisions about who gets in and who gains protected-refugee status on the basis of criteria such as race, ethnicity, religion, and the absorptive capacity of the economy and the availability of public resources to enable the integration of newcomers. When the implied solution to a declared refugee crisis is to find ways to admit only those deemed to be authentic refugees, the deck is already stacked against admission of any undocumented refugees who arrive by questionable means. In such situations, there is a significantly diminished role for presuppositions of hospitality in the state's framing of the refugee.

There are a number of activist movements (e.g., the No-Border Network, the No One is Illegal movement, and the Sans-Papiers of France) that challenge the fundamental precepts of sovereignty and the ways in which the concept of refugee is mobilized in the interests of powerful countries. In my view, asserting, for example, that borders among countries ought not to exist is a provocative act that disrupts liberal democratic discourses of protection and of citizenship, and such disruptions can help to foreground the nature of the suffering of those who transgress liberal edifices, and open up opportunities for thinking differently about what counts as a refugee. Indeed, such contestations and

transgressions open up the possibility for new approaches by calling into question the existence of the category of refugee itself.

Contingency and state power are interrelated; indeed, contingency in the form of unexpected or unwanted emergence of foreigners on state boundaries both exposes the limits of state power and catalyzes its expansion. While refugee policies evolved through *ad hoc* responses and discretionary powers exercised by state officials, it was not until 1978 that the refugee became a legal entity in the context of Canadian immigration policy. From that time forward, generally, the goal of the state has been to limit the numbers of refugees who could reach the Canadian borders. In response to the pressures of mass movements of refugees internationally, state powers were expanded in order to enforce increasingly restrictive policies, at home and abroad. Interdiction, detainment, and deportation gained saliency in the second half of the twentieth century as the focus shifted from refugee protection to protecting borders.

The problem for the state was that unwanted and unexpected refugee arrivals threatened the stability and the logic of the refugee policy regime by highlighting its weaknesses. Increasing state powers typically involved shifting the framing of the refugee from that of a person who both needs and is entitled to protection to that of a potential risk to social cohesion, public safety, and eventually, to global and national security. Yet the state, of course, was never able to prevent all such arrivals and something always escaped the state's control. The difficulties, however, not only highlighted state limitations on its own terms, but provided the state with legitimacy as it expanded its enforcement powers.

By tracking the role of contingency at various times during the periods in which each of the three meta-frames tended to dominate, we can see how Canadian refugee policy became more closely linked to crime prevention than to refugee protection – refugee policy increasingly focused on policing the borders in order to prevent any unwanted arrivals. In this sense, such preventive policy resonates with what Grégoire Chamayou has called “preventive police” which is always – indeed necessarily – vulnerable to being destabilized by contingency. Chamayou explains this concept in these striking terms:

If police logic tends ideally toward an unlimited control, in reality it always encounters contingencies, unforeseen circumstances, which always trips up its will to control. The unlimited limit itself therefore finds a limit, not by reason of an internal principle, but due to an external chance – which itself ends up nevertheless appearing as necessary insofar as a finite power cannot limit an infinite object, and because in this task, its hold will always be punctuated by cracks. There will always be conditions that escape it and that it cannot foresee. If preventative police is animated by a tendency toward infinite expansion, this tendency is no less necessarily halted at a certain point by the contingency of what escapes it (2013).²³

Contingencies can and do set the scene for the emergence of new meta-framings. Such moments can both entrench and destabilize dominant framings; however, in moments of contingency, it also becomes possible to make different choices, to begin something anew. I do not posit the shift in meta-framing from the perspective of a single, discrete community at a given juncture in the policy process. Rather, the concept of meta-frames allows for the tracing of a variety of discursive influences that operate

²³ For a compelling discussion of contingency, see the essay by Grégoire Chamayou entitled, “Fichte’s Passport: a Philosophy of the Police,” which was first prepared for a research colloquium at the Max-Planck-Institut für Wissenschaftsgeschichte in Berlin in 2010. The English translation by Kieran Aarons appears in the June 2013 issue of the online journal *Theory & Event*.

simultaneously at the international and national levels. My approach to understanding actors in shifting contexts is meant to provide for a more concrete discussion of the ways in which the framings of humanitarianism,²⁴ neo-humanitarianism, and securitization have affected Canadian refugee policy.

²⁴ A central normative presupposition orienting my approach is that refugees deserve refuge. In regard to this presupposition, humanitarianism is problematic. An extended critique of humanitarianism is not part of this project. Nonetheless, I share with Liisa Malkki (1995a, 1995b, 1996) a concern about the politics of humanitarianism, and a recognition that humanitarianism can be dehumanizing.

CHAPTER 1

REFUGEES AND THE POLITICS OF FRAMING

1.1 Framing and Meta-frames

Framing is to adopt a particular orientation, whether implicitly or explicitly, which makes sense of a situation. More precisely, framing is understood as the coalescing of “ordering devices” that make sense of a situation by foregrounding aspects of an issue while at the same time shifting attention away from others (Paterson and Marshall 2011, 85). Elements of a situation (events, actors, relationships, and so on) are named in order to render them consistently recognizable in context, and to ascribe coherent relationships among the elements, within the framing. Naming and framing are mutually-related practices that together are constituents of discourse. Discourse is understood as the deployment of language through various textual forms. Through discourse, we say what we see by naming and framing the elements of the situation as we find it in the world. Naming and framing together constitute conditions of possibility for action.¹

Meta-frames can be characterized as overarching frames constituted as persistent, discernible collections of ordering devices of implicit and explicit inclusion and exclusion. Indeed, as Michael Dillon argues, “the constitution of any social group or political community is a matter of the exercise of inclusions and exclusions” (Dillon

¹ I follow Hannah Arendt in regard to action (1958) and would thus take naming and framing to be intrinsic to politics.

1998, 32). Meta-frames exert powerful influence on the ways in which policy discourses arise and circulate, and in turn can either reinforce or destabilize localized framings. In this study, meta-frames are examined both as objects of analysis and the means by which I organize and examine the nature of socially and historically embedded political contestations in the development of Canadian refugee policy.

Meta-frames are mutually constitutive and can operate simultaneously, often overlapping in chronological terms, while they nonetheless remain discernible in the ways that they influence the practices of refugee policy regimes. As I will illustrate, meta-frames are not static, they exhibit varying degrees of instability: one meta-frame will come to dominate the broad conditions under which certain framings are mobilized at the national and international levels, while other framings fade into the background. While they exhibit paradigmatic characteristics, they are not paradigms. Instability, or shifting, originates at the level of the core presuppositions underpinning meta-frames (see Figure 1.7.1 below) and eventually becomes apparent at the level of policy discourses and practices. While core presuppositions will remain relatively stable for extended periods, at the level of practices (for example by policy officials), it is possible to see how meta-frames can be simultaneously both entrenched and shifting in relation to contingencies, particularly during the periods when ambivalence is most evident in the policy discourses.

The concept of a meta-frame is central to my development of a contextual map of Canadian refugee policy that is relevant to both inquirers and actors in refugee politics in Canada. I argue that, beginning with the inter-war efforts of the League of Nations and culminating in the decade following the attacks on the US of September 11, 2001, three

mutually constitutive meta-frames emerged and tended to dominate approaches to refugee policy in Canada during particular periods, namely: humanitarianism, neo-humanitarianism, and securitization. The purpose of this chapter is both to establish my methodological orientation and to outline how I deploy the concepts of naming, framing, ambivalence, and contingency in connection with the political history of contemporary Canadian refugee politics. I do this by drawing upon the work of Donald Schön and Martin Rein, while at the same time showing the limitations of their approach in addressing the politics of the frame.

My goal in this chapter is twofold: first, to set out the foundational conceptualizations for the research study, beginning with a discussion of the politics of frames and meta-frames; and second, to set out the basis for my explanation of how naming and framing influence the nature of political contestations about Canadian refugee policy. I also explain why I undertook a contextual mapping that included situating frames and meta-frames in socio-political contexts with respect to refugee policy-making. Further, I explain why ambivalence and contingency, and the relationship between these concepts, are central to the contextual mapping. I conclude the chapter with summary of the central argument of the dissertation, which is told as a story of the three meta-frames.

1.2 Mapping the Three Meta-frames

Many different and often contradictory framings of the category of refugee can circulate simultaneously, at the level of international law as well as in national policy contexts. For example, at the international level, the refugee is framed in legal terms as a victim deserving of rights and protection under the 1951 Convention on the Status of

Refugees, while at the level of contemporary domestic political life, the refugee is often framed as a threat to national security and social cohesion. Under the Convention, the refugee is named as a legal entity, one having recognized rights, including the right to protection by the receiving country. In the context of a national security framing, the refugee is renamed in various ways – for example, as a dangerous individual who embodies criminal, even terrorist, intentions and potentialities.

My concept of meta-frame is cognate with the concept of “metacultural frame” in Schön and Rein (1994, 33-34). However, my emphasis is not on cultural so much as on political dimensions of framing – while the meta-frame is analogous to Schön and Rein’s metacultural frame, it could be characterized as a metapolitical frame. What tends to be included in a meta-frame comprised of political dimensions does not constitute a completed whole but remains subject to challenge and contention by elements that are excluded (Howarth and Griggs 2012, 308-309). For example, as I will show, when the neo-humanitarian meta-frame emerged in the 1980s, following the emergence of neoliberal doctrines of free-trade and the erosion of social welfare programs, it undermined the more egalitarian approach to refugee policy that characterized the earlier period dominated by the humanitarian meta-frame (discussed in Chapter 2, and in subsequent chapters). When this happened, refugee advocacy groups challenged the neo-humanitarian framing of the refugee as a potential criminal on the grounds that such a framing excluded an emphasis on the refugee as both needing and deserving of asylum and protection. What ensued were frame contestations at the level of the core presuppositions that both shaped and were shaped by the dominant meta-framing. These frame contestations are what I call the politics of the frame.

Periodization of the meta-frames is problematic because, as I will demonstrate, they were not discreet, mutually exclusive, or incommensurable formations. However, broadly speaking, for purposes of this study, the humanitarian meta-frame emerged with the advent of League of Nations in 1920, and dominated Canadian policy discourses until the global financial crisis of the early 1970s. The core presupposition of the humanitarian meta-frame was that refugees as collectivities and as individuals were both in need and deserving of protection. In 1951, when the legal category of refugee was enshrined in international law as a particular kind of universalized individual (e.g., see 2.2, pp. 36, 43; 2.5.2, p. 52), the core presupposition encompassed legal commitments to the newly constituted Convention refugee as an individual with an acknowledged legal right to protection, and state practices evolved accordingly.

In the late 1970s, neoliberal economic imperatives began to dominate western states' approaches to the unregulated movements of people across borders. As this happened, the humanitarian meta-frame shifted at the level of core presuppositions, and what emerged in the 1980s is what I call the neo-humanitarian meta-frame. This shift was bolstered by a change from the common sense notion of refugees as collectivities of displaced persons to a more narrow way of framing refugees as individuals, according to the Convention definition. Consistent with neoliberal ideology, the individual refugee then became the focus of a variety of control mechanisms. The core presupposition of this emergent meta-frame was that the individual refugee was both risky and unwelcome, and represented a potential criminal threat to public safety and social cohesion. When the neo-humanitarian meta-frame dominated policy practices, states such as Canada nonetheless maintained their official commitment to adhering to the provisions of the

Convention. But in terms of the practices of border protection, the refugee was named and framed mainly in terms of representing a potential criminal threat. The result was that, as goods and services moved more freely across sovereign boundaries, it became more difficult for certain classes of persons to do so (discussed in Chapters 2 and 3).

The exclusionary practices of the period when the neo-humanitarian meta-frame dominated policy discourses and practices had by the end of the 1980s laid the foundation for the third meta-framing, securitization, which arose in the early 1990s, and became entrenched in the early twenty-first century, especially following September 11, 2001 (discussed in Chapters 4, 5 and 6). The core presupposition of the securitization meta-frame was that particular individual refugees and particular groups of refugees (depending on their points of origin) were extremely risky; they were often named as potential terrorists, and as such constituted a threat to both national and international security. As I will show, the securitization meta-frame came to dominate refugee policy approaches in Canada long before the attacks on the US of September 11, 2001. Since that crisis, as we will see, securitization has become deeply entrenched.

As the argument unfolds, I will also show how contestations occurred at the level of the core presuppositions among and within the three meta-frames in both national and international contexts. These contestations occurred throughout the twentieth and early twenty-first centuries, between national and transnational refugee advocacy and support organizations (in particular, the UN High Commissioner for Refugees) and western states seeking to protect their sovereign borders from unwanted migration. At the national level, frame contestations played out between the Canadian state and refugee advocates (especially the Canadian Council for Refugees). Further, the three meta-frames were

continuously being adapted and mobilized at the national level by refugee-receiving, predominantly western countries such as Canada that wanted to control refugee movements. Meta-frames, then, had both national and international significance for refugee policy practices.

Each discursive shift was influenced by unexpected events, which I examine as contingent moments, or contingencies. In some cases, contingencies affected the Canadian approach to refugee policy by providing opportunities to implement new restrictions on the admission of refugees. Restrictive policies that prevented uninvited arrivals and admitted refugees only under exceptional circumstances existed during the periods dominated by each of the three meta-frames. However, by the end of the twentieth century, Canadian refugee policy had shifted in response to contingencies from a policy milieu largely focused on humanitarian concerns, as well as economic development, to a milieu focused on protecting national security. At least ten years before the attacks of September 11, 2001, Canadian refugee policy, and the nature of the policy problem, had changed from an official humanitarian orientation to an orientation that was largely concerned with security and the prevention of terrorism.

Increasingly, uninvited foreign others were pictured as potential threats to national security. The framing of the refugee as a threat to security, associated with the decade before September 11, 2001, was rooted in earlier framings associated with humanitarianism and neo-humanitarianism. I argue that policy changes made after the attack of September 11, 2001, often heralded as emblematic of the beginning of a new era in Canadian immigration and refugee policy, were actually a continuation of earlier responses by the Canadian state to mass movements of certain migrants – responses that

resonated with approaches taken during other periods of crisis, such as during the Holocaust.

1.3 The Politics of the Frame

Framing is a complex feature of discourse, which is conceived here as the deployment of language as found in various textual forms (e.g., public speeches, official policy statements, legal and legislative forms, print media, specialized commercial products, cartoons, film, social media, television, and so on). In advancing arguments and narratives, a person may use multiple, even conflicting frames, but will in any case do so in the context of frames prevailing in a larger social and historical context. The politics of the frame typically occurs in such a larger context, so that, from among an array of different framings, some stand out and can be identified as particularly powerful in shaping discourses, actions, and institutions in an enduring way. Thus, as suggested above, it is possible to identify not simply three frames, but three shifting, mutually constitutive, and interrelated meta-frames in Canadian refugee policy.

In developing my approach to framing, I build upon the approach taken by Schön and Rein (1994), which focuses on framing in a policy context, particularly on the way actors construct problems in complex organizations and institutions (1994, 28-34). By their conception, frames are unavoidable, usually tacit, “structures of belief, perception and appreciation” (1994, 28). They write:

There is no way of perceiving and making sense of social reality except through a frame, for the very task of making sense of complex, information-rich situations requires an operation of selectivity and organization, which is what ‘framing’ means (Schön and Rein 1994, 30).

This conceptualization of framing as “an operation of selectivity and organization” underscores the key point that frames are inescapable. Frames and meta-frames, moreover, typically are not “free-floating.” As Schön and Rein explain, they are “grounded in the institutions that sponsor them” (1994, 29). Neither, however, are frames necessarily fixed or enduring. They may become entrenched, but they are also subject to change. Either may happen through ongoing contestations in public and policy discourse among “institutional actors who sponsor conflicting frames” (Ibid). Put another way, unanticipated or emergent events – or contingencies – may also arise in ways that reinforce dominant frames or that tend to destabilize them, opening the possibility of a significant shift in orientation.

Central to Schön and Rein’s understanding of framing, moreover, is what they term a “complementary process of naming and framing” (1994, 26). Naming, they argue, selects and designates particular elements from an otherwise extremely complex and multi-layered situation. For example, assigning the name *illegal alien* to a refugee establishes the entity in relation to other forms of presumably legal migration and sets it apart for purposes of specialized policy responses. Framing focuses attention on a few salient features and relations organized into a coherent, meaningful pattern that shapes understanding and influences conduct. As I will show, framing the refugee in terms of protection of national security, rather than in terms of providing refuge, legitimizes various state practices designed to prevent the refugee from reaching borders or attaining Convention refugee status.

Following Rein and Schön, I also treat frames as narrative devices that “guide both analysis and action in practical situations” (Rein and Schön 1996, 89). Frames

typically rely on a “unifying metaphor that enables the frame holder to make a graceful normative leap from is to ought” (Ibid). The authors thus treat narrative frames as containing “generative metaphors” that “underlie the particular problem-setting stories one finds in any particular policy controversy” (Ibid). Further, as Rein and Schön demonstrate, the strength of frames understood in terms of narratives is that the “story line is more capable of incorporating and adapting to changing events” – and this approach supports my conviction that a narrative approach to analyzing the framing of Canadian refugee policy and the figure of the refugee is best suited to understanding developments in terms of story lines. The following example illustrates the efficacy of adopting a “story line” approach to analyzing frames.

In their 1994 seminal work, *Frame Reflection*, Schön and Rein examine the issue of urban housing and what came to be called “urban renewal” in post-World War II Boston (1994, 22-27). Very different policy approaches were taken based on different framings of the “problem.” On the one hand, the crumbling urban communities of inner city Boston were named by city and state officials as “blighted slums,” as though “possessed of a congenital disease.” To those holding this view, such areas of the city ought to be completely torn down and replaced by implementing a “balanced, integrated plan” with homes, schools, parks, streets, and shopping centers. To others, however, these areas were understood as socially constituted, historically situated, communities that embodied long-standing kinship and relationships, together with shared patterns of coping with the effects of extreme poverty.

Named as communities, they were then framed by advocates in much more complex terms – they became more than the sum of their decaying parts. On this view,

such locales were vibrant communities in which people had access to informal as well as formal services that “evoked feelings of comfort and belonging” (Schön and Rein 1994, 24). To officials holding this view, the policy solution was to draw on the strengths of the community in order to reinforce and rehabilitate the structures and services, not to tear them down and replace the area with a modern, new development. As Schön and Rein explain, urban renewal in Boston thus involved not only two distinct framings of the policy problem, but also different “solutions” that flowed from the generative metaphors of different framings: the image of decayed urban housing suggested a disease that must be cured; in contrast, the image of the threatened disruption of a natural community suggested that it must be protected or restored.

Each framing – or more precisely in this context, what I call meta-framing – dominated a particular period of housing policy development in American cities beginning in the mid-twentieth century. The blight-and-renewal framing tended to dominate in the early 1950s. In the 1960s and 1970s, as resistance grew to this bleak approach to low-income community development, urban renewal policy-making shifted to an approach that included a high degree of community involvement in the planning, implementation and evaluation of the changes to the urban environment (Schön and Rein 1994, 26). There were, in effect, two different stories, each of which depended on a different frame. As Schön and Rein explain, each story was told from very different perspectives on what constituted the social reality of these low-income communities.²

² In the Canadian context, the forced displacement of the community of Africville in Halifax, Nova Scotia, in the late 1960s also illustrates the effects of conflicting framings of the problem of urban renewal during the early post-World War II years. To the city residents, Africville was a “slum” and constituted a significant blight on the community’s waterfront. Liberal-welfare planners, moreover, wanted to save Africville residents from extreme conditions of poverty and racial segregation. Ultimately, the community was razed and its members dispersed into various social housing programs, with no regard to the sense of

Each story set out the nature and substance of the problem in ways that pointed to different and conflicting sets of solutions. In each case, the framing of the policy problem rested on different and contradictory presuppositions.

In the first instance, it was assumed that the residents of the community had nothing to contribute to the solution, that they had no ties in their decaying community, and that they would welcome relocation. In the second instance, the policy-makers saw richness in the community as it was and assumed that the residents wanted to retain aspects of their community life. To these officials, the community's residents had a stake preserving what gave it meaning and could offer valuable insights as active participants in the policy processes. Each of these two approaches involved what Schön and Rein call "naming and framing." This process does not merely present "data" to support the development of policy proposals to solve a problem. Rather, the move from "facts" to "values" is accomplished in a way that appears "graceful, compelling, even obvious" (1994, 26). The underlying, often tacit structures of perception and belief that constitute the frames form the basis for problems and solutions to, in effect, be posed together. However, while Schön and Rein's account testifies to the power of naming and framing, their approach is not in itself adequate to an understanding of the *politics* of the frame.

Schön and Rein's main concern is to address the question of how to resolve what appear to be intractable policy controversies. Their claim is that, when such controversies persist, they are the result of contradictory, often tacit, framings that have shaped the opposing sides of the issue. Accordingly, they seek to develop practical strategies for reframing policy problems through a process they call "frame reflection."

community, strong kinship ties, and a long, shared history of racial segregation and struggle. See, for example, Clairmont and Magill, 1999 and Africville Genealogical Society, 1992.

Frame reflection entails an iterative approach to reflexive articulation and reframing within a managed process where actors examine the presuppositions, perceptions, and values that each brings to their version of the story. Through this process, Schön and Rein argue, it is possible to find pragmatic solutions to otherwise insoluble policy conflicts. In other words, simply appealing to the “facts” as each actor understands and portrays them will not work; what is required is a process of uncovering the frames at work, and through this activity, reframing the situation in a way that allows for cooperation and compromise. For Schön and Rein, this process of reflection can release us from the hold of implicit frames so that we can find more creative solutions to an otherwise controversial and entrenched problem. The process of reframing can lead, in their view, to a way of addressing a problem that none of the actors could have perceived otherwise. Implicit in their approach is the belief that by uncovering core presuppositions, the differences can then be attenuated by designing new practices. Yet, core presuppositions are not so easily dislodged.

My concern is to make explicit the implications of the framings, by mapping the contexts in which they arise – the socio-political contexts of the framings. I argue that a more robust understanding of the politics of framing is needed – one that builds on Schön and Rein’s conceptualizations of naming and framing, but goes further to address the ambivalence between implicit and explicit framings. Politics is in part about public contestations among frames and about attempts to render explicit frames implicit; that is, to embed them culturally and politically so that they become implicit and unquestioned.

For example, a rhetorical gambit such as the so-called “war on terror”³ tends to reframe political and social situations such that an explicit framing becomes, over time, implicit in policy practices – and therefore no longer subject to serious criticism or broad resistance. Framings such as these become locked in place as unquestioned foundations of discourse, making ambiguities and ambivalent tendencies no longer readily apparent. Accordingly, the method that I deploy in order to tell a story of the three meta-frames that shaped Canadian refugee policy is to examine frames in a way that renders the implicit explicit.

Indeed, when a meta-frame is fixed in place – when it has become the dominant explicit or implicit frame, contestations diminish or cease. Put another way, characteristic of the emergence and dominance of a meta-frame such as securitization is the waning of political contestations about the implicit and explicit meanings and effects of such a framing. My approach to understanding the politics of framing in refugee policy is to carry out a sustained, multi-perspective, contextual mapping of the interplay of power relations in both public and policy discourses, in context, over time – in this case, within and among the meta-frames of humanitarianism, neo-humanitarianism, and securitization.

The work of Schön and Rein attests to the importance of metaphor in the politics of the frame. The importance of metaphor is further suggested by George Lakoff and Mark Johnson, who argue that there is a power in metaphors “to create new reality”:

New metaphors have the power to create a new reality. ...
If a new metaphor enters the conceptual system that we
base our actions on, it will alter that conceptual system and

³ In 2001, a few weeks after the September 2001 attacks on the US, then President George W. Bush declared a worldwide and open-ended “war on terror” (National Security Strategy of the United States of America, September 17, 2002).

the perceptions and actions that the system gives rise to. Much of cultural change arises from the introduction of new metaphorical concepts and the loss of old ones. For example, the Westernization of cultures throughout the world is partly a matter of introducing the *time is money* metaphor into those cultures (Lakoff and Johnson 1980, 131; authors' emphasis).

The power of metaphor is evident, in the context of my analysis, in the shift from meta-frame to another. We can readily see how this power operates in regard to refugee politics. In the humanitarian meta-frame, refugees are strangers in need, deserving of protection and hospitality. Practices of refugee protection involve providing, for example, safe havens and resettlement. In the later securitization meta-frame, the metaphor that the refugee is a terrorist alters the conceptual system to such an extent that the hospitality and the duty to care underpinning humanitarianism all but disappear, replaced by the terms of dominant state practices of such as interdiction, detention, and deportation.

In a provocative 1995 study on the “mystification of liberals concerning the electoral successes of conservatives,” Lakoff continues to focus on the power of metaphors in a way that allows us to understand how naming and framing together carry a metaphorical power. His position is that we think and communicate through largely tacit metaphors that give concreteness to social and political reasoning and rhetoric. For example, Lakoff argues that liberals are unable to understand the logic of conservatism that purports to take moral positions, particularly with respect to “family values” (1995, 177-8). According to Lakoff, a pivotal move by conservatives was to name “family values” as inherent to a conservative (not liberal) world view. “Family values” are, Lakoff maintains, equally important to liberals, but conservatism co-opted this framing in

such a way that the phrase became code for a conservative moral position and, by extension, a particular moral community of patriotic conservatives. By implication, then, any others are neither moral nor patriotic. Lakoff's point is, in effect, that unless and until the liberals fully grasp the unifying frame that makes sense out of conservative positions and perspectives, they will not be able to respond to, or reverse, the effects of such framings.

In sum, frames are an inescapable feature of the use of language in any context, including political contestations about the category of refugee. Naming and framing together are part of the process of specifying a particular policy problem and, thereby pointing to the "obvious" solutions (Schön and Rein 1994). Politics, as I have argued, is in part about frame contestations and efforts to reframe political situations so that an explicit framing becomes implicit and thus largely immune to further contestation. As Lakoff and Johnson argue, "In a culture where the myth of objectivism is very much alive and truth is always absolute truth, the people who get to impose their metaphors on the culture get to define what we consider to be true ..." (1980, 134). The capacity to dominate processes of naming and framing provides the framers considerable metaphorical power, through which the logic of problem identification and resolution – as in responding to a refugee crisis – is reshaped in terms of the framers' interests and perspectives. Therefore, understanding the politics of the frame is important for all parties involved in refugee policy and politics.

1.4 Refugees and the Politics of the Frame

Following Schön and Rein’s account of naming and framing, I suggest that, to understand the significance of framing in refugee policy, we need to focus attention on the very name “refugee.” I will ask what counts as a refugee⁴ and explore this question in detail (Chapter 2). I begin here with an overview of my response to this question: At the level of international law, the refugee is framed as a legal entity under the 1951 UN Convention in the form of a *universalized individual* having legitimate reasons for flight and need for refuge while receiving states are obliged to provide protection. Yet, other specific framings of the refugee are deployed in domestic policy – for example, the refugee is framed as a potential threat to national security – in ways that bolster the legitimacy of a state with respect to practices of interdiction, detention, and deportation. The refugee has also been framed as a market-oriented commodity in the context of humanitarian fund-raising efforts, or even to sell coffee-table books designed to raise awareness of the plight of refugees. These and many other framings of the refugee typically share one characteristic – they all serve to reinforce the distinction between *us* and *them*, thereby bolstering practices designed to protect borders by controlling refugee movements.

A particular framing can become so dominant that it displaces all others. A recent example was the US administration’s framing following the attacks of September 11, 2001, of all domestic and foreign policy in the context of the “war on terror.” As Vice

⁴ “What” in this context is used to emphasize the impersonal nature of administrative language, as indicated in Max Weber’s claim that the watchword of bureaucracy is the “Dominance of a spirit of formalistic impersonality ... without regard to personal considerations” (Weber 1978, I, 225-6). In official discourses, the refugee is not a person but a particular collective of attributes, as is the case more generally with so-called “target” populations. For an excellent discussion of Weber’s theory of the bureaucratic form, see Paul du Gay, 2011.)

President Dick Cheney said a few weeks after the attacks on September 11, 2001, “[h]omeland security is not a temporary measure just to meet one crisis. Many of the steps we have now been forced to take will become permanent in American life ... I think of it as the new normalcy” (Cheney 2001, 2). The effect of this framing of US policy was to disrupt and dislodge any other possible policy approach to the question of refugees, adding weight and legitimacy to the significantly more restrictive policies governing the movements of certain persons within or across the US borders. In such a political context, with Americans in a state of extreme anxiety after the attacks, there was little or no serious contestation about this reframing of US policy. This reframing, as I will show, had significant influence on Canadian refugee and border control policies during the period following the attacks.

Canada was not attacked directly on September 2001, so the political context was different. In Canada, in the post-September 11 period, there was a change in Cabinet portfolios to reorient policy in the interests of protecting national security and addressing specific US concerns about Canadian immigration and refugee policies. Resistance to the new security legislation that increased ministerial powers was more evident in Canada than in the US, where the shock of the attacks tended to mute questions of the curtailment of civil rights, at least at the outset. In Canada, however, groups of scholars, Canadian law societies, the Canadian Council for Refugees, and community-based advocacy groups voiced strong opposition to Bill C-36, Canada’s version of the US omnibus bill designed to make sweeping changes in a number of legislative frameworks by increasing

enforcement and discretionary powers of most of the cabinet ministers and their agencies, particularly border control agencies.⁵

After September 11, 2001, advocacy groups attempted to frame the refugee issue largely from the perspective of protecting vulnerable migrants arriving from predominantly Muslim and Arab countries. For these advocacy groups, border control activities such as racial profiling were already a problem that, they claimed, would only be exacerbated through the increased powers granted via the omnibus bill. In the aftermath of the September 2001 attacks, by contrast, Canadian officials tended to frame such refugees as potential threats to both Canadian and US national security, seeking powers to act accordingly. The debates that ensued were contestations between these framings.

The frames we deploy frequently obscure what would otherwise be obvious. In naming and framing the refugee as a “terrorist,” officials obscure the humanitarian image of the refugee as a displaced person in need and deserving of protection. This is not to suggest inhumane motivations on the part of officials. Rather, such naming and framing follows from taken-for-granted practices in their policy milieu. For example, the recurring pattern in Canadian refugee practices of naming seaborne Chinese refugees as potentially dangerous and framing each boat load as a crisis obscured other ways of perceiving the elements of the situation and therefore precluded the development of different directions for its transformation. The effects of this kind of naming and framing

⁵ See, for example, *The Security of Freedom: Essays on Canada's Anti-Terrorism Bill*, edited by R.J. Daniels, P. Macklem, and K. Roach (2001). This collection was published by the University of Toronto Press in December 2001, following a conference convened on November 9 and 10, 2001 in Toronto that brought together more than 350 individuals representing the academy, the legal profession, the federal and provincial governments, and various local community groups. The collection of essays by leading Canadian scholars in the areas of law and public policy addressed the potential impact of changes under the proposed Bill C-36 on Canadian rights and freedoms.

can be seen when, in 1999, four cases of Chinese refugees arriving by boat sparked intense public hostility to the admission of any seaborne arrivals (discussed in detail in Chapters 4 and 6). Most of these refugees were kept in long-term detention and some were prevented from making refugee claims (Canadian Council for Refugees, 2010). Naming and framing conventions thus become entrenched as familiar constellations, resistant to objections, because those “who construct the social reality of a situation through one frame can always ignore or reinterpret the *facts* that holders of a second frame present as decisive counterevidence to the first” (Schön and Rein 1994, 30; authors’ emphasis). As I will show later, broad acceptance of the obviousness of official solutions enabled state officials to resist pressures by advocates to respond in a more hospitable manner to the Chinese refugees.

1.5 Naming the Refugee

In the twentieth century, I argue, there were three significant discursive phases characterized by different or meta-framings that influenced the ways in which the category of refugee was portrayed. The first of these was from the World War I era until the early post-World War II era, when humanitarianism dominated official, international framings (humanitarianism was influenced by the emerging liberal, Wilsonian vision⁶ of a new world order and was later embodied in the Covenant of the League of Nations).

The second phase was the period of neo-humanitarianism, the seeds of which were

⁶ After Germany signed the Armistice in November 1918, and in the interests of building a new world order by making the world “safe for democracy” and of building a “general association of nations . . . affording mutual guarantees of political independence and territorial integrity to great and small states,” then US President Woodrow Wilson was instrumental in framing the Versailles Treaty. The Treaty contained the Covenant of the League of Nations. Unfortunately for Wilson and the Democrats, the balance of power had shifted in the US Congress, and by seven votes, the Versailles Treaty failed in the Senate. Consequently, the US never joined the League of Nations. In 1920, Wilson was awarded the Nobel Peace Prize for his efforts on behalf of the League of Nations (Woodrow Wilson Presidential Library, 2010).

already present during the period of humanitarianism, and grew to dominate refugee discourses. Neo-humanitarianism laid the foundation for the emergence of the third discursive phase, or meta-framing – securitization – of the late twentieth and early twenty-first centuries.

The shift from humanitarianism to neo-humanitarianism was especially significant with respect to the question of what counts as a refugee, because it set the stage for the emergence and intensification of securitization. During each phase, there was a sense of “obviousness” (Schön and Rein 1994, 33) that adhered to the categorization of refugees. This sense of obviousness fixed the meta-frames in place and legitimized the core presuppositions on which policy solutions were based. In the context of the three dominant meta-framings, state actors developed refugee policies that reconstructed the refugee as a particular kind of policy problem in terms of particular solutions that carried a sense of obviousness for the officials.

In Canada since the Confederation years, the framing of the category of refugee has varied over time with respect concerns of nation-building, national unity, economic development, humanitarianism, neo-humanitarianism, and national security. During the period of the Holocaust, Prime Minister Mackenzie King’s own reaction to the plight of the European Jewish refugees vacillated between a humanitarian concern and a political concern to preserve national unity in the face of Quebec’s resistance to increasing the population of Jews. In decades after the Holocaust, the refugee was framed as a burden for the state in incremental, often *ad hoc* crisis-management practices of senior officials responding to contingencies. By repeatedly framing the refugee in terms that evoked a sense of emergency, the state could portray unwanted or unexpected arrivals of refugees

as recurring *refugee crises*. This move gained legitimacy for increasingly restrictive border control practices, especially after the shift away from humanitarianism (see Chapters 3 to 6).

The burden posed by the refugee was portrayed as increasingly serious throughout the second half of the twentieth-century along with the shifts in meta-frames from humanitarianism to neo-humanitarianism to securitization. Long before September 11, 2001, indeed throughout the 1990s, refugee policy intersected with questions of national security in both Canada and the US. Refugees were framed as threats; immigration and refugee policy was integrated with the policy regimes of national security and public safety in both countries. It was not unusual in either country for refugees to be cast as potential criminals or demonized as threats to public safety and social cohesion during periods of economic downturn and social insecurity. What changed in the early years of securitization leading up to September 2001 was the scope and intensity of the way mass movements of refugees worldwide were pictured as potential terrorists, particularly by western countries (e.g., the European Union, the US and Canada – several examples of these framings, focusing on the Canadian context, are discussed in subsequent chapters). As I will argue moreover, an analysis of the meta-framing of securitization reveals underlying connections between the refugee crises in Canada during the Holocaust years and in the aftermath of the September 11, 2001 attacks.

After the 2001 attacks, public and official discourses in Canada as well as the US converged on an intensified framing of the refugee as a terrorist. The influence of national security questions on immigration and refugee policy in both countries was not new. After September 2001, however, the historical ambivalence among refugee policy

meta-framings in Canada was subsumed by national security interests. As the Canadian Council for Refugees said, “Since September 11th, there is of course a greatly heightened focus on security, and an unfortunate and unfair association has been made between refugees and terrorism” (CCR 2002, 1). As I will show, refugee management practices reflected this loss of ambivalence. During the period following the attacks, Canada reformed relevant legislation in order to demonstrate to the US that the country would not become a safe haven for terrorists. Long after the attacks, the refugee-as-terrorist framing continued to shape policy in both countries.

1.6 Ambivalence, Contingency, and Refugee Policy

We typically think of *ambivalence* as the holding of simultaneous and contradictory attitudes toward something, such as an object, person or action. Ambivalence can, moreover, involve a continual fluctuation between one direction and its opposite, as well as uncertainty about which to follow. I examine ambivalence as the deployment, in particular here, of contrary framings that work both to affirm and to deny a particular categorization of refugee. Ambivalence, more generally, characterizes the modern approach to sovereignty-as-border-control whereby nation-states assert their sovereign control of the movement of people inside and across their borders in order to admit desirable migrants while keeping out those deemed to be undesirable or dangerous. As Tilman Schiel explains, following Zygmunt Bauman (1991), such ambivalence is evident in modern techniques of categorization and management with respect to protecting sovereignty:

The alien ... is neither friend nor enemy. Potentially he could be both, but we don't know which. ... [aliens] are the embodiment of ambivalence. Ambivalence is indecisive, it

is both ‘neither-nor’ and ‘this as well as that.’ Ambivalence creates uncertainty which paralyses us. We know very well how to deal with the enemy but what can we do ... [in relation to] the alien ...? This is why we fear aliens more than enemies – and this is why modernity fears ambivalence (Schiel 2005, 79).

As I discussed in the prologue, the persistent objectivist presuppositions characteristic of technocratic approaches to policy are still manifest in contemporary refugee policy discourses, notwithstanding the critiques of such practices by many policy studies scholars. The persistence of objectivism indicates a kind of striving for social order that can be understood in relation to state officials’ practices of naming and framing in the course of management and planning – all of which, as Zygmunt Bauman (1991) suggests, are oriented toward preventing chaos. Ambivalence threatens chaos; thus, ambivalence must be eradicated. Such technocratic objectivist policy practices can be seen as the “fight against modern ambivalence” (Fuglerud 1997, 447 citing Bauman 1991).

For Michael Dillon (1998, 1999), what he calls the “scandal of the refugee” is “the scandal of the human as such” because the disruptive arrival of the alien at the border is met by the technologized politics of categorization and effacement. Dillon writes:

This register of scandal is plural. It refers to the scandal of the human as such. It addresses also the scandal of the inhospitability of the *techne* of modern politics: politics understood as *techne*, politics technologized by *techne*; politics whose end has become the application and operation of *techne*. Finally and relatedly it provokes the scandalous thought that the political project ... is precisely not ... that of the instantiation of sovereignty ... (Dillon 1998, 31).

This disruptive scandal of the refugee – the refugee experienced by the state as a contingent moment – explains in part the modern state’s approach to sovereignty through border control. Technical solutions are sought to render the borders impermeable to aliens who call into question the legitimacy and stability of sovereign edifices.

Randomness, or contingency, embodied in the unexpected and unwanted arrival of aliens at frontiers and borders, represents potential chaos, evokes considerable ambivalence, and constitutes a crisis for the state.

Linking ambivalence with randomness, Oivind Fuglerud writes:

In a very fundamental sense, modernity *is* this quest for order: the meticulous defining and classification of small problems to be solved; the elimination of randomness of events without which human existence is threatened. The problem with this situation, of course, is that ambivalence is a product of classification itself – it is what is left over when the filing is done, the quality that does not conform and therefore calls for yet more classification (Fuglerud 1997, 447).

This is an important insight, one that informs my analysis of the role played by ambivalence and contingency in the development of Canadian refugee policy, because, as Peter Beilharz argues, “... strangers are beyond classification” (Beilharz, 1998, 33).

Ambivalence can emerge in the ways in which policy officials frame “what is outside ‘their’ borders” (Fuglerud 1997, 444). As Fuglerud explains,

... separating the domain of authority and loyalty to authority, from what lies outside, is the basic premise upon which any ... state project or plan is based. The border ... is this demarcation, and at the same time a symbol of demarcation – an icon of power symbolizing itself. Nothing outside is relevant to the state if it is not related to its inner life, its ‘national interests’: nothing inside is irrelevant to its enforcement of order (Fuglerud 1997, 448).

This insight illuminates why state power and bureaucratic structures operate together to shore up the edifices of sovereignty through framing – in this instance, through the category of refugee as manifest in border control. However, categorization is never complete; there is always something left over, and what is left over creates ambivalence (Bauman 1991). In the chapters that follow, I will show how ambivalence was at work in both the humanitarianism and neo-humanitarian meta-frames. I will also examine the effects of the waning of ambivalence in official policy discourses during the period when securitization became the dominant meta-frame. As ambivalence waned in the state's responses to contingencies, so too did the possibility for political interventions that could alter the core presupposition of securitization.

Ambivalence and contingency are related concepts that characterize the development of Canadian refugee policy and are implicated in the ways in which discretionary powers were, and continue to be, brought to bear. Contingency can indicate a moment of opportunity, an occasion when something can, or must, be done otherwise. Political life, as I take it, is largely made up of contingencies, which are challenges to notions of sovereignty. In other words, contingencies can create a state of “emergency politics” (Honig 2009), and the conventional policy response becomes one of legitimized crisis-management, including the use of special discretionary powers to deal with the crisis. Sovereignty-as-border control tends to frame irregular migration – the unwelcome and unexpected arrival of foreign others – as crises precisely because the foreign others, or aliens, are outside established systems of classification. Their status is ambivalent until they can be declared with some certainty and legitimacy to be categorizable as either friends or enemies.

In the context of my study, contingency is taken to be the advent of the unexpected or the unpredictable such that existing policy regimes are no longer capable of addressing the situation. Contingent events – such as the unexpected or uninvited arrivals of foreign others on the borders and frontiers of a state, or an unexpected attack by rogue agents on a sovereign nation – often rupture established methods, disrupt embedded framings, and call forth *ad hoc* approaches to eliminate the uncertainties and dangers that contingency represents. Contingency can call into question substantive policy goals or procedural regulations of the polity – it can change the rules of the game. In doing so, contingency becomes a political moment *par excellence* in that it disrupts or reinforces established power relations and practices and opens up the possibility of different approaches.⁷ For example, the unexpected arrival of boatloads of refugees from China in the late 1990s destabilized the routine patterns of Canadian refugee policy enforcement as senior officials exercised considerable discretionary powers in order to detain and deport the refugees. Although contingency can both emerge out of and bolster ambivalence, contingent events can also serve to end – or, at least, arrest – ambivalence, as I will show in regard to the aftermath of September 11, 2001.

State policies typically attempt to respond to contingent moments through laws and regulations that purport to deal with any and all aspects of a problem. But it is also generally recognized, especially among senior officials, that this goal is impossible to accomplish. Consequently, Canadian refugee policy-making has typically incorporated

⁷ Mark Salter (2011) argues that invoking a state of emergency (and, as I will argue, increasing the scope of discretionary powers) effectively closes down the opportunity for deliberative politics. Bonnie Honig (2009) illustrates many ways in which democratic action might actually be motivated in emergency settings, and how such settings could open up opportunities for democratic renewal. While I support Honig's position generally, she has not taken, in my view, sufficient account of the question of how discretionary acts by policy actors in state bureaucracies are legitimized and institutionalized, or of the role played by discretionary acts in curtailing democratic action.

extensive discretionary powers. Invoking a state of emergency, as is often the case in Canadian refugee policy development, can open up possibilities for new frame contestations. However, when the framing of the emergency is unequivocal with respect to the potential dangers of unregulated migration, and when ambivalence wanes in the face of such certitude, frame contestations are less likely to occur, and the voices of marginalized actors are muted. The combined forces of regulatory and discretionary powers, nonetheless, frequently fail to achieve the goal of eliminating ambivalence by preventing unwanted arrivals at Canadian borders.

Inevitably, borders are porous because they evolve through historically and culturally contextualized shared understandings of what constitutes *this* as opposed to *that* sovereign collective. Given that refugee survival depends on the ability to move freely, the exclusionary border control practices of modern states represent a serious threat to the safety and security of refugees. Western refugee policy regimes and instruments typically encompass a range of sanctioned, frequently legislated, discretionary powers that come into play when government officials perceive that existing practices are insufficiently flexible to respond to contingent situations that are perceived as threats to sovereignty. When this happens, there tends to be broad acceptance of the deployment of discretionary powers to respond to the emergency; legitimized discretionary power for state officials remains a significant component of Canadian sovereignty-as-border-control.

In the 1930s, long before the refugee became a legal entity and enshrined in Canadian law, the discretionary powers exercised by senior officials in these matter were largely tacit, highly subjective, and rarely challenged. After 1978, when human rights and

humanitarian discourses dominated the approach to the newly enshrined legal category of refugee in Canadian refugee policy, increasingly wide-ranging discretionary powers were made explicit and institutionalized. In Canadian immigration and refugee policy-making, there has been increasing institutionalization and expansion of a range of discretionary powers granted to senior officials or cabinet ministers.

Some argue that the hallmark of liberal political thought – that of the impartiality of the state – rests on the *non-arbitrary* exercise of authority and that discretionary action is, by definition, arbitrary (see, for example, Pratt 2005, 69-72). I suggest, however, that discretionary powers are essential to the operations of the state. Indeed, it is precisely for this reason that such powers are institutionalized. The complexity of the regulatory structures in Canadian law often is seen by senior officials to limit the range of options needed to respond effectively to contingent events. When discretionary powers are seen to be indispensable with respect to contingent events, particularly those situations in which officials perceive extreme threats to national security and social cohesion, a type of crisis-management comes to dominate the Canadian refugee policy process. In this sense, discretion becomes an embedded feature of Canadian refugee policy – as the principle of discretion is legally enshrined and legitimized so that it can be brought to bear to deal with contingencies.

Discretionary acts, as I will illustrate in subsequent chapters, were indispensable in dealing with contingencies, particularly in the context of ambivalent policy framings. At certain points in the development of Canadian refugee policy (particularly during a period of so-called “refugee crisis” (Creese 1992, 131)) when policy regimes moved quickly to amend existing frameworks (e.g., in response to the arrival of sea-borne

refugees at Canadian ports in the late twentieth century), the state seemed to lack faith in legislated standards.⁸ Regulatory systems were bolstered through the deployment of both formally sanctioned and informal discretionary acts by various senior state officials. Thus, discretionary power in the face of contingency functioned as a fail-safe mechanism that was activated when vast, interconnected federal regulatory structures and agencies were unable to deal with contingencies – particularly when established rules and procedures were seen to be incapable of preventing further uninvited arrivals, or of dealing effectively with foreigners who were deemed unacceptable.

When unexpected events or contingencies arise, they can destabilize dominant frames, leaving open the possibility of ambivalence and a significant shift in meta-framing. For example, the attacks of September 11, 2001 destabilized the framing of US refugee policy and new framings of refugees emerged. Until recent decades, ambivalence has been characteristic of Canadian refugee policy as state agencies have addressed their responsibility for adhering to the provisions of the Convention while, at the same time, seeking to control the flow of unwanted, uninvited foreigners across the country's boundaries and borders. In Canadian refugee policy, the difference between the post-September 11, 2001 period and the Holocaust was that, by the end of 2001, ambivalent tendencies were on the wane.

After the first decade of the new millennium, the tendency increasingly was for national security to trump most other considerations in Canadian refugee policy. By the

⁸ As Marie Lacroix writes, “according to Creese (1992) the development of a ‘refugee crisis’ was at least partly an intentional outcome of government policies. Unable to control the source and volume of arrival of asylum seekers” the government, in effect, allowed the refugee determination system to cease to function in order to further bolster the state’s framing of the “crisis” and allow for “radical restructuring” (Lacroix 2004, 150). This was a recurring pattern of response by the Canadian state to subsequent unwanted arrivals of groups of refugees, particularly by boat, throughout the twentieth and early twenty-first centuries, as I will show in subsequent chapters.

end of 2011, securitization was paramount, marginalizing and effectively excluding discourses that would frame refugees as needing and deserving refuge. This is the situation that now faces all parties in Canada involved in the politics of refugees, and in this context it is particularly difficult for advocacy groups to overcome securitization framings. As I will show in Chapter 6, refugee advocacy groups now face strong resistance by an increasingly restrictive and exclusionary approach to refugee policy. More than a decade after the attacks of September 11, 2001, the Canadian state has shifted the refugee problem into the policy regimes of national security and public safety, despite widespread public and political criticism.

As ambivalence waned in government policy discourse, so too did the influence of non-governmental organizations. With the election of the Conservative majority government in the spring of 2011, policy ambivalence effectively came to an end. This is not necessarily a condition in which ambivalent tendencies in refugee policy are permanently arrested. Even in the most securitized forms of refugee policy discourse, the government still pays occasional lip service to humanitarian ideals, particularly in international settings. Indeed, persistent struggles by refugee advocacy groups continue to allow for the possibility of a shift to a more hospitable approach.

1.7 Summary of the Argument: A Story of Three Meta-frames

The refugee has typically been cast as a problematic figure for the Canadian state, since the period of World War II. This dissertation is a contextual mapping of refugee policy in Canada as a story of three shifting meta-frames. Although the shifts cannot be dated precisely in terms of a linear chronology, there has been a discernible tendency for each meta-frame to dominate Canadian refugee policy at different periods:

humanitarianism, beginning in the inter-war and World War II years; neo-humanitarianism, emerging in the late 1970s, and securitization, beginning in the 1990s. The core presupposition underpinning the humanitarian meta-frame was an egalitarian, liberal claim that refugees (whether in groups or as individuals) are both in need and deserving of protection. In neoliberal terms, the core-presupposition of what I call the neo-humanitarian meta-frame shifted its emphasis to *individual refugees* framing them as risky, potential criminals, and a threat to public safety and social cohesion. The neoliberal influences on refugee policy laid the foundation for the shift to the securitization meta-frame, which presupposes that refugees (as individuals or in particular groups) are potential terrorists, and thereby represent a threat both to national and international security.

In the context of each of these meta-frames, the refugee continued to be framed as a profoundly contradictory figure – one that appears to be both dangerous and deserving of refuge. I illustrate how this contradictory framing was forged significantly in the crucible of two crises: the Holocaust and the events of September 11, 2001. Further, I argue that Canadian refugee policy has been shaped significantly by ad hoc policy changes in response to contingencies and that these responses exhibited discernible ambivalence until the advent of the securitization meta-frame. As securitization came to dominate the policy framings of refugees, ambivalence waned and the refugee was no longer seen as a contradictory figure, but was increasingly framed as unwelcome, a threat to national and international security. Frame contestations occurred throughout these three periods, at the level of the core presuppositions; however, as securitization became entrenched, ambivalence waned, and it became increasingly difficult for advocates to

shift the framing of the refugee back to a more humanitarian register. Nonetheless, despite the entrenchment of securitization, contingencies are always possible, and I suggest that these may open up the possibility for new frame contestations – a new politics of the frame – that could lead to a more hospitable approach to refugee protection.

Figure 1.7.1 Overview: A Story of Three Meta-frames

Humanitarian Meta-Frame	Neo-humanitarian Meta-Frame	Securitization Meta-Frame
<p>Core Presupposition (liberal): Refugees (groups or individuals) are both in need of and deserving protection</p> <p>Emerged with League of Nations in 1920, gained international form and structure with the advent of the 1951 Convention, the UNHCR, and other mid-twentieth century refugee regimes</p> <p>Policy discourses emphasized protection of refugees and adherence to the requirements of international law</p> <p>Official responses to contingencies embodied considerable ambivalence and framed the refugee as both abject yet potentially socially destabilizing</p> <p>Embodied basic normative commitment to the principle that the stranger – the refugee – is a person (or is among a collectivity of such persons) both deserving and in need of protection</p> <p>Fostered an ethos of proximity to the stranger in need; a strong empathy and a communally shared sense of the need to alleviate the suffering of stateless and displaced persons, whether at the border or overseas</p> <p>Foregrounded liberal human rights ideals and was dominated by international discourses of protection, aid, and resettlement</p> <p>Practices under this meta-frame exhibited much ambivalence, which emerged in official and</p>	<p>Core Presupposition (neoliberal): Refugees are risky <i>individuals</i>, potential criminals, thereby represent a threat to public safety and social cohesion</p> <p>Emerged with the advent of neoliberal global restructuring beginning in the 1970s; coincided with the duration of the Cold War and encompassed the period of decolonization that set in motion millions of refugees</p> <p>Policy discourses emphasized protection of national borders against incursions by uninvited migrants (irregular migration); racial profiling emerged as one strategy to identify risky individuals</p> <p>Official responses to contingencies were less ambivalent and more inclined to frame the refugee as dangerous, while paying lip-service to Convention requirements and ideals</p> <p>Embodied basic normative commitment to the principle of sovereignty-as-border-control through which irregular migration was criminalized</p> <p>In context of neoliberal global restructuring, goods and services move freely across borders;</p> <p>people do not, particularly those who arrive uninvited and seek Convention refugee status</p> <p>Fostered an inverted ethos of proximity: rendered only those who wait in offshore camps as authentic refugees; rendered all</p>	<p>Core Presupposition: Refugees (individual, or in groups) are potential terrorists, thereby represent a threat to national and international security</p> <p>Emerged with the end of the Cold War, and the global uncertainties arising with decolonization; securitization intensified after September 11, 2001</p> <p>Policy discourses emphasized basic normative commitment to the principle of preventing terrorist acts of all kinds, and the protection of national/international security; policies included enhanced racial profiling techniques and targeted migrants from Arab or predominantly Muslim countries</p> <p>Legitimized wide range of interdiction, detention, and deportation regimes in the interests of protecting homeland against terrorism and preventing any further irregular migration</p> <p>Intensified the links between particularly, therefore risky, refugees and terrorism, particularly after September 11, 2001; legitimized wide range of policy responses that focused on denial of access by refugees</p> <p>State practices exhibited little or no ambivalence in responses to uninvited and unwelcome arrivals; crisis-management practices dominated; refugee and immigration policy regimes were harmonized across the Canada-US border, and within Canada,</p>

<p>unofficial state policy discourses and in public debates about the importance of refugee protection and the capacity of receiving states to absorb refugees during times of economic crisis</p> <p>Fostered multinational approaches to providing international aid and to facilitating resettlement of displaced persons</p> <p>Fostered development of national refugee review processes and institutions that reflect international human rights standards and values under the Convention, and consistent with Canadian Charter, and commitments to multiculturalism (in Canada)</p>	<p>others, particularly uninvited, unregulated migrants, as potential criminals and as risks to public safety and social cohesion – in other words, authentic refugees were always waiting patiently in camps elsewhere</p> <p>Foregrounded the potential risks that refugees represent – refugees are risky, requiring detention, deportation, interdiction</p> <p>Practices under this meta-frame exhibited considerably less ambivalence about duties and responsibilities with respect to refugee protection, while maintaining in official policy statements the ongoing commitment to international refugee protection laws</p> <p>Supported multinational and regionalized approaches to preventing the unsanctioned or irregular movements of refugees across any international boundaries, notwithstanding the fact that movement is fundamental the survival of refugees – preventive protection was subsumed in the interests of neoliberal global restructuring and became a method of protecting borders, not refugees</p> <p>Enabled diminished or delayed formation of state-based appeals processes; integrated refugee policy with other policy regimes responsible for criminal justice, public safety, and national security</p>	<p>Integrated with regimes of public safety, criminal justice, anti-terrorism, intelligence gathering, national security, and foreign policy; equated refugees-as-terrorists with other forms of international crises such as disease pandemics</p> <p>Intensified role of multilateral regimes designed to close borders and limited access to borders and frontiers by irregular migrants (e.g., Safe Third Country Agreement, Fortress Europe)</p> <p>Legitimized wide range of law enforcement practices that precluded or limited access to appeal processes</p> <p>Operated refugee regimes under the aegis of omnibus legislation that permitted detention without access to legal counsel, and deportation of residents on a wide range of potentially terrorism-related charges, without recourse or appeal</p>
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CHAPTER 2

WHAT COUNTS AS A REFUGEE? FROM HUMANITARIANISM TO NEO-HUMANITARIANISM IN THE INTERNATIONAL CONTEXT

2.1 Introduction

By focusing on the question of what counts as a refugee,⁹ I pursue naming and framing in this chapter in an international context. With the advent of the humanitarian meta-frame, refugees were primarily understood in a common sense way as displaced people in need of refuge. However, as refugees came onto the agenda as a policy problem, they also were typically understood by state actors as a “burden” in terms of national interests, and the meaning of refugee became more complicated (see for example, Barutciski and Suhrke 2001; Betts 2003; Black 2001; Boswell 2003; Copeland 1992; Fonteyne 1978; Garvey 1985; Hathaway 1991; Suhrke 1998). As I will show, these complications arose first in the form of ambivalence under humanitarianism, inasmuch as it was constituted in tension with what state actors generally perceived as their primary mandate: to pursue national interests.

While ambivalence persisted at the level of state practices under the neo-humanitarian meta-frame, it was less apparent because of the forces of neoliberalism that foregrounded the category of refugee as an individual for purposes of reducing the

⁹ The term refugee, from the French *refugié*, is attributed in particular to the flight of the Protestant Huguenots during the absolutist reign of Louis XIV in France in the sixteenth century. There was no general definition of *refugee* outside the persecution of particular religious groups by the French authorities (C. Moulin Aguiar 2006).

refugee burden on the state by excluding them as much as possible. The shift in meta-frames from humanitarianism to neo-humanitarianism was accompanied by a change in what counted as a refugee, so that the term refugee was no longer understood mainly in the sense of someone needing and entitled to refuge, but became associated with new names, using terms such as *risky* or *criminal* to the extent that even the common sense notion of the refugee tended to be eclipsed. In this chapter, I examine the changes in what counted as a refugee in the shift from the humanitarian meta-frame to the neo-humanitarian meta-frame at the international level. In the next chapter, I address this shift in the specific context of Canada.

2.2 The Refugee as a Contested and Ambivalent Concept

What counted as a refugee under the humanitarian meta-frame was first a common-sense notion that refugees were displaced collectivities of people who needed refuge. After World War II, with the advent of the 1951 Convention, the refugee was defined in legal terms as a particular type of displaced individual having both a need for, and rights to, protection by signatory states. As a particular yet *universalized individual* under the Convention, the refugee in legal terms was protected by a shared international commitment. Ambivalence in state practices arose under humanitarianism because of the tensions between the more common sense understanding of what counted as a refugee as against the legalistic approach that made each refugee determination based on the merits of an individual case.

Ironically perhaps, given its humanitarian aims and objectives, the formal definition of the refugee as a universalized individual provided the foundation upon which, in neoliberal terms, refugees could be reframed as risky individuals, and as

potential criminals who represented a threat to public safety and social cohesion. These framings were characteristic of the shift to neo-humanitarianism that began with neoliberalism in the late 1970s, and intensified throughout the 1980s. The orientation toward empathy, human rights, and refugee protection for groups of refugees characterized the early years of the emerging international refugee regimes, when the humanitarian meta-frame tended to dominate at the level of international and national state discourses. The advent of neo-humanitarianism, with its neoliberal presuppositions associated with the individualization of all forms of risk, including the risks represented by unwelcome strangers at the borders, was in effect bolstered by the Convention definition of the refugee. Other framings persisted, but naming the refugee risky tended to be foregrounded during the phase in which neo-humanitarianism was the dominant meta-frame.

Many framings can circulate simultaneously, generating conflicting responses to the question what counts as a refugee.¹⁰ In modern, state-based systems of international society, refugees are produced by economic, political, social, cultural and environmental factors. Terminology and definitions are constantly shifting and ambiguous. As conditions change, the contingent discourses that constitute the *otherness* of the refugee are reframed. Adding to the difficulties in theorizing the concept is the fact that many other terms are now associated with refugee, such as asylum seekers, forced migrants, humanitarian refugees, stateless persons, exiles, expellees, transferees, economic

¹⁰ Various scholars working in different disciplines with many perspectives or framings have addressed the question, but no consensus has emerged (see, for example, Bakewell 1996b, Chimni 1993, Dauvergne 2008, Dillon 1999, Harrell-Bond *et al* 1992, Hyndman 2000, Lacroix 2004, Loescher and Scanlan 1986, Marfleet 2006, Nyers 2006, Rajaram 2002, Skran 1995, and Zetter 1995).

refugees, or development refugees. These names illustrate the ways in which the concept of refugee is mobilized in support of different and often competing interests. Despite this lack of consistency, what endures is a persistent framing of refugees that works to set them radically apart from the citizen. Policy discourses about the refugee are integral to the ongoing construction of citizenship and sovereignty, as well as to contestations among meta-frames about the category itself. Practices of state sovereignty are based upon an idealized notion that borders can be made impermeable; of course, in practice, this is impossible. Undocumented migrants inevitably arrive at the borders; many enter without permission. The resultant labeling of this part of the population as *illegal* effaces those to whom the label is attached, yet the labeling sets them up as specific, individual targets of state interdiction.

In this sense, refugees are simultaneously both subjects of persecution and objects of policy changes. Illegals, understood as criminals, are feared, persecuted, shunned and frequently deported. Yet the constitution of the category called *illegal* is actually necessary to the formation of sovereignty, and of borders. As Dillon argues, “the semantic field of the alien is ... manifold and its political register is determinative of political community” (Dillon 1998, 32). The naming of a category of refugees as illegals is in effect necessary to the constitution of the line between *us* and *them*, and therefore to assertions of nationalism. Further, the assumptions underpinning sovereignty-as-border-control that are enshrined in migration law in many western countries with respect to the arrival of unwanted foreign others also have real material effects. As Catherine Dauvergne explains,

... the labelling of part of the population as “illegal”
accomplishes [the exclusion of the Other] when the border

itself does not. Capturing the moral panic about extralegal migrants and enshrining it in law allows governments control that their borders lack. When a part of the population is labelled “illegal” it is excluded from within (Dauvergne 2008, 17).

In sum, the concept of refugee is an ambiguous abstraction, composed of notions that draw upon the Convention definition, which identifies conditions under which an individual is a legitimate refugee and therefore eligible for humanitarian protection. The intent of the Convention is inclusionary: more precisely, it is to prevent the denial of refugee protection status to individuals suffering particular forms of persecution. Despite the intent of the Convention, its definition of refugee narrowly interpreted operates as a means of exclusion precisely to exclude migrants of all types from entering countries, or obtaining refugee protection status. Notwithstanding its focus on the individual, the category of refugee is a class designation, or a label, which reduces complex multiplicities of experience and identity to a homogeneous category of person. And it is an ambivalent category: it connotes humanitarianism, while it creates and imposes institutionalized dependency; it assigns a particular identity, yet this identity is universalized and stereotyped; it is about benevolence and being apolitical, yet it is a politically charged category; and it threatens the sovereignty of states and the autonomy of the designated individuals while simultaneously protecting state sovereignty and granting individual rights (Haddad 2008; Zetter 1991; Colson 2006).

2.3 Displaced People in the Twentieth Century¹¹

As a modern embodiment of forced displacement, the concept of the refugee emerged with the advent of the principle of state sovereignty. The discursive category of refugee, however it is framed, is always constituted within and by international regimes comprised of sovereign states (Haddad 2008). What counts as a refugee has varied over time, but the criterion of crossing an international boundary was, and remains, common to most understandings, including to the formulations of humanitarianism and neo-humanitarianism, as I conceive them. Displacement is a consequence of conflicts, natural disasters, and global restructuring – it reconfigures boundaries, global networks of exchange, and transnational connections. The twentieth century saw massive displacements of millions of refugees fleeing conflicts, wars, and persecution (Skran 1992; Marfleet 2006).

Displaced, stateless people appeared first as a mass phenomenon at the end of the World War I, with the collapse of the Russian, Austro-Hungarian, and Ottoman empires, and the new order created by peace treaties that changed the geopolitical and demographic structures of most of Europe. To these “masses in motion” (Agamben 2006) were added the large populations of minorities created by peace treaties on the model of the nation-state that were protected through a series of international treaties (the so-called Minority Treaties). In the inter-war era, the racial laws in Germany and the Civil War in Spain set in motion new mass migrations of refugees throughout Europe. Even during the relatively calm interwar years, millions of Europeans became refugees

¹¹ In summarizing a complex political/historical era, I draw extensively upon Phillip Marfleet’s seminal book, *Refugees in the Global Era* (2006), particularly on his exposition of the contemporary movements of refugees in the context of the radical global restructuring (in geo-political and economic terms) that occurred throughout the twentieth century.

including Germans, Poles, Hungarians, Russians, Greeks, Turks, Armenians, Bulgarians, Spaniards and Jews (Skran 1992).

In the late 1920s, for example, more than 10 million people across Europe were rendered stateless and it was during this period that these groups of forced migrants came routinely to be referred to as refugees (Marfleet 2006). Minorities and irregular migrants became scapegoats in the post-World War I economic deterioration and by the time the Great Depression took hold, mass migrations had ceased. Forced migrants fleeing fascist and other repressive regimes in Europe were poor, vulnerable, and undesirable as immigrants, and their constant movements, and uninvited arrivals at borders, were seen to be indicative of the general instability of European political systems (Marfleet 2006, 123-4). Thus, a pattern of ambivalence within refugee policy practices took hold: whenever large numbers of forced migrants were most in need protection, states that had been amenable to receiving refugees became focused on preventing migration into their territories.

In addition to the devastating effects of mass displacements resulting from two World Wars, the twentieth century also inaugurated an “age of exclusion and hyper-nationalism” (Marfleet 2006, 124) arising from the intense conflict and competition among nineteenth century colonial powers. After World War I, as Marfleet explains, the Russian, Austro-Hungarian and Ottoman empires of Europe were dismantled and new states were formed. In 1861, there were fourteen states in Europe and by 1919 there were twenty-six states (Ibid, 124). Marfleet describes this important shift and the resultant “hyper-nationalist” policies of exclusion that had prevented the movement of refugees within and into Europe:

Combatant states poured their energies into rival propaganda efforts and unprecedented levels of hostility were generated vis-à-vis citizens of other states assumed to be antagonistic to the domestic population. Surveillance and regulation of the population reached new levels of intensity. Passports were introduced across Europe ... that marked out a new national status ... [and became] a bureaucratic assertion of the power of the state vis-à-vis 'its' citizens (Marfleet 2006, 124).

The rise of fascism in Germany and elsewhere in the interwar period set in motion the flight of labour organizers, political activists, and most of all, Jews who were the focus of a racial purification program by the Nazis (discussed in more detail in Chapter 3).

In the pre-World War II period, borders remained firmly closed as nation-states attempted to insulate themselves from the effects of the worldwide economic crisis. Western national discourses constructed refugees in general as a threat to internal stability; refugees, including the German Jews, were explicitly considered undesirable – as exemplified by the implicit and explicit anti-Semitism that pervaded, for example, Canadian policy-making of the period (Abella and Troper 1983/2000). By the middle of the twentieth century, hundreds of thousands of refugees were living in overseas containment camps or in exile in countries adjacent to their own, where access to humanitarian aid and emergency services was frequently very limited and unsustainable.

Most of the displaced people in the post-War period of the late 1940s and early 1950s were women and children, who became increasingly invisible as refugees as the 1951 Convention definition of refugee was being interpreted in increasingly narrow terms. A UN Subcommittee of the Whole on International Protection stated in a report that “there are situations in which refugee women face particular hazards due to the mere

fact that they are women” (quoted in Alfredson 2009, 98).¹² The language of the Convention masked the particular difficulties faced by women refugees, including the reasons why their gender prompted them to become refugees in the first place.¹³

Also in the mid-twentieth century, there was a shift in the framing of the refugee and this shift affected the ways in which the refugee was framed later in the century. Ironically, this new framing – the universalized individual constituted by Convention – gave some grounding to the meta-framing of neo-humanitarianism that emerged later, because it bolstered the focus on the individual that is one of the hallmarks of neoliberalism.¹⁴ This narrow legal definition led to the institutionalization of international and national refugee regimes that focused on the assessment of individual, not collective, cases of persecution. The promotion of human welfare, the lynchpin of traditional understandings of humanitarianism, was further undermined in late-twentieth century neo-humanitarianism because of its overriding emphasis on the individual as risky, rather than being at risk. Group affiliations no longer affected what counted as a refugee in western countries, except insofar as a refugee-receiving country such as Canada decided to make an exception in special circumstances (for example, in the post-

¹² In the early 1980s, the United Nations recognized gender as a category under which one could claim persecution (UN 2010).

¹³ In 1991, the UNHCR issued guidelines on the protection of Refugee Women, which provided a framework for evaluating asylum cases with gender-related claims (Ziegler and Stewart 2009, 118). These guidelines were updated in 2002; to date, no refugee-receiving country has incorporated gender-based guidelines into their statutes, although several, including Canada and the US have developed procedural guidelines for use by adjudicators (Ziegler and Stewart 2009). Canada’s Immigration and Refugee Board Guidelines, adopted in 1993, established a framework for analyzing women’s claims to asylum within extant Canadian asylum laws, the Charter of Rights, and judicial precedents (Chaffin 2010).

¹⁴ See Chapter 2, pp. 62-63 for a more detailed discussion of neoliberalism – which is at the heart of neo-humanitarianism, as I conceive it.

World War II context, Hungarian refugees in 1956, Czechoslovakian refugees in 1968, and Vietnamese refugees in 1975).

2.4 Ambivalences of Humanitarianism

How does humanitarianism operate as a meta-frame? Humanitarianism is broadly understood as incorporating a doctrine of duty to promote human welfare, manifested through public and private philanthropy. The humanitarian meta-frame is anchored by a core presupposition that refugees are both in need and deserving of protection. Yet humanitarianism is ambivalent. On the one hand, it purports to hold the classical and apolitical values of impartiality and independence in advancing humanitarian goals; on the other, it is not actually independent of the state but operates to advance the interest of states.¹⁵ Humanitarianism as a meta-frame indeed contributes to the bolstering of state sovereignty through its discourses of *we* and *they* in the decisions about whether or not to intervene in crisis situations (see, for example, Edkins 2003, 255).

Ambivalence is manifest in refugee policy-making in the context of the humanitarian meta-frame at different stages of development. Humanitarian regimes often

¹⁵ Critical assessments of humanitarianism further suggest such ambivalence. For example, Liisa Malkki (1995a, 1995b, 1996) argues that humanitarianism can be dehumanizing. She undertakes a critical analysis of refugee status as a “historicizing condition” that helped to produce a particular subjectivity. Malkki argues that the “net effect” of the views of administrators of refugee camps and their particular uses of the term “refugee” was to depoliticize the refugee category and to “construct in that depoliticized space an ahistorical, universal humanitarian subject” (1996, 378). Bureaucratized humanitarian interventions, she argues, “leach out the histories and the politics of specific refugees’ circumstances” so that refugees stop being specific persons and become general types – “universal man, universal woman, universal child, and taken together, universal family” (Malkki 1996, 378). She calls this phenomenon “dehistoricizing universalism” – one that creates a context in which people in the refugee category tend to be approached as mute victims, sometimes rendered incapable of giving credible narrative evidence about their own condition (1996, 378). Many others offer different and frequently critical perspectives on humanitarianism, such as Barnett (2011), Barnett and Weiss (2008, 2011), Betts (2009), Wheeler (2000), Pratt ; Bohmer and Shuman (2008), Gibney (2004), Hyndman (2000), Kennedy (2004), Dauvergne (2005), Kennedy (2004), Stedman and Tanner (2003), Rajaram (2002), Fox, (2001), Givoni (2011), Edkins (2003), Reiff (2002), and Shani *et al* (2007).

struggle to operate among contradictory imperatives, intrinsic ambiguity, and lack of reliable information. The ambivalences of humanitarian regimes set the stage for their destabilization and a shift of meta-frames, particularly to neo-humanitarianism, the core presupposition of which is derived from a neoliberal notion such that refugees are risky, potential criminals, and a threat to public safety and social cohesion. Nonetheless, humanitarianism embodies discursively constituted forms of moral authority that are brought to bear, particularly by the United Nations High Commissioner on Refugees (UNHCR), in order to engage sovereign nations in responding to crises.

Michael Barnett suggests a particular ambivalence of humanitarianism in relation to its presumed duty of care when he calls it “a mixture of care and control” (2011, 221).¹⁶ In the next and subsequent chapters, I will particularly illustrate in detail how the Canadian state repeatedly portrayed the arrivals of refugees as emergency events, or crises, notwithstanding the massive, complex and very sophisticated legislative and refugee policy frameworks that were developed in keeping both with the ambitions of humanitarianism in the inter-war years and with the advent of the Convention in 1951. As efforts increased to prevent the arrival of unanticipated or unwelcome strangers into

¹⁶ In his ground-breaking new work, Barnett develops a political history of humanitarianism by foregrounding the persistently ambivalent nature of the concept – or what I have called the meta-frame. He writes: “Humanitarianism is a creature of the very world it aspires to civilize; from the days of the abolitionists to today’s peacebuilders, humanitarian action has been lodged somewhere between the present day and the utopian. Humanitarianism is not one of a kind but rather has a diversity of meanings, principles, and practices; all humanitarians share a desire to relieve unnecessary suffering, but agreement ends there. The ethics of humanitarianism are simultaneously circumstantial and universal; humanitarians are a product of their times even as they illuminate their actions with the transcendent.” I agree with Barnett’s assessment of the ambivalence of humanitarianism. As he puts it, the “paradoxes and dilemmas” of humanitarianism have always been present, not as a “dialectic” or as a “pendulum” but rather as an “unstable balance” between “potentially contradictory elements that are always present and never reconcilable” (2011, 8). These elements are, he concludes, “nearly intrinsic to humanitarianism” (Barnett 2011, 8).

borderlands or across borders by countries such as Canada, the doctrine of humanitarianism lost some of its moral authority.

2.5 International Refugee Regimes¹⁷

In this section, I develop an account of the emergence of key international refugee protection regimes in order to illustrate how the humanitarian meta-frame operated, and how it contributed, in effect, to the shift to worldwide neo-humanitarianism. This section provides the context for the discussion to follow in Chapter 3 about the ways in which the Canadian state responded at different stages to the unwanted arrivals of refugees.

2.5.1 Inter-war Development of Refugee Protection Regimes

In the late nineteenth and early twentieth centuries, nascent humanitarianism encountered barriers to asylum and refugee protection. European countries, Canada, and the United States implemented various immigration policies on the basis of race, national passports and other legal categories. Barriers grew further as nationalism and the assertion of national sovereignty came to dominate international relations (Loescher, Betts, and Milner 2009). At the end of World War I, US President Woodrow Wilson chaired the Paris Peace Conference and played a major role in the drafting and subsequent ratification of the League of Nations Covenant.¹⁸ In stark contrast with US President George W. Bush's later view of what must constitute a new world order in the

¹⁷ For purposes of this discussion, “regimes” are understood to “comprise the norms, rules, principles, and decision-making procedures that regulate the behaviour of states” (Loescher, Betts, and Milner 2009, 2).

¹⁸ See the United Nations Office at Geneva (2010) for a detailed description of the organization, political, and technical activities and committee structures of the League of Nations in the post-World War I period. In 1904 and 1910, the League of Nations undertook initiatives to augment the Covenant in order to protect the rights of women and children. In 1921, an International Conference was held in Geneva that led to ratification by 48 states of a Convention for the Suppression of the Traffic in Women and Children, and gave the League the authority under Article 23 of the Covenant for supervising the execution of these agreements.

context of the globalized “war on terror” after September 11, 2001 (discussed in Chapter 5), Wilson’s post-World War I vision of a new world order was based on liberal values of peace, progress, democracy and economic prosperity for all. These principles shaped the Covenant, which contained three basic elements: to ensure collective security, to assure functional cooperation, and to execute the mandates of peace treaties. The League of Nations, officially inaugurated, was headquartered in Geneva, after the Peace Treaty of Versailles came into effect on January 10, 1920 (United Nations Office at Geneva 2010). The League set out a mandate comprised of a number of technical and political measures, including the repatriation of prisoners of war and approaches to the “problem of refugees” (UN 2010, 5).

The first set of governing arrangements for dealing with refugee movements occurred under the aegis of the League of Nations in 1921, when it took responsibility for assisting approximately half a million prisoners of war (primarily in Russia) awaiting repatriation. During this period, as a result of the 1917 Revolution, more than 1.5 million stateless refugees fled Russia and scattered all over Europe (UN 2010). These refugees had neither the right to claim any nationality nor the means to find refuge. In 1921, the League set up what was characterized as a temporary Refugee Organization to deal with these massive displacements. After the Russian refugee situation was addressed, the League of Nations was asked by several other countries to help repatriate refugees in their regions (e.g., Armenia, Greece, Turkey, Syria) (UN 2010).

Fridtjof Nansen, the first High Commissioner for Refugees, launched a system of identification for stateless persons called the “Nansen Passport,” which gave refugees

legal protection and was recognized by more than 50 states.¹⁹ The only “nationality” these refugees held was the Nansen Passport, a precursor to contemporary passport regimes. In the late 1930s, the Office of the High Commissioner was overwhelmed with refugees from Austria, Czechoslovakia, and Nazi Germany; nonetheless, it remained active until it was disbanded in 1939, although remnants of the organization continued to be active throughout World War II. In 1947, the Office of the High Commissioner was officially transformed into the International Refugee Organization (IRO) by the newly formed United Nations (UN 2010). In 1951, a new refugee protection regime under the United Nations established the legal definition of refugee.

2.5.2 The New Refugee Convention Regime of the UN

Despite its legal instantiation of the refugee as a universalized individual, the 1951 UN Convention definition was, geographically, a very exclusive one. It enabled international attention to be deflected from the violence and material deprivation arising from colonialism and imperialism by allowing for populations affected by these forces to be included under the aegis of the Convention, *only* through discretionary *ad hoc* efforts of the UNHCR (Hyndman 2000, 9-14). In 1951, the IRO was replaced by the UNHCR, also headquartered in Geneva, and with more than 50 field offices around the world (United Nations Office at Geneva 2010).²⁰ In the early Cold War years, in an era of conflict and confrontation between the Soviet Union and the United States and its

¹⁹ The Nansen Passport was not recognized by Canada or the US, among other countries (United Nations Office at Geneva (2010).

²⁰ The Nansen International Office was awarded the Nobel Peace Prize in 1938; the UNHCR was awarded the Prize in 1951.

western allies, the UNHCR attempted to deal with the repatriation of millions of displaced people in Europe.

The new Convention emphasized civil and political status in the context of the ideological debates that dominated post-War European reconstruction (the perceived threats of communism and the fears of another Holocaust). The effect of emphasizing civil and political rights was to minimize the importance of socio-economic rights (Hyndman 2000, 9). This was an important move that had profound effects on what counted as a refugee. The definition adopted in the Convention was explicitly intended to distribute the European refugee *burden* – through a process called “burden-sharing” – without inaugurating any binding obligation to reciprocate by way of the establishment of rights for, or the provision of assistance to, non-European refugees (Hyndman 1991, 8). The explicit reference to refugees as a burden is important – it is central to the ambivalence of humanitarianism in that it suggests a conflict between humanitarian goals and the national interests that states regard as their central mandate. During the early period dominated by the humanitarian meta-frame was that the League of Nations mandate treated the category of refugee as a collective term, moreover, referring to *groups* of people. Later, what counted as a refugee became a particular kind of individual.

By 1954, many western states (except Canada, as discussed in Chapter 3) were signatories to the Convention, which set out the obligations of the states regarding foreign others who appear inside frontiers or at borders.²¹ The Convention required signatory states to put in place a number of procedural safeguards, including ensuring an

²¹ The Convention is subject to interpretation by states according to the international “principle of effectiveness” that require that a treaty be interpreted “in order to ensure maximum effectiveness in achieving the object and purpose of the treaty” (Heckman 2003, 223, n. 62).

assessment of the ability of an individual claimant to demonstrate in a convincing narrative form a sufficiently compelling fear of persecution and whether this fear was objectively legitimate, based on an account, given in person, of events that caused the claimant to flee (Heckman 2003). If there was no corroborating evidence, these assessments were made solely on the basis of the official's assessment of the applicant's personal credibility.

States were obliged to institutionalize a suitable range of policies and programs to meet their commitments as signatories to the Convention. A central requirement of the Convention was that a state must not *refouler* (or deport) a person who has demonstrated a "well-founded fear of persecution." Signatory countries were expected to give refugee applicants the opportunity to make their cases verbally in the presence of a state official, and adequate interpretation services were to be provided to enable the applicant to tell her/his story. The expectation was that those who judged refugee claims were qualified to do so, and claimants were to be allowed to remain in the host state until their status was determined (Goodwin-Gill 1996).

2.5.3 Expanding Refugee Protections under the UN Convention

In contrast to the first half of the century, the period from the 1960s onward saw the majority of forced migrations occur outside Europe due to political and economic upheavals as well as decolonization (Marfleet 2006). Taking these mass migrations into account, a new 1967 UN Protocol amended the Convention by rescinding the Euro-centered restrictions and eliminating the pre-1951 requirements associated with resettling millions of displaced people after World War II. The expanded international refugee regime was comprised of the Convention Relating to the Status of Refugees, the 1967

Protocol Relating to the Status of Refugees, and the 1969 Organization for African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa. This regime of international law both institutionalized and enforced the refugee-related aspects of the UN Universal Declaration of Human Rights,²² which holds that a person has the “right to leave” and return to her own country, and has the “right to asylum.” By 1995, 125 states (including Canada) had acceded to the expanded requirements of the Convention.

Protection of large groups of people fleeing violence, which fell outside customary legal instruments and outside the scope of international law, came largely to be institutionalized under the purview of UN-endorsed humanitarian interventions, rather than initiatives of individual states. The UN, at the invitation of host countries, provided on-site resources and case-workers who helped people who technically were not refugees under the Convention, yet were displaced *in situ*.²³ For this purpose, in the mid-1980s, the UN created its “persons of interest” category, so that it could augment its activities offshore to find “durable solutions” (e.g., repatriation or resettlement) to these movements of people in crisis (UN 2010).

²² The Universal Declaration of Human Rights was adopted by the UN General Assembly in the post-War period on December 10, 1948 when world leaders decided to complement the UN Charter with a covenant that would guarantee a range of human rights for all persons. The first draft of the Declaration was proposed in September 1948. By its resolution 217 A (III) of 10 December 1948, the General Assembly, meeting in Paris, adopted the Universal Declaration of Human Rights. Eight nations abstained but none dissented (UN 2013).

²³ Displacement *in situ* nonetheless creates distance; the experience of displacement is not a function of distance as such. For example, Palestinians whose farms and communities and commercial livelihoods have been disrupted by the Israeli security barrier remain physically close to their familiar and familial ties, but they experience displacement as vast distances, painfully long intervals, and impermeable barriers to movement. In some areas, where the Israeli “security barrier” is constructed of solid concrete standing over ten meters high, and it is not possible to see through the barrier, the distance between people who share bonds of various kinds is experienced as vast, even though the actual distance is only a few meters (Colson 2006).

2.5.4 Wilsonian and Early UN Approaches

Both the League of Nations regime and the UN Convention regime embodied ambivalence in the form of the central and problematic tension that persisted between a commitment to the principle of absolute state sovereignty on the one hand, and the humanitarian principle, on the other hand – a principle that was based on the liberal belief in the fundamental worth and dignity of all human beings. The Wilsonian and later the UN humanitarian regimes represented attempts by states to make exceptions in otherwise restrictive immigration policies for those who had to flee because their lives were threatened in their home states. Both regimes incorporated the right to seek asylum (for groups, under the League of Nations regime; and for individuals, under the Convention regime); however, neither regime achieved full realization of the corresponding norm – the right to asylum (Skran 1992, 15).

What counted as a refugee in the context of international refugee regimes thus evolved over the period since World War I: first, refugees were classified based on group affiliations (League of Nations regime); subsequently the Convention shifted the legal definition to create a theoretical, universalized individual, one whose refugee status depended upon the capacity to render a convincing, verbal narrative that both demonstrated a “well-founded” fear for her/his life, and the conditions within which this fear arose (UNHCR regime). So the answer to the question *what counts as a refugee* shifted significantly during the period of humanitarianism from the early part of the century to the post-War period. As the number and intensity of mass displacements increased throughout the twentieth century, so did western countries’ efforts to control their movements in the interests of protecting sovereignty and security. As international

refugee regimes answered this question on the basis of an increasingly narrow definition of the individual refugee precisely to address the perceived negative effects of the influx of greater and greater numbers of refugees and other uninvited migrants, the scene was set for the shift in meta-frames from humanitarianism to neo-humanitarianism.

2.6 The United Nations: Administrative Practices and Humanitarian Ambivalence

In this section, I examine some of the ways in which the administrative practices of international refugee regimes exhibited the ambivalences of humanitarianism. As we have seen, the core presupposition of the humanitarian meta-frame stood in stark contrast with the state mandate to advance national interests through the protection of absolute territorial sovereignty. Ambivalence can also be seen in the administrative practices of refugee regimes, both at the international level, and as I will illustrate in subsequent chapters, at the level of the state.

Formally established in 1951, the mandate of the UN High Commissioner for Refugees (UNHCR) was to protect refugees, to alleviate the conditions in which refugees found themselves in the post-World War II years, and to promote regional and international stability. The UNHCR had two principal responsibilities: (1) to work with states to ensure the protection of refugees; and (2) to ensure that refugees have access to durable solutions (including repatriation and resettlement). The UNHCR remains the principal international organization charged with ensuring the provision of political and legal protection to refugees, displaced persons, and other vulnerable groups under its Charter (UN 2010; Loescher, Betts and Milner, 2009). As a matter of policy, the Office of the UNHCR is designed to complement state-based regimes of international law. The

UNHCR's position, however, was and remains a difficult and ambivalent one: the High Commissioner both represents states' interests and it is dependent on states for funding, but its mandate requires that the Commissioner attempt to persuade often reluctant states to meet their obligations and commitments to offer humanitarian aid to refugees. The greatest ongoing challenge for the UNHCR in meeting its responsibilities is that it has only the tools of moral authority and persuasion in an international environment where powerful national self-interests drive policy-making (Loescher, Betts, and Milner 2009).

The United States did not engage with the UNHCR in its early stages as the emerging agency concerned itself primarily with relocating refugees within Europe. Although the US posture changed somewhat as the agency grew and the Cold War intensified, American refugee policy and practices of resettlement and asylum were framed mainly in the context of the Cold War foreign policy agenda (Goodwin-Gill 2008). For the US, framing the refugee in liberal terms as an individual suffering persecution served ideological and foreign policy purposes because, by providing asylum to defectors from Soviet Bloc countries, these emerging Communist regimes could be positioned as totalitarian states that persecuted individuals seeking freedom (Loescher, Betts, and Milner 2009). At the same time, however, European states involved in founding the UNHCR also saw the regime as an efficacious way of dealing with the post-war concerns of various religious and ethnic minorities in Europe – especially the Jews. Those who supported the UNHCR and participated in its development did so because they wanted mechanisms to prevent future persecution of Jews, and to create new international arrangements that would enable Jewish refugees to depart and resettle elsewhere if necessary (Loescher, Betts, and Milner 2009).

The UNHCR's responsibility to foster protection of groups or categories of refugees – as well as to encourage states to adhere to their responsibilities under the Convention – created a tension at the core of the agency's mandate. Jennifer Hyndman refers to this as a functional “slippage” between the administrative practices of the UNHCR and those of participating states (Hyndman 2000, 10). The UNHCR was the lead organization in estimating the number of refugees at risk and in determining the need for humanitarian interventions. The international system depended on credible data-gathering and analysis to determine resource allocations to refugee-receiving states. This data-gathering had to be credible both in the context of the UNHCR's mandate and in relation to the national interests of the states whose priorities were not always consistent with those of the UNHCR. This tension, or functional slippage in Hyndman's terms, can be seen as part of the ambivalence of humanitarianism as manifested at the level of administrative practices.

To the extent that any consensus exists about refugee statistics, there is general agreement that it is impossible to count refugees accurately in any given situation because the situations in which people are caught are always fluid and in motion (Loescher, Betts, and Milner 2009). Put another way, there are no internationally recognized, simple and effective ways of counting refugees, and no reliable methods for developing accurate counts, particularly in light of the conflicting political agendas in which refugee counts are deployed.²⁴ With respect to the politics of refugee statistics,

²⁴ I attempted to gather and summarize in chart form consistent statistical information about asylum-seeker and refugee inflows over the period of time covered by this dissertation – approximately 75 years. The exercise was helpful in that it demonstrated what I have described as some of the problems inherent in historically and politically embedded systems of counting refugees in which frame contestations render definitions unstable and inconsistent. Further, there is little or no consistency among approaches to such data-gathering by OECD countries, the UNHCR, or by refugee-producing regions/countries. In Canada, while data were available for certain periods, the ways in which these data were assembled and packaged

refugee census practices and techniques within humanitarianism exhibit ambivalence. Such administrative practices are embedded in an “ideology of control” – the more that the movements of refugees are restricted, the easier it is to count them (Harrell-Bond *et al* 1992, 8). However, restricting the movement of refugees contravenes the central tenet of the Convention by which refugees are declared in law to have the right to flee. Mobility is always essential to the survival of refugees. Nonetheless, western technocratic means of managing refugee flows in the national interests of states cannot move beyond the need for control. These practices were and continue to be brought to bear in ways that forestall motility and mobility and impose external notions of fairness in the distribution of aid, often at the expense of local, culturally embedded mechanisms (Harrell-Bond *et al* 1992).

Refugees often resist being counted – quite understandably, given common practices. These practices include marking refugee bodies with indelible ink as part of a supposedly efficient and scientific approach to meet the demands of donor states to prevent abuses of the system. UNHCR-sanctioned practices of requiring refugees to stay inside camps and containment areas and the field-workers’ enforced marking of refugee bodies (for identification purposes) are practices that might be associated more with totalitarian regimes than with humanitarian ones. In wealthy countries, where relatively

for political reporting purposes changed as governments changed. Therefore, when I discuss in context particular increases or decreases in refugee movements in relation to the Canadian policy environment, I characterize them in relation to proximate periods for purposes of making key distinctions in framing. Longitudinal charting of refugee data (especially of the success and failure rates of asylum-seekers to gain entry) proved to be impractical and potentially misleading with respect to the effects of the three meta-frames. While I suggest in subsequent discussions that the number of certain selected offshore refugees admitted to Canada increased slightly, even during the period associated with intense securitization, the number of asylum-seekers who entered Canada from the US and were able to apply for Convention refugee status decreased dramatically as a result of the implementation of the Safe Third Country Agreement after September 11, 2001 (discussed in Chapter 5, section 5.3.3).

few refugees arrive each year, data-gathering is complicated by a blurring of distinctions between asylum-seekers, asylum applicants,²⁵ refugees, so-called economic migrants (temporary workers) and undocumented immigrants, depending on how state officials and others want to play the numbers games (Bakewell 1999a). The use of refugee counting systems for political purposes is a practice that is clearly at odds with the liberal egalitarian principles of humanitarianism. Further, this practice, which undermines international aid efforts, appears to be an unintended consequence of the UNHCR's international aid programs.

Manipulating refugee statistics contributes to the perception of corruption and criminality in both refugee-producing and certain refugee-receiving states. As refugee data-gathering processes lose credibility, the refugees involved in corrupt programs are also seen to be associated with criminal activities. This tendency toward criminalization of the refugee is an aspect of the ambivalence of the humanitarian meta-frame that helped to set the stage for the emergence of the exclusionary practices of neo-humanitarianism in the early 1970s. Finally, given the functional slippage between humanitarian goals and state administrative practices, it is necessary to situate any analysis of what counts as a refugee in context, as I have attempted to do here. One must always ask about the source of the data, and how the data are collected – by whom and for what purposes (Bakewell 1999b).

²⁵ Asylum applicants are those who travel “under their own steam and then apply for asylum”; they may travel with or without documentation, and they may wait until after they have been admitted on a student or travel visa to apply (Bohmer and Shuman 2008, 25).

2.7 The Scandal of the Refugee

The early humanitarian, common-sense understanding of the refugee that emerged in the period of World War I referred to groups of people rendered stateless as a result of the War or other geopolitical upheavals. With the advent of the 1951 Convention, the category of refugee was reconstituted in legal terms as an individual fleeing persecution, thus reflecting the turbulence associated with post-War Europe, the Cold War, and decolonization. In the second half of the twentieth century, this shift in the understanding of the refugee, together with new trends in UN-sponsored multinational responses to refugee crises, signaled the erosion of asylum practices worldwide and set the scene for the period in which a neo-humanitarian meta-frame would become dominant. The “scandal of the refugee” (Dillon 1999) became a global scandal; the plight of refugees raised problematic questions about the increasingly unstable international system of states and the legacies of colonialism.

The modern political scandal of the refugee was actually inaugurated, according to Michael Dillon, with the earliest invocations of absolute sovereignty beginning in the sixteenth century when the refugee was a figure that challenged the legitimacy, stability and identity of emergent nation states (Dillon 1998, 34). As such, the refugee embodied what Dillon calls “political abjection” and was scandalous in that the figure of the refugee represented “the waste which continuously disturbs identity, system and order because it continuously irrupts in a way which erodes the very parameters by which those inside seek to be defined” (1998, 34). The refugee thus represents ambivalence because the advent of the alien appears as a burden while, at the same time, appearing as a boundary figure that is essential to the creation and maintenance of sovereign territories. The

refugee thereby serves to scandalize “traditional understandings of the idea ... of unity as such” (Dillon 1998, 33). Long after the war years, the scandal of the refugee persisted, as states intensified their efforts to prevent altogether the arrival of unwanted foreigners.

In the post-World War II period, those refugees who succeeded in gaining admission to other countries were selected on the basis of their suitability and potential for contributing to solving massive labour shortages in industrialized economies (see, for example, Abella and Troper 1983/2000). Suspicion of aliens began to dominate the selection processes and refugees were rarely framed during this period as having any potential for contributing to social or economic stability in receiving countries (Marfleet 2006; cf. Chapter 3, below). Demands for independence by European colonies in Africa and Asia increased rapidly after the Second World War and during the early Cold War. Decolonization produced massive numbers of refugees, largely in Africa and Asia, thereby leading to another global refugee crisis.²⁶ During the early years of the Cold War, western governments positioned humanitarian and human rights policy regimes as a way to counteract the potential for the Soviet Union to increase instability in poor countries and regions. As the processes of decolonization accelerated, the scandal of the refugee was further politicized in ways that served east versus west foreign policy and domestic agendas.²⁷

²⁶ For example, in French-controlled Algeria and in the Portuguese colonies of Angola, Guinea-Bissau, and Mozambique, decolonization sustained waves of violence and displaced massive numbers of refugees. Also, many refugees fled the Chinese Communist Regime by moving to the British colony of Hong Kong (Loescher, Betts, and Milner 2009).

²⁷ In the mid-1950s, for example, approximately 700,000 Chinese refugees fled to the British colony of Taiwan; in 1957, the UN General Assembly, with its rapidly growing membership in the post-colonial era, determined that the Chinese refugees were “to be of concern to the international community” thereby enabling the UNHCR to provide assistance to refugees (not normally part of its mandate) without having to make the determination that China, which became a permanent member of the UN Security Council, is actually persecuting its own citizens (Loescher, Betts, and Milner 2009, 23).

As Phillip Marfleet (2006) explains, when the economic boom began to recede in the late 1960s, this suspicion widened and deepened in western states, while struggles for independence from colonial rule and political instability intensified elsewhere. Mass refugee movements and mass migrations continued to challenge western states' capacity and political will to meet their obligations under the Convention while making it increasingly more difficult for forced migrants to gain entry and protection. The practice of the containment of refugees persisted throughout the 1970s and 1980s. Discourses of exclusion portrayed forced migrants of all kinds as carriers of the dangerous and destabilizing forces of their homelands – carriers that must be contained or interdicted before they reached frontiers and borders and thus were in a position to make a claim for protection (Marfleet 2006).

During this period, the UNHCR established the category of *de facto* refugee – migrants who were fleeing conflict zones, and in need of sanctuary, but who had not crossed any international boundaries (Marfleet 2006). This category became the basis on which the agency interceded in crisis zones so as to contain refugees as much as possible within their own states of origin. The category of *de facto* refugee laid the foundation for what became the UN's *preventive protection* regime. Preventive protection is understood as “the establishment or undertaking of specific activities inside the country of origin so that people no longer feel compelled to cross borders in search of protection and assistance” (Hyndman 2000, 17). Safe havens, zones of tranquility, relief centers, refugee camps, and safe corridors were examples of this trend toward a policy of preventive protection, based on a *right to remain*, which was a characteristic expression of post-Cold War framings of the refugee problem (Hyndman 2000; Chimni 1993).

Preventive protection regimes under the humanitarian meta-frame were thus later to become the cornerstone policies for the neo-humanitarian meta-frame, as states sought new ways to prevent the movements of potentially dangerous individuals.

In the early 1980s, concerned about the way refugee-receiving countries were deploying preventive protection, the UNHCR stressed that the regime was not to become a substitute for asylum. The UNHCR further asserted that the right to seek and enjoy asylum must continue to be upheld (UN 2010). Preventive protection was followed by what was called “refugee warehousing” under the emergent neo-humanitarian meta-frame – the practice of containing most of the world’s refugees in massive camps for indefinite periods, often in countries least able to protect and support them (Cuellar 2007, 413).²⁸ For the UN, preventive protection deployed as a rationale for denying asylum violated the intention of the program, jeopardizing the “most fundamental principles of refugee protection – the right to seek asylum from persecution in other countries, and not to be returned into the hands of their persecutors” (i.e., the right of *non-refoulement*) (Frelick 1993, 7; quoted in Chimni 1993, 444).

In sum, in this section, I have described some of the significant changes in the movements of refugees in order to help contextualize the responses to such changes by international refugee regimes, and – as we will see in Chapter 3 – by the Canadian state. Irregular migration became a globalized phenomenon – manifest in global crises during periods of upheaval. International movements affected the ways in which states

²⁸ The concept of preventive protection was subsumed by discourses of neo-humanitarianism beginning in the 1970s, as western states adopted increasingly restrictive approaches explicitly designed to prevent refugees from reaching their frontiers and borders. By the early 1990s, refugee warehousing under the rubric of preventive protection (e.g., according to Chimni 1993, in the early 1990s, we saw this pattern in response to the plight of the Haitians, Bosnians, Albanians, and Somalis) had evolved into a key component of what became the securitization meta-frame (discussed in Chapter 4).

responded, either individually or in cooperation with other states, to unwanted arrivals. The development of international refugee regimes in this context shows the ways in which states (including Canada) were situated in relation to the mass movements of displaced people during a period largely dominated by the humanitarian meta-frame. In the next section, I will discuss how the humanitarian meta-frame shifted to neo-humanitarianism at the level of international regimes and in relation to state practices.

2.8 The Shift from Humanitarianism to Neo-Humanitarianism

As I have shown, humanitarianism (with its core presupposition that refugees both deserve and are in need of protection) and neo-humanitarianism (with its core presupposition that refugees are risky and potential criminals) are inextricably related, mutually constituted meta-framings. It is possible to distinguish the periods in which each of these two meta-frames tended to dominate refugee policy at the level of core presuppositions and then at the level of state practices based on these presuppositions. In the shift from humanitarianism to neo-humanitarianism, the concept of refugee protection was transformed into a particular understanding of preventive protection that worked to reinforce the category of refugee as a burden for the state. Indeed, the fundamental ambivalence at the core of humanitarianism was that the refugee emerged first as a burden for the state. Nonetheless, the old humanitarian regime operated on the assumptions of fairness and due process; the new regime assumed that all uninvited refugees were “illegal” unless and until they proved otherwise. This change was the central distinguishing feature of the shift to the neo-humanitarian meta-frame.

The tenets of neoliberalism are foundational to the formation of what I call the neo-humanitarian meta-frame. I take neoliberalism, following Norman Fairclough (2000), to be mainly a political project involving multiple, intersecting and persistent framings of ways to reconstruct society in accord with the demands of unrestrained global capitalism (as distinct from framings of global capitalism as only one of many intersecting forces). Neoliberalism comprises networks of discursive framings, including the framings of refugees and other migrants as problematic, within which circulate the mutually reinforcing discourses of, for example, border control and risk management. Further, I agree with Fairclough that the neoliberal global order is an “incomplete project rather than a *fait accompli*” (Fairclough 2000, 148). This is a crucial point: as an incomplete project, neoliberalism is always open to destabilization by emergent events, or contingencies, and to the possibility of new frame contestations. My particular interest is in how the neoliberal framings emblematic of the neo-humanitarian meta-frame constitute social and political life in terms of insecurity, risk, anxiety, and fear of foreign others, together with the effects on refugee policy and on how these framings led to the shift to securitization.

What neoliberal discourses have in common is that they constitute social problems as problems for *individuals* (Fairclough 2000, 148). In a neoliberal ethos, individuals who must rely on the collective resources of the state (such as refugees) are found to be unworthy, or lacking in virtue, legitimacy, and authenticity. When neoliberalism gained saliency worldwide in the late 1970s and became deeply entrenched by the late 1990s, refugees were reframed not just in terms of the absence of virtue, but also in terms of an array of potential risks to social cohesion, public health, national

security, and to public safety. As Anna Pratt argues, "... rather than being received as an entrepreneurial, self-governing, risk-taking potential citizen, the deserving figure of the refugee 'at risk' has been widely recast as the risky refugee" (2005, 18). While not always explicitly framing foreigners as a danger to the social order, security regimes frequently operated to prevent incursions by unwelcome, uninvited others. The threads of security discourses were woven together in relation to recurring refugee crises during the twentieth century.

My conceptualization of neo-humanitarianism in relation to refugee policy is informed by Jennifer Hyndman's argument that, consistent with the neoliberal project of dismantling welfare states and systems, there emerged a trend she calls "neo-humanism" – whereby human well-being and development were "qualified by the visibility and political popularity of people's need, as well as by the economic viability of measures employed to assist them" (Hyndman 2000, 182). This normative shift away from the egalitarian discourses of humanitarianism was toward an approach that emphasized cost-effectiveness and national security, thereby encouraging, in Hyndman's words, "ambivalence to and distance from the political and privations of 'others'" (Hyndman 2000, 182). Further, she argues that the neo-humanist account of the deserving refugee is that of a foreigner who is always elsewhere, out of sight, and inaudible (Hyndman 2000). Such neo-humanism operates in neoliberal regimes to obscure and efface human need as its proximity increases. In other words, the closer the stranger is to the border, the more danger she represents (Hyndman 2000).

Under neo-humanitarianism, the relationship between need and proximity is inverted such that the proximate stranger in need, who travels by questionable means

without documentation, is seen as no longer deserving of refuge but as both inauthentic and a potential danger. This inversion of need and proximity, as articulated by Hyndman, is also bolstered by an increasingly narrow interpretation under neo-humanitarianism of the legal definition of the individual refugee in the Convention. In this sense, we can see how the two meta-frames of humanitarianism and neo-humanitarianism are mutually constituted and share, at least nominally, significant discursive elements associated with need and proximity – but the core presuppositions that underpin each meta-frame and the resultant policy discourses are quite different.

Not surprisingly, with such an ethos, asylum applicants worldwide have declined steadily since the late 1990s – a decline attributable not to a decrease in refugee movements but to the emphasis on preventive protection and on increasingly restrictive asylum and border control policies introduced by industrialized countries (Crépeau, Nakache and Atak 2007). During periods of economic downturn, humanitarianism concerns were often undermined by other forces, including ethnocentrism and racism, which shaped and were shaped by western state immigration and refugee policies (see for example, Abella and Troper 1983/2000; Abu-Laban 1998; Abu-Laban and Gabriel 2002; Avery 1979; Baaba 2004; Bohmer and Shuman 2008; Folsom 2004; Henry and Tator 2010; Hier and Greenberg 2002; Kelley and Trebilcock 2002; Roy 1989; Simmons 1998; Struthers 1983; Thobani 2000; Whitaker 1987, 1991, 1998, 2002). In the context of the neo-humanitarian frame – notwithstanding the nominal international acceptance of principles of protection, fairness and due process – signatory countries frequently enacted policies designed instead to prevent altogether the arrivals of refugees, or to detain them.

These neo-humanitarian policies were designed explicitly to address national security interests and to further domestic political agendas, not in the interests of protecting refugees, which was the explicit focus of humanitarianism. As Marfleet explains, late twentieth century global market restructuring created new tensions that impacted the refugee: states opened their borders to the free flow of goods and capital, while, at the same time, excluding people who were displaced by the consequences of these flows (Marfleet 2006, 19-36). Discourses of “migrant criminality” developed across the European Union, both reinforcing and being reinforced by, policy discourses throughout the industrialized world. Marfleet cites, for example, a report prepared for the European Union, which asserts that “every [second] migrant in the ‘first world’ should be assumed to be irregular and hence inauthentic” (quoted in Marfleet 2006, 4).

As the neo-humanitarian frame began to emerge in the late 1970s, the individual rather than groups of refugees became the focus of refugee regimes, and mass movements of refugees were dealt with by the United Nations and by receiving countries as exceptions, on a case-by-case basis. Freedom of international movement was curtailed as states increasingly adopted instrumental immigration and refugee policies designed to prevent refugee arrivals (Hathaway 1991). Later in the twentieth century, the category of refugee suggested a foreigner who, although perhaps suffering and therefore deserving, was regarded more as uninvited and unwelcome – indeed, as the embodiment of incipient criminality, disorder, danger, and instability. For example, the dominant discourses of the “illegal alien invasion,”²⁹ common to contemporary debates in the United States about US-Mexican border control, illustrate the neo-humanitarian shift whereby all

²⁹ Yakabuski (2010), “In Arizona it’s all about immigration;” McIlhaney (2010), “Congressman Poe talks border security;” and, Beard Rau (2010) “Civil rights activists, Pearce plan summit on immigration issues.”

migrants were increasingly viewed as dangerous to social cohesion and public safety.

(The shift from humanitarianism to neo-humanitarianism, which impacted on what counted as a refugee, is summarized in Figure 2.8.1, below.)

Figure 2.8.1 – From Humanitarianism to Neo-Humanitarianism

<p>Humanitarian Meta-frame (emerged with the League of Nations in 1920s)</p>	<p>Neo-Humanitarian Meta-frame (arose with neoliberalism in 1970s)</p>
<p>World War I era, Wilsonian world vision; broad commitment to liberal values and principles (e.g., progress, prosperity, democracy, peace among nations)</p> <p>League of Nations – what counted as a <i>refugee</i> constituted in terms of groups or collectivities who were fleeing violence, or rendered stateless</p> <p>1951 UN Convention – refugee reconstituted in legal terms as a particular form of universalized individual who is forced to seek refuge outside her/his homeland, and is able to narrate a well-founded fear of persecution</p> <p>Convention established the protection paradigm by which signatories were legally obligated to provide certain protections to refugees, and to provide refuge and social supports to Convention refugees</p> <p>League of Nations focused on repatriation, resettlement, alleviating suffering</p> <p>Convention regime began with European refugee crises, and expanded its ambit to include conflict zones world-wide; humanitarian interventions abroad, combined with persuading Convention signatories to meet their responsibilities with respect to individuals seeking asylum</p>	<p>Rooted in the period of the Holocaust, and evolving through World War II and Cold War eras; arises from narrow focus on the legal definition of refugee as an individual; mass displacements treated as exceptions and dealt with on case-by-case basis, usually in the context of western regimes’ domestic security, economic development, and foreign policy aspirations</p> <p>New protection paradigm emerged in 1980s – <i>preventive protection</i> (refugee warehousing, erosion of asylum)</p> <p>Now, what counts as a refugee is a person who, by virtue of waiting elsewhere to be selected and granted refuge, is deemed to be a <i>deserving</i> refugee. Uninvited foreigners who manage to make their way with or without documentation to the borders and frontiers of receiving nation-states are reconstituted as cheats, criminals, queue jumpers, and more recently, as potential terrorists (the latter to become central to securitization)</p> <p>Uninvited, undocumented refugees fleeing so-called terrorist-producing, or terrorist-harboring countries are reconstituted as threats; interdiction/diversion strategies dominate western countries’ policy regimes</p> <p>New critical contestations emerge, against both humanitarian and neo-humanitarian discourses, over the concept of refugee (e.g., No One is Illegal movement; the No-Borders Network; the “Sans-Papiers”)</p>

2.9 Framing the Refugee in Neo-Humanitarian Discourses

Framing of the category of refugee in terms of risk is the central characteristic of the neo-humanitarian meta-framing that dominated policy discourses by the late 1980s. Neo-humanitarian framings of refugee dependency and helplessness of this period were paradoxical. These framings took refugees to be abject beings while, at the same time, possessed of political agency, therefore representing a kind of threat merely because they have the will to move to places of relative safety (Haddad 2008; Nyers 2006; Colson 2006). In these discourses, for example, refugees were portrayed as “illegals” (Macklin 2004, 370), demonized as “bogus,” therefore criminal (Citizenship and Immigration Canada 2009), and identified as a danger to public order and social cohesion in the context of domestic security agendas (Nyers 2006).

In a climate characterized by fear of the uninvited foreigner, there was an “erosion” of the idea that people who seek asylum actually were refugees (Macklin 2004, 365). As Audrey Macklin argues, the deserving refugee is not the actual person who arrives at the border. Paradoxically, the deserving refugee is always “over there”; and if she manages to get here, she is perceived as an “illegal” (Macklin 2004, 369). As the border control regimes constituted the refugee as an illegal, the tendency was to erase the very category of refugee from refugee discourses. As the image of the refugee disappeared from policy framings, to be replaced by the image of the “illegal,” this erasure, as Macklin argues, allowed the emergence of legitimating policies, laws and practices (such as interdiction, detention, and deportation) in a way that made refugees disappear in reality (2004, 369).

At the same time, discourses of effacement played out through the range of western media in the context of neo-humanitarianism, often portraying refugees without contextualization as an “amorphous mass, faceless and speechless” (Haddad 2008, 35) and thereby reinforcing a climate of social distance. Such distance contributed to a general lack of awareness about the actual conditions refugees face and operated to isolate refugees from the society of the host country. As Haynes, Devereux and Breen (2004) illustrate in their study of British national print media, news formats tend to concentrate on episodic framings, unpredictability, brevity and negativity – framings that tend to focus attention away from societal responsibility and to shift blame onto the victims of social ills (Hanyes, Devereux and Breen 2004, 5). Shifting blame onto individuals such as refugees in this manner is characteristic of the neoliberalism that underpins neo-humanitarianism. Moreover, national print media tended to adopt familiar and recognizable stereotypes that had the effect of reinforcing the nascent criminality of refugees (Hanyes, Devereux and Breen 2004, 5).³⁰ National print media therefore, has a significant role in framing particular answers to the question *what counts as a refugee* in public discourse. Beginning in Chapter 3, I will show how this influence has worked in the Canadian context.

Other features of the discourses under the neo-humanitarian meta-frame are the ways in which images of refugees have circulated in the global marketplace since the

³⁰ They identified five categories of negative framing of refugees: Frame 1 constructed refugees as illegitimate and portrayed host nations as the victims of (rather than signatories to) human rights and refugee conventions; Frame 2 constructed refugees as a threat to national or local integrity, portraying the presence of ‘the other’ as a cause of cultural and racial conflicts; Frame 3 constructed asylum seeking as social deviancy, framing the ‘other’ as degenerate, exotic, extremist, sexually deviant and uncivilized (often apparent, for example, in relation to media coverage of the so-called ‘War on Terror’); Frame 4 constructed refugees as a criminal element and as a direct threat to the physical safety of legitimate members of society and to their property; and, Frame 5 constructed refugees as an economic threat, citing benefits fraud, and the costs to legitimate taxpayers of the refugee/asylum system itself (Hanyes, Devereux and Breen 2004).

advent of neoliberal market restructuring. Such images are to be found, for example, in Web-based media images, film, and television images, news reports, humanitarian fundraising campaigns, political cartoons, and still photography. Refugee voices were rarely audible in these various portrayals; the dominant voices and perspectives tended to be those of journalists, aid providers, policy officials, advocates, and analysts (Szorenyi 2006). Another striking way in which images of refugees were popularly framed, and by which the meanings of these images were made and inflected, was through the “refugee coffee-table books”³¹ – large-format, hard-bound collections of high-quality, glossy pictures of refugees (Szorenyi 2006, 24). In this way, refugeeness and particular figurations of refugee experiences were commodified. Refugee coffee table books portrayed people who were explicitly labelled “refugees,” thereby emphasizing the “distance between the refugees on display and the reader of the book.” In doing so, these images stressed the distance between the reader (who is privileged enough to be able to afford the cost of the coffee-table book) and the refugee (in contexts of abjection) “on display,” together with the “lines of demarcation ... between ‘us’ and ‘them’” (Szorenyi 2006, 24).³²

Such neo-humanitarian photographic presentations both exoticize and affirm the existence of the ‘other,’ called refugee, while positioning the viewer as a consumer of the

³¹ In her examination of the ways in which ‘refugee’ is produced as a meaningful figure, Szorenyi analyzes three books: *Images of Exile* (UNHCR 1991); *Migrations* (Salgado 2000) and *Exodus* (Signum Fotografie et al. 1997, produced by Signum Fotografie, a photographic agency devoted entirely to the portrayal of refugees (Szorenyi 2006, 25).

³² Building on Mieke Bal’s concept of “expository discourse” defined as a “discourse of display” (1996), Szorenyi argues that images of refugees in coffee-table books are figurations of an object that are taken to be visual evidence of suffering that is always “out there” in the world. These images reinforce an inverse relationship between proximity and empathy that, in turn, leads to fear of the stranger on the doorstep – a fear that underpins contemporary refugee policy discourses.

images. As Rajaram argues, “consigned to ‘visuality’ and stuck in static signification of particular meanings, refugee images (indeed the very resonance of the refugee experience) become commodities” (2005, 253). The neo-humanitarian meta-framing, therefore, was implicated in the construction and instrumental use of refugee images as exotic objects, works of art, and as commodities that circulate in the market and in public and policy discourses more broadly. The neoliberal globalized market was thus implicated in framing the refugee as a commodity – what counted as a refugee in neoliberal market terms was a particular, yet anonymous and universalized, figuration that was framed so as to sell ideas and products, through coffee-table books to video games³³ to participation in worldwide humanitarian projects.

Another powerful example of the reframing of refugees can be found in Peter Nyers’ reading of the visual images deployed by humanitarian agencies on behalf of Kosovar refugees (2006). Nyers draws attention to the parallels between these humanitarian discourses and the discourses deployed by animal protection societies: the “visual message in these representations encouraged Canadians to think of sponsoring a refugee in the same way that they would consider adopting a pet” (2006, 91). Notably, he claims, no sympathy was evoked by images of a boatload of Chinese refugees and a dog, arriving off the coast of British Columbia until the Victoria Society for the Prevention of Cruelty to Animals was “overwhelmed by more than four thousand offers from all over the country to adopt the refugee-dog” (Nyers 2006, 92). To the local

³³ *Frontiers – You’ve Reached Fortress Europe* (2010) is a free, online video game developed by a consortium of European artists and technicians designed to recreate the experiences of migrants who manage to reach the frontiers and fences of “Fortress Europe.” Playing the game can be done from one of two perspectives, that of a desperate refugee, or that of a border guard. The designers of *Frontiers* wanted to deploy the video gaming medium in order to raise awareness of the difficulties faced by “these people” (refugees, migrants) as they attempted to gain access to Fortress Europe.

residents, “in contrast to ‘man’s best friend,’ there was nothing ‘domestic’ about the character of the Chinese migrants: they were presented as entirely foreign, untrustworthy, and dangerous” (Nyers 2006, 92). Thus, popular discourses of neo-humanitarianism framed refugees not in terms of their humanity but as ahistorical collectivities whose boundaries and constituents were relegated to categories of dangerousness in ways that supported and reinforced the shift away from the older humanitarianism.

The typically mute images of refugee bodies that circulated in photojournalism and film, and in print media, operated to consign refugees to forms of visibility that elided the purposes of their representation and allowed it to remain unproblematized (Chow 1992, 105; Rajaram 2002). Simply put, the media framings of what counts as a refugee functioned both to commodify the object *refugee* and to shore up the power of the state – with its control over resources and opportunities – in part by maintaining boundaries between the constructed *other* and the imagined *us* (Hanyes, Devereux and Breen 2004).

2.10 The Neo-Humanitarian Erosion of Asylum

Following the advent of neo-humanitarianism, the international community toward the end of the Cold War seemed to be recreating a situation reminiscent of the pre-World War II period when large numbers of unwanted people were denied entry to *any* country (Loescher 1992; Skran 1992). The emphasis on interdiction and containment – together with the growing credibility of the preventive protection regime as a solution to the mass movements of refugees – resulted particularly in the proliferation of refugee camps in Africa and Asia (Loescher 1992). With neo-humanitarianism, in other words, the humanitarian meta-frame gave way to the realpolitik of protectionism and xenophobia as the international state system turned to interdiction, detainment, containment and

camps to prevent the arrival of mass movements of potential asylum-seekers at their frontiers and borders.

Many countries produced movements of asylum applicants as violence spread throughout the Middle East, Africa, and South America during the Cold War (Loescher 1992). The early post-Cold War period between 1989 and 1994 ushered in different patterns of conflict and emergencies. Nearly a hundred conflicts occurred during this period, most of which were internal wars that involved land, resource, and rights disputes; or they were clashes of ethnic minorities, rooted in the conflicts of decolonization that began in the 1940s (Kaldor and Vashee 1997). Despite the political upheavals and the movements of vast numbers of people in Europe, most of the asylum applicants continued to come from poor countries. The unexpected arrival of many thousands of asylum applicants in western countries jolted existing practices and overtaxed the procedural systems for handling refugee determinations (Loescher 1992). In his assessment of the significant global increase in the number of asylum applicants and refugees, Gil Loescher writes:

[This] is neither a temporary phenomenon nor a random product of chance events. Rather, it is the predictable consequence of fundamental political, demographic, economic, and ecological crises occurring throughout the Third World and Eastern Europe. Although the Cold War and East-West competition in the developing world had been responsible for most refugee movements in the past, the collapse of Communism in large parts of the world has not diminished the risks of displacement. The numbers of refugees and migrants are on the rise all over the world. Indeed there are fears that many more could become displaced in the future as nationalistic, ethnic, and religious tensions, previously suppressed by totalitarian regimes and by East-West conflict, are now unleashed, and potentially leading to violence (Loescher 1992, 5).

In the post-Cold War era, foreign policy strategists sought new forms of legitimation – a new context, a new agenda – to replace outdated security concerns derived from the bipolar structures of Cold War politics (Whitaker 1998). Writing about this period, Samuel Huntington asked, “How will we know who we are if we don’t know who we are against?” (quoted in Marfleet 2006, 4). Foreshadowing the anti-Islamic reactions in the post-September 11, 2001 period, Huntington’s initiated a “clash of civilizations” discourse that began to dominate international relations theory by the early 1990s, particularly in the United States. The notion of this “clash” in his now infamous 1993 article had a polarizing effect on the field of international relations, and this polarization in turn influenced domestic policy responses to the movements of refugees, particularly between Islamic and non-Islamic nations.³⁴ Huntington particularly portrayed “the fault lines of civilizations” as “the battle lines of the future.”

In this emerging era of cultural conflict the United States must forge alliances with similar cultures and spread its values wherever possible. With alien civilizations the West must be accommodating if possible, but confrontational if necessary (Huntington 1993, 22).

Huntington’s position exemplified growing western anxieties about emerging fundamentalisms, and this anxiety in turn contributed later to a shift to a new approach to international migration – that of securitization (discussed in Chapter 4). Adding to the apparent post-Cold War identity crisis experienced by western powers after the fall of the Soviet Union, as Marfleet explains (2006), was the failure of many former colonies (particularly regions in Africa, Asia and Latin America) to adhere to the norms and

³⁴ Huntington’s core argument (1993, 1996) was that world politics was entering a new phase of international cultural conflicts, particularly between Islamic and non-Islamic nations. Huntington argues that so-called cultural identities – based on religion, history, language and tradition – would lead to deep divisions.

standards of the dominant global restructuring agenda led by these powers. In such conditions, “large areas of the world were identified as dysfunctional and threatening to the global good” (Marfleet 2006, 4). Forced migrants were reframed as “evidence of such dysfunction ... of the inability of non-western society to conform to the market model” (Ibid). This change was emblematic of a shift from the egalitarian approaches of humanitarianism to the increasingly exclusive and inhospitable approaches that characterized neo-humanitarianism. Thus, by the 1990s, we see a resurgence of the politics of fear of the stranger, particularly of the non-western stranger, who arrived uninvited on the borders of home countries and thereby represented a threat. The liberal altruism of humanitarianism had been sidelined by neo-humanitarianism as debates focused on new categories of alien threat to national interests, anticipating the shift to securitization.

2.11 Conclusion

In this chapter, my goal was to explain how naming and framing the refugee worked in the context of an account of the international emergence of the meta-frames of humanitarianism and neo-humanitarianism. As I have shown, in the shift from one of these meta-frames to the other, there were changes in the way the refugee was understood. During the period when the humanitarian meta-frame tended to dominate refugee policy, refugees were named and framed as groups, and then as individuals, who were deserving and in need of protection by refugee-receiving states. With the shift to the neo-humanitarian meta-frame, the focus was by the late 1980s on naming the refugee as an individual threat to public safety and social cohesion. Border security began to

override the principles of refugee protection as states worked to prevent their arrival altogether.

At the level of international refugee protection regimes, the shift resulted in reframing the response to the burden of the refugee as one of preventive protection. The answer to the question, what counts as a *deserving* refugee under the UN Convention, also shifted both implicitly and explicitly – what counts as a deserving refugee became the individual waiting *over there*, as opposed to the uninvited stranger who has arrived *here*. The process of naming and framing the refugee problem in terms of an inversion of the relationship between need and proximity had the effect of helping to reconstitute the refugee problem in neo-humanitarian terms and – and, thereby, of suggesting what became the “obvious” or “common-sense” solution in neoliberal terms: that of preventing the arrival of refugees altogether. Further, this late twentieth century framing dehistoricized, depoliticized, and (in the context of the circulation of refugee images in the global marketplace) commodified the category of refugee within discourses of dependency and helplessness. Ironically, as we have seen, such neo-humanitarian naming and framing of refugees were often deployed in the interests of garnering financial donations to humanitarian causes or of selling products that were designed to alleviate the suffering of refugees.

The category of refugee was reconstituted as framings shifted over time, in geopolitical terms depending on socio-political contexts and responses to crises. Nonetheless, the category of refugee, however it was framed, was consistently one of creating the image of an *other* that, as different from *us*, helped to shore up the edifices of sovereignty. Ambivalence is more apparent in humanitarianism than in neo-

humanitarianism, where the *other* is constituted mainly as a dangerous figure. As ambivalence waned with the advent of the neo-humanitarian meta-frame and the refugee was portrayed as a danger to public safety, the scene was set for the shift to securitization in the early 1990s (discussed in Chapter 4). In the next chapter, I will focus on the emergence of Canadian refugee policy and, particularly, the shift in that context from humanitarianism to neo-humanitarianism.

CHAPTER 3

THE EMERGENCE OF CANADIAN REFUGEE POLICY: FROM HUMANITARIANISM TO NEO-HUMANITARIANISM IN THE NATIONAL CONTEXT

3.1 Introduction

Humanitarian concerns about the refugee first appeared on the Canadian policy agenda as a burden that the country was expected to take on, together with other members of the international community. The burden was not readily accepted. Canada's immigration policy had been established not with a view to international humanitarian efforts, but with a concern to advance what governments and officials conceived as the national interest – which was seen to require as much exclusion as inclusion. Canadian refugee policy thus emerged from the larger context of immigration policy in a way that both reflected and perpetuated tensions between the national interest and international humanitarian expectations, especially in emerging international law. Canada was not alone in this respect. Humanitarian responsibilities were generally viewed by refugee-receiving countries as a burden to be shared. The humanitarian meta-frame was thus constituted in a context of ambivalence and remained marked by it. No country was expected to abandon its interests, but all that could were expected to do their part in sharing the burden – an expectation that arose with the mass displacement of people and the establishment of the League of Nations after World War I. The expectation became explicit as “burden-sharing” with the displacements of World War II and with the establishment of the United Nations and the UN High Commissioner for Refugees

(Barutciski and Suhrke 2001; Betts 2003; Boswell 2003; Fonteyne 1978; Suhrke 1998). With the advent of the 1951 Convention, signatory countries (today numbering 147, according to the UN) were obligated to respond in humanitarian terms to refugees who managed to cross international boundaries.

The ambivalence of humanitarianism became especially evident in connection with the Holocaust. Canada's policy response was far from exemplary in humanitarian terms – in fact, it is now regarded by many as a national disgrace. Nonetheless, the country's policy response was not without ambivalence, particularly in the figure of Prime Minister MacKenzie King. His ambivalence stands out in comparison to the stark anti-Semitism advanced in public and in policy circles, most notably by Frederick C. Blair, a senior official in Mackenzie King's government. Despite the ambivalence, Canada's policy came down mainly on the side of restricting entry to the country for European Jews fleeing Nazi policies of oppression and extermination. Restrictions continued into the early post-War period as the focus of immigration policy remained on the national interest, especially on rebuilding the Canadian post-war economy. The way that Canada's ambivalence came down on the side of restriction during the period of the Holocaust stands in sharp contrast to the country's admission in 1979-1980 of approximately 60,000 Vietnamese, Cambodians, Laotians, and Chinese refugees from Southeast Asia – for which the Canadian people were awarded the Nansen medal several years later. How humanitarian ambivalence came down on the side of refugee protection in the latter instance further stands in marked contrast as well to tendencies under the subsequent neo-humanitarian and securitization meta-frames.

From its origins in the early post-Confederation era to the advent of new immigration legislation in the late 1960s, one explicit objective of Canadian immigration policy was to sustain the Anglo-Saxon or European (i.e., white) character of Canada and to exclude people of so-called *non-assimilative races* – those deemed to be incapable of contributing to the predominantly Anglo-Saxon project of white nation building (Richmond 2001; Jakubowski 1997).³⁵ In the 1950s and early 1960s, given the continuing and extensive discretionary powers of the cabinet ministers responsible for immigration policy, the way absorptive capacities were interpreted depended on prevailing public and business sector opinions about what constituted an appropriate flow and mix of immigrants into the country. Canadian policy thus continued to limit the immigration of non-white peoples on the basis of race, a practice that echoed the early years of Confederation when immigrants were selected on the basis of their capacity to integrate (or to be absorbed) economically, socially and culturally into mainstream Anglo-Saxon Canadian society. Explicit racism, therefore, remained a significant component of Canadian immigration policy discourses from the time of Confederation well into the Cold War years (see, for example, Abu-Laban and Gabriel 2002; Angel-Ajani 2003; Canadian Council for Refugees 2000, 2010; Creese 1992; Dench 1999; Kaprielian-Churchill 1994; Kelley and Trebilcock 2000; Knowles 2007; Li 1998; Richmond 2001; and Thobani 2000).

Humanitarian efforts during the Cold War were often the result, as Harold Troper explains, of the “fortuitous mixture of altruism and self-interest” (Multicultural Canada

³⁵ For reviews of the ways in which systemic racism pervaded contemporary Canadian immigration and refugee policies, see CCR (2000), “Report on Systemic Racism and Discrimination in Canadian Refugee and Immigration Policies.” See also Sunera Thobani, “Closing the Ranks: Racism and Sexism in Canada’s Immigration Policy,” *Race and Class* 41:1 (2000), 35-55.

2013) on the part of the Canadian state; as such, humanitarianism during this period tended to favor certain refugees while denying asylum to others, depending on whether the source countries were allied with western countries against socialist regimes and the Soviet Bloc countries. Thus, humanitarian efforts persisted in various forms on a case-by-case basis, well into the period of neo-humanitarianism. The change, as the meta-frames shifted in Canadian refugee policy, was the advent of the increasingly exclusionary practices that framed refugees as representing a risk to social cohesion and public safety. By the end of the Cold War, as we saw in Chapter 2, asylum had eroded worldwide. At a time when mass displacements were occurring as the result of decolonization and other conflicts, the inclusionary practices of humanitarianism tended to be displaced by the entrenchment of the neo-humanitarian meta-frame, within which exclusionary practices tended to dominate responses to refugees seeking protection outside their homelands.

In the post-war period, public opinion and government policy, while not abandoning the national interest, resolved to some extent the tensions between the humanitarian obligations under the 1951 Convention and the national interest more clearly in a direction consistent with the humanitarian benevolence – even to the extent such that humanitarianism could, at least for a time, be understood as part of the national interest. Yet the advent of neoliberalism in the late 1970s began the shift in meta-frames from humanitarianism to neo-humanitarianism. Increasingly, refugee crises came to be understood and portrayed not as crises of humanitarianism but as crises threatening the national interest, and this change was reflected in the ways in which exclusionary and

racist attitudes characteristic of the early Confederation years persisted under neo-humanitarianism in Canada.

In this chapter, I include an extended discussion of the Canadian policy responses to the European Jewish refugees during World War II in order to illustrate the contestations that emerged within the intrinsically ambivalent humanitarian meta-frame, foreshadowing later shifts to even more exclusionary practices and policies. With a focus on the national interest, two federal domestic policy imperatives dominated Canadian immigration and early refugee policies in the nineteenth century and early twentieth centuries: nation-building and economic development. The international humanitarian meta-frame that comes to dominate refugee policy, beginning with the advent of the League of Nations, is also traced in relation to Canadian policy responses to particular events or crises. I situate emergent Canadian refugee policy discourses (associated with both *ad hoc* and institutionalized policy forms) and notable events within a general historical overview³⁶ of the dominant policy regimes since Confederation, focusing on twentieth century policy regimes – refugee framings during the Holocaust, in particular, and how these affected refugee questions.

I will focus on the ways in which the category of refugee was reframed in successive Canadian socio-historical contexts and how these reframings contributed to the different characterizations of multiple, recurring refugee crises. My goal in doing so is to illustrate some of the ways in which the state framed the category of refugee changes over time with respect first to early nation-building and economic development and then

³⁶ This overview is not intended to do justice to the complex and well documented history of Canadian immigration policy; rather, it provides the context within which I examine different ways in which the refugee came to be framed as a policy problem. See Figure 3.7.1.

later, as the country developed, with respect to the meta-frames of humanitarianism and neo-humanitarianism. As I have indicated, these two meta-frames were co-constitutive; each meta-frame contained elements of the other, each was anchored in many of the same core assumptions about the need to protect the national interest, and each meta-frame embodied ambivalence, although in different degrees, about the figure of the refugee. However, the two meta-frames involved markedly different emphases on matters of inclusion versus exclusion.

3.2 Canadian Immigration Policy: Pursuing the National Interest³⁷

In this section, I describe the development of Canadian immigration and refugee policy from the early days of Confederation, focusing on how refugee policy operated, first on an *ad hoc* basis in the context of immigration policy, and later, as a separate category enshrined in Canadian immigration legislation. Immigration policy, which was central to the development of the Canadian nation-state, was rooted in the Confederation debates of 1865 when immigration was portrayed as a major benefit both to newcomers seeking a better life in the British North American colonies, as well as a way to ensure

³⁷ In developing this chapter, I drew upon various works, particularly those by Reg Whitaker (his 1987 book, *Double Standard: The Secret History of Canadian Immigration* and his 1991 historical pamphlet entitled *Canadian Immigration Policy since Confederation*). For chronological accounts of Canadian immigration policy, see for example, Canadian Council for Refugees (2010), Dench (1999), Dirks (1977), Kelley and Trebilcock (2000), and Knowles (2007). Not discussed in this chapter, but important because of its significance as one of the first mass movements of refugees, is the flow of American “Free Blacks” and slaves into Canada in the years of the American Revolution in the late 1700s. Later, the Underground Railroad, a vast network of people who helped fugitive slaves escape to the North and to Canada, moved hundreds of slaves northward each year. Approximately 100,000 slaves left the South between 1810 and 1850, but, for obvious reasons, exact records and accounts of their movements were either not made or were destroyed in order to protect the Railroad participants. Knowles (2007) suggests that 30,000 slaves made their way into Eastern Canada before the American Revolution. Another wave of refugees entered Canada after the American Revolution. The United Empire Loyalists, the first mass wave of political refugees into Canada, were uprooted mainly from the New York area because their Tory politics made it impossible for them to stay in the area without British protection. Some 50,000 Loyalists came northward. Their influence on the development of Canada was significant because of their ongoing ties and relationships with Great Britain (Knowles 2007, 36-37, 44, 59).

the independence of the colonies from the United States. Early immigration policy framed certain immigrants as desirable if they served the interests of the wealthy mercantile class, while implicitly and explicitly framing other foreigners as dangerous, inassimilable, subversive, and incapable of being integrated into either English or French Canada (Avery 1979). Canada's immigration system from the beginning involved framing practices related to nation-building, social cohesion, public safety, and sovereignty.

In the first thirty years after Confederation, the dominant interests with respect to immigration were those of employers, trade unions, and nationalists (Kelley and Trebilcock, 2000). The thrust of immigration policy, however, was to attract people rather than keep them out, particularly to help open up the western territories in the interests of nation-building and trade. Sir John A. Macdonald, Canada's first Prime Minister, was a self-professed nation-builder, and he made it a priority to bring the West into Confederation as quickly as possible. He saw large-scale immigration as a means to this end and the expansion of immigration as a way to settle the west more quickly while facilitating resource extraction and trade. Macdonald placed responsibility for immigration first in the Department of Agriculture, given the west's role as the breadbasket of Canada (1867 to 1892) and then in the Department of the Interior (1892 to 1917) (Avery 1979).

The post-Confederation government sponsored networks of emigration agents, or "immigration salesmen" (Knowles 2007, 69) to recruit, preferably from Great Britain, farmers with capital, along with agricultural labourers and female domestics. Not welcome were professionals, clerks, or other immigrants of "sedentary occupation";

artisans, mechanics, and trades people were not actively recruited.³⁸ As one assistant superintendent of immigration said, the country wanted “men of good muscle who were willing to hustle” (Timlin 1960, 518). In the view of Macdonald (who was himself Scottish), “Scotch” immigration was most desirable: “Scotch emigration being as a rule, of the very best class” (quoted in Knowles 2007, 69). He sent “Scotch” agents to Great Britain to recruit new immigrants while discouraging immigration by those he considered undesirable (including certain “loose” women who, in his view, took advantage of government programs in order to come to Canada) (Knowles 2007, 70).

Since Confederation, the federal government has had responsibility for the control of immigration inflows. In the early years after Confederation, this control took the form of medical restrictions by which persons were denied entry on the basis of potentially carrying contagions of various kinds. Later, in 1872, the range of exclusions was expanded in order to prohibit the entry of criminals and other “vicious classes,” paupers, and “destitute immigrants” (Knowles 2007, 71). In these very early characterizations of the unwanted foreigner, we can see the operation of the system in the “national interest” and the beginnings of the associations between criminality and refugee flows that would come to the fore much later, in the period dominated by the neo-humanitarian meta-frame. The first Immigration Act was passed in 1869. Amendments and Orders-in-Council extended the government’s authority to deny entry to those with mental or physical disabilities. As Valerie Knowles has argued, the introduction of such provisions set the pattern for future Canadian immigration policy – incremental, evolutionary, and undertaken largely through amendments to existing legislation, rather than through the

³⁸ Yet they come anyway, by the tens of thousands. Manufacturers consistently and successfully supported the recruitment of skilled mechanics, engineers, and artisans as a form of technological capital (J. Struthers, editorial note, August 2011).

introduction of new Acts (Knowles 2007, 71). As I will illustrate in this and in subsequent chapters, this *ad hoc* approach was to become characteristic of policy responses to contingencies, most notably whenever there were significant unanticipated or unwanted upsurges in the numbers of refugees arriving at Canadian borders.

In 1878, the government initiated the first National Policy, which called for a significantly enlarged industrial labour force – with increasing immigration viewed as a need in meeting this goal.³⁹ The federal government saw immigration as primarily a matter of economic development, specifically as needed for the development of the national railroad system. As Reg Whitaker has argued, the emerging Canadian state saw private companies' interests as being parallel to its own. For example, the Canadian Pacific Railway (CPR), a private corporation, acted as the main instrument of implementation, as well as being central to the development of immigration policy in the early Confederation years. The government delegated responsibility to the CPR for bringing in much needed workers, and later, farmers to settle the western regions. The state was, during this period, content to leave the CPR and later the Canadian National Railway (CNR) in charge of attracting newcomers (Whitaker 1991).

In the late nineteenth and early twentieth centuries, immigrants arrived in Canada in record numbers (Whitaker 1991). As Whitaker explains, the national interest remained paramount as immigration policies shifted in the context of a growing backlash in Canadian society against increasing the inflow of non-Anglo Saxon immigrants. In the

³⁹ Over the longer term, the emphasis on industrial development led to the separation of the agriculture and immigration policy regimes. However, early immigration policies designed to attract newcomers to Canada failed because emigration to the United States consistently outpaced immigrant flow into Canada throughout the first three decades of Confederation (Whitaker 1987, 1991; Keenleyside 1948). Keenleyside called these the “despondent decades” of early Confederation Canada (1948, 3).

early years of mass immigration, fear of non-Anglo Saxon foreigners and racist attitudes greatly influenced the framing of public and state discourses, together with dominant pro-British attitudes of the emerging Canadian society (e.g., Avery 1979; Iacovetta 1993; Roy 1989; Abu-Laban and Gabriel 2002; Baaba 2004; Dauvergne 2005; Dench 2000; Jakubowski 1997; Knowles 2007). As barriers to immigration grew during the late nineteenth and early twentieth centuries, the first form of guest-worker was instituted in order to acquire needed migrant labour without having to absorb migrants into society – Chinese men indentured as railway workers with no avenues to obtain citizenship (Struthers 1983). Later, during the boom years of the early twentieth century when immigration was central to Canadian economic development, policy debates still constructed non-British immigrants as dangerous foreigners incapable of assimilation in class, ethnic, or cultural terms (Jakubowski 1997; Whitaker 1991).

When World War I broke out, immigration almost came to a halt. During the War, anti-foreigner sentiments grew to such intensity that direct state coercion was brought to bear against a number of ethnic groups living in Canada (e.g., the Germans, Ukrainians, and others).⁴⁰ Millions of European refugees were displaced by World War I, due to the subsequent redrawing of national boundaries and the emergence of totalitarian state regimes. As discussed in Chapter 2, it was in the inter-war years that the category of refugee first became significant in the context of the humanitarian meta-frame on a world scale in regard to the mass movements of displaced people, although the category was not yet enshrined in international law. Racialized policies continued to

⁴⁰ It is also worth noting that large numbers of Ukrainian immigrants, who arrived in Canada prior to 1914 as subjects of the Austro-Hungarian Empire were also interned during WWI as “enemy aliens.” Internment camps began in Canada in WWI.

dominate Canadian policy during the inter-war period and the World War II years, with such policies seen as being in the national interest as it was then conceived. During World War II, immigration to Canada again almost stopped, and specific groups of residents were targeted for detention. For example, anti-Asian racism gave rise, during World War II, to the policies of forcible internment and relocation of Japanese Canadians, mainly from British Columbia.⁴¹

The effects of the Great Depression and widespread anti-Semitism led Canadian government policy-makers in the late 1930s and onward to reject most appeals from Jewish refugees (Abella and Troper 2000/1983; Whitaker 1991).⁴² The period of the Nazi Holocaust and Canada's response to European Jewish refugees fleeing extermination was a unique period of intensely explicit, openly racist and anti-Semitic policy discourses at the highest levels of government.⁴³ Anti-Semitism and other such exclusionary framings of this period were not new to Canadian policy discourses. For example, very few Russian Mennonites fleeing Soviet political repression and forced exile were admitted to Canada in 1929 (Avery 1995, 116). Mackenzie King demonstrated great reluctance during a period of severe economic downturn to antagonize western provinces by admitting large numbers of Mennonite refugees who would settle the prairies (Avery 1995). In November 1929, the Premier of Saskatchewan

⁴¹ See, for example, P.E. Roy's 1989 book *A White Man's Province: British Columbia Politicians and Chinese and Japanese Immigrants, 1858-1914*.

⁴² For example, in 1939, the *SS St. Louis*, a ship bearing 907 German Jews was refused landing anywhere in South and North America. A senior Canadian immigration official declared, "the line must be drawn somewhere" (Whitaker 1991, 13) and ultimately the *St. Louis* returned to Germany where a third of its passengers would perish in Nazi concentration camps.

⁴³ As I show in Chapters 5 and 6, these discourses resonate with contemporary anti-Muslim discourses associated with securitization and, and in particular, the period around the attacks of September 11, 2001, when racial profiling and intensely explicit anti-refugee sentiments tended to overshadow the vestigial discourses of humanitarianism in responding to irregular migration by both the US and Canada.

told the federal government that “his province was not interested in receiving any more [Mennonite] immigrants unless the federal government would look after them” (Avery 1995, 116). Canada’s inhospitable reaction to the plight of the Mennonites was a precursor to the even less hospitable response to the Jewish refugees during the World War II years.

3.3 Humanitarianism and the National Interest: Canada’s Response to Jewish Refugees during World War II⁴⁴

During World War II, tensions emerged between international refugee protection regimes and domestic policy – between the nascent discourses of humanitarianism under the aegis of the League of Nations and the strengthening discourses of sovereignty, national interest, exclusionism, and border protection by the Canadian state. These tensions manifested at high levels of policy decision-making as an ambivalence, particularly with respect to furthering national interest goals in the face of calls to admit large numbers of European Jewish refugees, who presented certain kinds of problems for the national interest as it was conceived during this period. I contend that the Holocaust was a key period in Canadian refugee policy because that time exhibited the ambivalent tendencies that came to characterize refugee policy-making under the humanitarian meta-frame and that remained under neo-humanitarianism.

⁴⁴ The definitive work on Canadian responses to the plight of the Jews of Europe during the years leading up to and immediately following World War II is the prize-winning, internationally acclaimed book *None Is Too Many*, by Irving Abella and Harold Troper (1983/2000). I rely on their work in identifying and assessing key policy documents of this era, and on their analysis of the ways in which Canada responded to the crisis during the Holocaust. It should be noted that my discussion is condensed significantly, and it is intended to draw out aspects of Canadian public and policy discourses that constituted the European Jewish refugee as a threat to Canada. At the same time, national advocacy organizations such as the Canadian National Committee on Refugees and Political Persecution worked to reframe the European Jews as deserving of refuge. Another important source of information on policy responses to Jewish refugees is a more recent work by Ninette Kelley and Michael Trebilcock, *The Making of the Mosaic: A History of Canadian Immigration Policy* (2000), from which I also draw key texts that they cite and some perspectives on public discourses about Canada’s response to Jewish immigration and Jewish refugees.

During the Holocaust, the state framed European Jewish refugees as an unwelcome problem. This response was familiar as it was linked to recurring anti-Semitic and ethnocentric discourses of the early twentieth century, as I have indicated, and as others have clearly demonstrated.⁴⁵ Between 1933 and 1948, Canada systematically excluded European Jews. Canada's immigration policy at this time was summed up by the words of an anonymous immigration field agent who, when asked how many Jews would be allowed into Canada, replied "none is too many" (Abella and Troper 1983/2000). During the war years, Canada demonstrated once again its unwillingness to serve as a country of first asylum (which echoed an earlier policy designed to exclude Indian and Asian migrants that made continuous journey from homeland to Canada as a requirement for entry into the country). In January 1939, for example, in a speech to his Montreal constituents about the Jewish refugee problem, Canada's Secretary of State, Fernand Rinfret, summed up his government's position, in which implicit but obvious reference is made to the perceived inability of Jewish refugees to assimilate into Canadian society. As Abella and Troper indicate (1983/2000, 58, emphasis added), quoting Rinfret:

Despite all sentiments of humanity, so long as Canada has an unemployment problem, there will be no 'open door' for political refugees here ... [government restrictions would

⁴⁵ Examples of racist, nativists and exclusionary discourses that dominated Canadian immigration policy until the mid-twentieth century are numerous, and include the Chinese Head Tax of 1900, which was increased and administered as part of extremely narrow restrictions on the admission of any "Asians" (interpreted very broadly to include Turkey and Persia); the landing of a ship in Vancouver harbor carrying Punjabis and Sikhs, which sparked race riots and attacks on Chinese and Japanese neighborhoods; the 1908 Continuous Journey Rule; the various amendments to the Immigration Act that allowed for sweeping discretionary powers on the part of the Minister to deny entry or to deport persons on racial and other grounds; and other discourses, particularly during the two World War eras, which constituted "enemy aliens" and other dangerous foreigners as subject to various forms of interdiction, internment, or to deportation (see, for example, Abella and Troper 1983/2000, Canadian Council for Refugees 2010; Knowles 2007; Jakubowski 1997; Razack 2000; Richmond 2001; Simmons 1998; Whitaker 1987, 1991).

remain] “*especially* against that element who is assimilated with difficulty among the English and French of our country (Abella and Troper 1983/2000, 58; emphasis added).

What was the nature of the resistance by the Canadian state to admitting European Jewish refugees during the Holocaust era? Part of the answer lies, as I have shown, in the legacy of the ambivalent, frequently *ad hoc* and discriminatory, discourses of refugee policy administration associated with nation-building in the post-Confederation era. Nonetheless, many Jewish refugees and immigrants managed to enter and resettle in Canada in the first half of the twentieth century (Abella and Troper 1983/2000). Anti-Semitic policies and practices were already deeply entrenched in Canada long before the Holocaust. For example, both Clifford Sifton, federal Minister of the Interior, and later, Frederick C. Blair, the department’s deputy minister, wanted to prevent admission of Jewish refugees and immigrants. Nonetheless, between 1900 and 1921 approximately 140,000 Jewish refugees (mainly Russian Jews fleeing *pogroms* in Czarist Russia) were admitted to Canada and settled mainly in Montreal and Toronto (CCR 2010). Blair, who would become extremely influential in Canadian refugee policy during the World War II years, claimed with some apparent bitterness in 1926 that Jewish refugees were successful in settling in Canadian cities because “... the Jews have been able to organize public opinion in their favour, creating the impression that they are the most oppressed people, deserving of special consideration” (PC 534 – 8 April 1926; quoted in Kelley and Trebilcock 2000, 201).

During the Depression years, immigrants (many fleeing religious and racial persecution in their homelands) became targets of fear and anger that were expressed repeatedly across the country (Kelley and Trebilcock 2000, 218-221). Popular discourses

of racism and anti-Semitism also found support at the highest state levels. For example, the following excerpt from a report prepared for the Prime Minister's Office on Unemployment and Relief in Western Canada, June-August 1932, illustrates public attitudes and the ways in which ethno-centric exclusions – particularly anti-Semitic exclusions – were coded at the time:⁴⁶

The number of single men, foreigners on relief, is unduly large, and in several centres, officials report them as among their troublesome clients. Language differences, their tendency to segregate, their corporate loyalties, their susceptibility to seditious propaganda, their known proclivity to hoard money, and the consequent difficulty of ascertaining their actual need of relief, all greatly complicate an already difficult problem in these cities (quoted in Kelley and Trebilcock 2000, 218).

The concerns noted in the report served to target immigrant groups in stereotypical terms, thereby reinforcing the popular prejudices and support for policies to address the perceived deficiencies of particular groups of immigrants coming to Canada.

In this context, Jewish refugees fleeing Nazi oppression⁴⁷ were reconstituted in Canadian policy discourses in conflicting terms, as being *both* deserving *and* dangerous: they were deserving of refuge from the Nazis, on whom Western allies had declared war; yet they were dangerous because their presence in Canada was seen as potentially

⁴⁶ The author of this report was Charlotte Whitton, at that time, executive director of the Canadian Council on Child and Family Welfare Council, and who would subsequently become mayor of Ottawa in the 1950s.

⁴⁷ In 1933, the Nazi party came to power and implemented anti-Jewish policies and legislation in order to drive the Jews out of Germany. World War II began with the German invasion of Poland in September 1939 and the policy shifted from expulsion and segregation to concentrating the Jewish population in areas from which they could be expelled. It is not clear, according to the US Holocaust Memorial Museum, exactly when the policy of mass extermination emerged (known as the “Final Solution”) but by 1941, mass exterminations had begun, using mobile gas vans and then later, in concentration camps where the goal was the mass murder of an estimated two million Jews (US Holocaust Memorial Museum 2012). Thousands of displaced Jews could find no refuge; the Canadian federal government refused to accept any Jewish refugees. In the early post-War period, small numbers were admitted under very restricted circumstances (Abella and Troper 1983/2000).

disruptive. Tension persisted between humanitarian goals and the way the national interest was conceived at the time. Although Mackenzie King was frequently moved by the plight of the Jewish refugees, as his diaries indicate, his concerns about the consequences of their reaching Canada tended to trump humanitarian concerns. He saw an increased inflow of Jewish refugees as particularly problematic with respect to questions of national unity and maintaining Liberal Party control of Parliament. Liberal power depended in part at the time on maintaining support in Quebec, where Mackenzie King knew anti-Semitism to be deeply entrenched among political and business elites.

It is instructive to review some of Mackenzie King's diary entries of the period to get a sense of the intensity of his early anti-Jewish refugee sentiments that, in turn, bolstered and directed federal policy-making during this period. (In later diary entries, as I will show, his views were tempered by growing ambivalence when he became aware of the nature and scope of the Nazi project to exterminate German Jews.) In the spring of 1938, regarding US President Roosevelt's "appeal to different countries to unite with the United States in admitting refugees from Austria, Germany, etc." Mackenzie King writes:

... that means, in a word, admitting numbers of Jews.⁴⁸ My own feeling is that nothing is to be gained by creating an internal problem in an effort to meet an international one. That we must be careful not to seek to play the role of the dog in the manger so far as Canada is concerned, with our great open spaces and small population. We must nevertheless seek to keep this part of the Continent free from unrest and from too great an intermixture of foreign strains of blood, as much as the same thing as lies at the basis of the Oriental problem. I fear we would have riots if we agreed to a policy that admitted numbers of Jews. Also

⁴⁸ Note that this is an instance – one of many in Mackenzie King's writings as well as official documents – where the word "refugees" is understood to mean "Jews."

we would add to the difficulties between the Provinces and the Dominion.⁴⁹

At international conferences on the refugee situation in Europe – Evian 1938 and Bermuda 1943 – Canada took no official position, but also offered no access for Jewish refugees. This approach was documented in a 1938 memo to Mackenzie King from the Department of External Affairs, and the Department of Mines and Resources:

We do not want to take too many Jews, but in the circumstances, we do not want to say so. We do not want to legitimise the Aryan mythology by introducing any formal distinction for immigration purposes between Jews and non-Jews. The practical distinction, however, has to be made and should be drawn with discretion and sympathy by the competent department, without the need to lay down a formal minute of policy (quoted by the Canadian Council for Refugees 2010).

Indeed, Canada was reluctant to attend either conference – Evian, because at the time international inertia and indifference cast the Jewish question as a problem for the German government; and Bermuda because, by 1943, other countries were admitting Jewish refugees while Canada was not. Government officials, not surprisingly, did not want to highlight the country's record in this regard.

Reflecting on the political implications of participating in efforts to provide refuge to European Jews, the Prime Minister himself was concerned in 1938 that Canada not make any commitments or take any official position as countries gathered in Geneva to look at their options. In his diary, Mackenzie King indicated ambivalence, while recognizing the humanitarianism among those of “larger sympathies” concerning the plight of the European Jews:

... we had to be careful in what we did ... agreeing to be present without making any commitment in advance. All

⁴⁹ Library and Archives Canada, *The Diaries of William Lyon Mackenzie King*, Tuesday, March 29, 1938, typewritten 338.

the Cabinet were favourable to being present at the Conference except Lapointe and Rinfret. I had to say that my judgment made me feel that it would be unwise in an international situation of this kind for us to be classed only with Italy as refusing the invitation. I spoke of the danger of offending many Jews who were loyal supporters of the party as well as *people of larger sympathies*, who would think we ought, at least, to have sat in even if we could do nothing later on ... I thought we should prepare the ground to make clear that, in the event of war, we would not feel any commitment whatever because of our relationship with the League [of Nations] (emphasis added).⁵⁰

During the period of the Holocaust, officials advanced what would become a recurring figuration – that of the inauthentic refugee. For example, Blair and other authorities in the immigration offices were convinced that Jewish refugee capital was only “show money,” deposited in a Canadian bank by an American Jew “to the credit of some person in Europe,” who then applied for admission. Blair warned that this was a “crooked business” and an attempt to evade Canadian laws (Abella and Troper 1983/2000, 56).⁵¹

Nonetheless, by November of 1938, Mackenzie King’s own views appear to have shifted. He was markedly more sympathetic as he attended the funeral of the wife of a Jewish colleague: “I feel Canada must do her part in admitting some of the Jewish refugees. It is going to be difficult politically, and I may not be able to get the Cabinet to consent but I will fight for it as right and just, and Christian.”⁵² In the spring of 1939,

⁵⁰ Mackenzie King Diaries, Monday, April 25, 1938, 410.

⁵¹ As the numbers of applications from European Jews challenged the administrative capacity of the Canadian Immigration Branch, the federal government raised the standards for admission. Between January and November 1938, the minimum amount of capital required to gain admission increased from \$5,000 to \$15,000 for each Jewish family. By 1940, \$20,000 or more was no guarantee of admission (Abella and Troper 1983/2000).

⁵² Mackenzie King Diaries, Sunday, November 13, 1939, p. 132.

Mackenzie King expressed concern in his diary about government policy, linking a failure to take in Jewish refugees with the possible erosion of “our parliamentary system of government” and indicating an ethical responsibility to future generations who “would never forgive us if we took an attitude of that kind.”⁵³ Still, in the autumn of 1939, Mackenzie King indicated that “as far as he was concerned the admission of refugees perhaps posed a greater menace to Canada in 1938 than did Hitler” (Abella and Troper 1983/2000, 31).

Mackenzie King was clearly ambivalent about the so-called “Jewish question”: on the one hand, he had sympathy for the plight of the Jewish refugees; on the other hand, such sympathy did not coincide with what he saw as being in the national interest and the best interests of his party. In particular, he did not want to risk alienating Quebec – where anti-Semitism dominated questions of immigration – by admitting large numbers of Jewish refugees. As his diaries attest time and time again throughout the war years, national unity trumped his apparent humanitarian feelings (Abella and Troper 1983/2000, 280-283). The question was not straightforward for Mackenzie King, and he continued to demonstrate ambivalence.

On November 9, 1939, the Nazis initiated *Kristallnacht* to terrorize German Jews by destroying their synagogues, stores and homes. Many thousands of Jews were arrested and transported to concentration camps; scores were killed that night. Moved by these events, yet showing persistent ambivalence, Mackenzie King wrote in his diary that “something will have to be done by our country” even though it will be “politically

⁵³ Mackenzie King Diaries, Wednesday, March 8, 1939, p. 284.

difficult.”⁵⁴ In late November 1939, however, Cabinet remained unmoved by his request that they adopt a more “liberal attitude” (Abella and Troper 1983/2000, 90). The Cabinet, according to Mackenzie King, was afraid of “the political consequences of any help to the Jews” (Ibid) so, lacking support, he decided to drop the issue. Cabinet and senior policy officials remained unified throughout the war in their opposition to admitting European Jews as either refugees or immigrants. Most notable among these senior officials was the Director of the Immigration Branch, Frederick C. Blair, who was associated with earlier anti-Semitic policies regarding Jewish immigrants, as I have shown, and whose explicitly anti-Semitic views are well documented (Abella and Troper 1983/2000, 84, 90, 122-23, 125, 129).⁵⁵

Blair’s categorical anti-Semitism was not always shared by other departments. For example, in 1940, other officials pleaded with Blair to “stretch regulations ... to dispose of individual cases ... rather than wait until we are asked to take them *en bloc* and without any financial means whatever ...” (Abella and Troper 1983/2000, 78-9). Blair’s colleagues asked him to allow two German Jews (a judge and his physician brother) who had escaped to Japan to enter Canada via Vancouver. Blair replied that:

I wish we could save some of the Finns, Norwegians, Danes, Dutch, Belgians and French, but any opening of the dam will result in absolutely nothing but a movement of Jewish refugees (quoted in Abella and Troper 1983/2000, 79).

⁵⁴ Mackenzie King Diaries, Thursday, November 9, 1939, p. 118.

⁵⁵ In the broadcast of the CBC’s *The Journal* on October 6, 1982, Saul Sigler, a Toronto businessman, said that he tried in vain to get his brother and sister in to Canada during the war years. Blair’s response, according to Sigler, was “Why don’t you people learn to live with your neighbours wherever you are? Why are you hated?” (CBC 2010).

Blair retired in 1943 and, at that point, the Prime Minister's Office took over direct management of the question of Jewish refugees. Mackenzie King exhibited ambivalent tendencies once again in relation to increasing pressure by Jewish advocacy groups and his Jewish colleagues in government to take a more humanitarian stance toward the question of admitting European Jews. Nonetheless, his pragmatic orientation led him instead to put in place a series of very stringent requirements that, as Irving Abella and Harold Troper have argued, in effect "cut off the flow [of refugees into Canada] before it could start" (1983/2000, 153). By the summer of 1943, Canadian officials were aware of the systematic Nazi program of the mass murder of Jews in Europe. Briefing notes of this period are replete with updates on the German "deportation" of "refugees," terms which were understood in policy circles as code words for "mass murder" and "Jews" respectively (Abella and Troper 1983/2000, 185).

Mackenzie King's ambivalence returned toward the end of the war. He repeatedly expressed concern in his diary about the plight of the Jews and the circulation of anti-Semitic views⁵⁶ (e.g., Abella and Troper 1983/2000, 39-43). He also valued his personal friendships with a number of Jewish colleagues. At the same time, however, he wrote about the need to keep Jewish refugees out of Canada in order to keep Canada unified, and to ensure that employing returning soldiers had priority over refugee intake and resettlement. In early 1944, for example, in reflections on a meeting with Emil

⁵⁶ The Library and Archives of Canada published web-based searchable background discussions entitled "Behind the Diary – Politics, Themes and Events from King's Life." Surprisingly, in "Mackenzie King and the Second World War," the discussion of King's role during the war includes no mention of the Holocaust, of Jewish refugees, or of Canada's policy responses to the plight of these refugees; nor is there any reference to other related issues, such as the internment of thousands of Japanese Canadians, or the ways in which King responded to public sentiments with respect to immigrants and refugees during the War years.

Ludwig, a Polish Jew and author, Mackenzie King recalled stating his opposition to any “open door” policy:

I could see Ludwig is very anxious about having Canada open its doors to Jewish people; immediately for those who are victims of Hitler’s persecution and later as a country having space for populations I told him I thought until our own forces were de-mobbed and re-established, the country could not stand for much immigration. That for a govt. to adopt any policy of open door would only cause the other parties to take an opposite stand and gain thereby in a general election.⁵⁷

Ultimately, Canada admitted approximately 5,000 selected Jewish refugees during the period of the Holocaust, a number significantly lower than others took in, including the US and European countries (Abella and Troper 1983/2000). This response was consistent with prevailing Canadian attitudes and official views of the national interest. Popular and official discourses constructed Jews as aliens, as having a language and religion that would not enable their easy assimilation into Canadian society. For example, a claim circulating in popular media and among right-wing activist groups in Canada was that the Jews were in some way actually responsible for what was happening in Europe and that they would act against national and social interests if they were admitted (Abella and Troper 1983/2000).⁵⁸ Anti-Semitic views also circulated among the

⁵⁷ Mackenzie King Diaries, Sunday February 13, 1944.

⁵⁸ The Canadian National Committee on Refugees and Political Persecution (CNCR) campaigned during the period on behalf of admitting victims of Nazi persecution. Broad public response beyond the Jewish communities in Canada to these appeals was generally lacking, and sometimes it was openly hostile. In 1943, anti-immigrant sentiment was intense in Canada, and the campaigns on behalf of admitting Jewish refugees were complicated by the tendency in public discourses to confuse temporary refugees with permanent immigrants. Abella and Troper (1983/2000) offer several examples of how this discourse constructed all “undesirable Europeans” (a phrase that signified European Jews) as a threat to the “future of Canada.” News outlets associated with the Manitoba Command of the Canadian Legion, for example, “lumped refugees together with the interned Japanese further to define its social vision: ‘There is no room in Canada for cut throat competition of Japs [*sic*] or refugees until every last man or woman who gave their service to their country has been properly and happily reabsorbed into the national structure’” (*Canadian Veteran*, November 30, 1943; quoted in Abella and Troper 1983/2000, 160-161). Polling in January 1944

political classes, in diplomatic circles, among bureaucrats, in the popular media,⁵⁹ in the armed forces, within labour unions, and also some faith groups (Abella and Troper 1983/2000; Kelley and Trebilcock 2000).⁶⁰ The crisis of the European Jewish refugees thus never became a policy priority for the Canadian federal government. As Abella and Troper explain, the whole “Jewish business” was seen to be more of a recurring nuisance than a political issue requiring a serious response. Together with the humanitarian framing of the Jewish crisis, notions of the national interest prevailed in the Canadian policy response. In this sense, Mackenzie King, his cabinet, and their policy officials “read the public mood and read it correctly” (Abella and Troper, 281). High profile and vocal anti-Jewish and anti-refugee positions taken by Quebec politicians and federal Cabinet ministers were dominant along with the government’s fear that Canada might become central to British or American schemes to resettle Jews. Despite his personal concerns about the plight of the European Jews, the Prime Minister was “astute” (Abella

tended to confirm the view that Canadians were still confusing immigrants and refugees, with both understood to mean Jews. After five years of national campaigning by the CNCR in its effort to raise public awareness of the plight of European Jews, those favoring a closed door policy grew by about 18 per cent in Quebec and by 50 per cent in English-speaking Canada (Winnipeg Tribune, January 27, 1943; cited by Abella and Troper 1983/2000, 161). After the war ended, and the full evidence of the concentration camps became public, the barriers to admitting survivors remained in place. Canada needed to attract new immigrants to rebuild and reorient its economy, but in 1946, another opinion poll demonstrated that only the Japanese were more unpopular than Jews as immigrants. Germans fared better than either of these groups (Abella and Troper 1983/2000). Anti-Jewish feeling was also evident in popular discourses following the war. “Christians Only” signs were to be found all around Ottawa, and the Jewish community was dismissed by the social elites of the city (Abella and Troper 1983/2000, 282-283).

⁵⁹ For example, while editorial opinion generally was in favour of Canada playing her part in admitting Jewish refugees, the French Canadian press was extremely hostile. Publications by the Catholic Church took the position that Canada had already received “too many immigrations of the Jewish race ... who do not assimilate with either of the two elements which have built Canada” (Abella and Troper 59).

⁶⁰ There were exceptions. Georges Vanier, then Ambassador to France, made personal and official pleas to the Canadian government to admit refugees, and CPR officials saw a lost opportunity for Canada to admit highly skilled, affluent immigrants from Europe.

and Troper, 282) in his reckoning that the political losses of admitting European Jewish refugees would far outweigh any temporary political gains from humanitarian actions.

Nonetheless, humanitarian goals began to gain some policy traction in the immediate post-war period. Immigration controls remained tight, but pressure mounted for a more open and humanitarian response to masses of displaced people in Europe. Canadian officials were directed by the Federal Cabinet to accept identity and travel documents in lieu of passports from displaced persons. In 1946, in a move that signaled his concerns about the situation, Mackenzie King announced emergency measures to aid the resettlement in Canada of selected European refugees. Still, it was some months before any concrete action was taken, and refugees without relatives in Canada were not able to enter under this program until mid-1947. On May 1, 1947, Mackenzie King, citing a need to grow the labour force in many sectors as part of his post-war reconstruction plan, announced in the House a more open immigration policy:

The policy of the government is to foster the growth of the population of Canada by the encouragement of immigration. The government will seek by legislation, regulation, and vigorous administration, to ensure the careful selection and permanent settlement of such numbers of immigrants as can advantageously be absorbed in our national economy (CCR 2010).

With the formation of the state of Israel in 1948, Canada began to lift some barriers to Jewish immigration (Abella and Troper 1983/2000, 285). Even so, the selection of refugees was guided not so much by humanitarian concerns as by economic, ethno-cultural, and political ones.⁶¹ Mackenzie King himself made it clear that Canada

⁶¹Under the aegis of the Department of Labour; by ethno-cultural and racial criteria (Jews were rejected routinely); and by political orientation (those deemed to be left-wing or Communist sympathizers were labeled undesirables) (Canadian Council for Refugees 2010). Refugees had to be in good health (a

was “perfectly within her rights in selecting the persons whom we regard as desirable future citizens.” Nonetheless, he also saw the value in removing “objectionable discrimination” (quoted in CCR 2010) from the statutes. Yet, he still declared 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” (quoted in CCR 2010, 4).

In the continuing context of the humanitarian meta-frame in the post-World War II period, Mackenzie King once again expressed a desire to do something about the suffering of refugees, but he nonetheless remained ambivalent, refusing to admit substantial numbers of European refugees, particularly Jewish Holocaust refugees and survivors. During this period, the Canadian state remained situated in an ambivalent position between humanitarian goals and the notions of national interest that responded to Canadian political realities. During the war and afterwards, Mackenzie King was the embodiment of this ambivalence.

3.4 Post-World War II Humanitarianism in Canada

For more than twenty years after the end of the war, the humanitarian meta-frame, with its core presupposition that refugees are both in need of – and entitled to – protection, tended to dominate international and national policy. Throughout this period, Canada continued to select refugees from overseas camps and other areas of refuge to bring in those who were “judged best able to adapt to life in Canada,” and were as close to the desired immigrant profile as possible (Abella and Troper 1983/2000, Epilogue, 288-9). In the absence of legislation governing the admission of refugees during the 1950s and 1960s – and under some pressure by its European allies to adopt a more

requirement that excluded many Holocaust survivors); indeed, an External Affairs officer said that Canada selected refugees “like good beef cattle” (CCR 2010).

generous approach to the admission of European refugees – the Canadian state administered various *ad hoc* measures to admit certain refugees (Aiken 2001).⁶² While the humanitarian meta-frame was gaining considerable force in international relations, Canada’s humanitarianism tended to be more cautious. Mackenzie King had made it clear that Canada would continue to select the most “desirable future citizens”⁶³ from among displaced peoples seeking entry to Canada. Canada maintained a clear order of preference for admitting people of British origin, while severely restricting access by Asians, Africans, and West Indians. Anti-Semitism also persisted (Abella and Troper 1983/2000). However, by the 1950s, under pressure to rebuild skilled workforces, Canada entered the Displaced Persons camps in Europe to process qualified applicants, and the remaining barriers to skilled Jews and Slavic immigrants began to diminish (Troper 1993). Nonetheless, Canada’s policy responses to displaced peoples throughout the 1950s and 1960s, as Harold Troper has argued, were “understood as exceptional cases”; “if there was a policy at all” he adds, “it seemed one of non-commitment” (Multicultural Canada 2013).

During the early years of the Cold War, national security – rather than providing refuge or increasing immigration – began to prevail as a policy consideration.

⁶² For example, in 1956, 37,000 Hungarians fleeing the effects of the Soviet Union invasion were eventually brought to Canada, but not without considerable stalling because of government concerns about settlement costs, in the face of growing public sympathy and media pressure; in 1968, 12,000 refugees from Czechoslovakia were brought to Canada at the end of the Prague Spring, this time in a climate of humanitarianism, Cold War posturing, and economic incentives (Troper 1993; Kelley and Trebilcock 2000).

⁶³ The exclusionary discourses that dominated the inter-war period re-emerged in part as a result of the enactment of the *Canadian Citizenship Act* of 1946 that created a Canadian citizenship distinct from British subject status. The country was preoccupied with rebuilding the post-war economy and with ensuring employment for returning soldiers, so the sentiment was generally not in favor of significantly increasing the flow of immigrants and refugees into the country (Whitaker 1987, 1991; Abella and Troper 2000/1983).

Nonetheless, Canadian public opinion during this period was generally more pro-immigration and pragmatic than at any time before (Whitaker 1991). For example, writing in 1956 about the “hard facts” of Canadian immigration policy, Paul Roddick said that the necessity of expanding the Canadian population “in order to reduce the heavy financial burden which we now pay for the privilege of remaining Canadian” was a “fundamental fact of life” for Canadians (Roddick 1956, 124).⁶⁴ Small quotas were also established for immigrants from former British colonies. New, independent Commonwealth partners in the post-colonial era during the 1960s and 1970s (India, Pakistan, and Ceylon) were finally granted access to immigration.

Responding to the growing public debates about human rights throughout the 1960s, and the new directions in multiculturalism sparked in part by the Centennial celebrations of 1967, Canada implemented a new immigration “points system” in 1967 that ranked applicants according to various criteria, including skills, education, and resources – rather than in explicitly racial terms. The policy environment was one of growing acceptance and integration of immigrants and refugees from newly independent and developing countries in Africa and South America, as well as those fleeing Soviet repression. The advent of the UN Convention in 1951 was a hallmark event internationally in the post-war development of the humanitarian meta-frame. Canada, however, was a latecomer to the treaty in part because, during the early years of the Cold War, the RCMP had advised the government that meeting the legal requirements of the Convention would limit Canada’s ability to deport refugees considered threats to national

⁶⁴ At the time of his writing, Paul Roddick was Executive Officer of the Ford Motor Company in Windsor, Ontario. He had served as a Current Affairs Advisor in the Department of National Defence during the War.

security (CCR 2005). It was not until 1969 – during the period of Pierre Trudeau’s time as Prime Minister – that Canada acceded to the 1951 Convention and its 1967 Protocol. At this point, the category of “refugee” was formally incorporated into Canadian refugee policy-making for the first time.⁶⁵

These moves marked a growing influence of the humanitarian meta-frame in Canadian refugee policy and signaled a shift in the Canadian approach to refugee policy from a predominantly *ad hoc*, discretionary approach to a more systematic one, consistent with obligations under the Convention. Refugee policy was increasingly influenced by public support for more non-discriminatory and humanitarian policies (Kelley and Trebilcock 2000). The Canadian state responded by implementing a more generous family reunification policy geared to admitting increasingly large numbers of immigrants from Soviet Bloc countries (Kelley and Trebilcock 2000), a move that added to the international perception of Canada as a country that welcomed newcomers – reinforcing efforts to promote Canada as a multi-cultural and bilingual society that welcomed newcomers, which began during the Centennial celebrations and Expo 67. The move also coincided with Trudeau’s early promotion of Canada as being a modern, “Just Society.”⁶⁶

⁶⁵ The explicit refugee category was not officially enacted as part of immigration legislation until proclamation of a new Immigration Act in 1978 (CCR 2005).

⁶⁶ I am grateful to James Struthers for pointing out key factors that also contributed to the development of the points system. As Freda Hawkins shows in her 1988 study, from the early 1960s onward, the government’s goal was actually to reduce family class immigration. Of particular concern was the sponsorship of family members by Italian-Canadians. State officials saw the family sponsorship provision as contributing to a large mismatch between the skill requirements of the technologically sophisticated Canadian economy and the high levels of intake of immigrant labourers who were seen to lack necessary skills. During this period of the early 1960s recession, economic policy development shifted to a focus on structural rather than cyclical causes of unemployment and the increase in unskilled Mediterranean workers was identified as a key cause. Further, as Hawkins argues, because Italian, Greek, and Portuguese Canadians were strong supporters of the Liberal Party, cutting back on family class immigration would be

After extensive public consultations and intense political debates, the new Immigration Act (though not proclaimed until 1978) reflected an “unprecedented consensus on central issues” such as family reunification, transparency, a revised points system, deportation procedures, and a “reasonably generous” refugee policy (yet one that was also sensitive to the concerns about unemployment rates) (Kelley and Trebilcock 2000, 385). In other words, the new Act incorporated a policy framework designed to manage increased flows of refugees in light of the bad economic conditions. By this time, world-wide refugee movements had reached unprecedented numbers and frequency (CCR 2010). Canada’s new refugee protection regime brought its legislative program into line with international standards under the Convention, and regularized the approach to refugee admissions. Although the new refugee regime also appeared to eliminate the extensive use of discretionary powers and *ad hoc* decision-making by refugee officials, policy discretion, as I will show, remained the basis on which the Canadian state recalibrated its refugee admissions program. The state, in other words, continued to amend regulations on an *ad hoc* basis to respond in a timely fashion to contingencies, whether framed as crises or as humanitarian opportunities.

In Canadian policy, the category of refugee was expanded to facilitate management of the flows; it encompassed the UN Convention definition while establishing by regulation the category of “designated class” that allowed granting of refugee status to people coming from so-called “refugee producing” countries – particularly Soviet Bloc countries during the Cold War (Creese 1992). Again, the question of which countries were recognized as refugee-producing, and which groups of

politically risky for the Party. Implementation of the new points system provided a way to achieve the goal of adding workers with the necessary skills to particular sectors of the labour force without focusing on ethnicity and kinship.

refugees were therefore granted admission to Canada, was left to the discretion of the relevant minister and senior policy officials who were charged with protecting the national interests of the time.⁶⁷ For example, refugees fleeing Soviet Bloc countries were generally well received; refugees fleeing the violent regimes of South America were not. Canada remained generally open to admitting Cambodian, Vietnamese, and Laotian refugees fleeing Communist aggression; however, Canada was reluctant to admit refugees fleeing Central and South American conflict zones and right-wing states that were allied with the United States.⁶⁸

Perhaps the most remarkable – and certainly the most widely recognized – event in the history of Canadian refugee policy came in 1970-1980 with the admission and resettlement of a great many Southeast Asian Refugees. The process of bringing in refugees from Southeast Asia began under Trudeau, with several thousand being accepted, but admissions accelerated under the short-lived minority Progressive Conservative Government of Joe Clark, from mid-1979 to early 1980, with some 60,000 refugees coming to Canada (Granatstein and Bothwell 1990, 218-219; Adelman 1980, 1982). Canada admitted the highest number of “boat people” that were absorbed for resettlement during this period, per capita, of any nation (Adelman 1980, 1982). This accomplishment was, in any event, attributable to organizations of faith-based groups and

⁶⁷ This move foreshadowed similar moves made recently by the current Conservative government to designate “safe countries” for purposes of side-stepping the *non-refoulement* provisions of the Convention. In other words, refugees who arrive in Canada or at its borders from any of these designated countries can be deported to any of designated safe havens under this provision. The safe-third country legislation is discussed in detail in Chapter 5.

⁶⁸ Beginning in the late 1960s, there was a series of mass arrivals of refugees: In 1969, some 11,000 Czechs were admitted; in 1971-72, a few hundred Tibetan refugees; in 1972-73, approximately 5,000 Ugandan Asians; during the Vietnam War years, between 80,000 and 200,000 American war resisters; in 1973; approximately 7,000 Chilean and non-Chilean supporters of the Allende regime; and finally, between 1975 and 1981, approximately 77,000 Indochinese were admitted (Knowles 2007).

other community advocates, more so than to the government of the day (Hagan 2001). The community advocates mobilized public opinion and lobbied the federal government to such an extent that new provisions were put in place regarding private sponsorship. In contrast to the negative reception (even *refoulement*) of such refugees by other western countries, many Canadians came forward to welcome the Southeast Asians, thereby helping to launch a new Private Sponsorship of Refugees Program. Popular pressure forced the government to adjust upwards its initial commitment to resettling the refugees. Indeed, in 1978-81, refugees made up 25 per cent of all immigrants to Canada (CCR 2010). It was largely due to such developments that years later, in 1986, the people of Canada (not the government of Canada, as such) were awarded the Nansen Medal⁶⁹ in recognition of “the major and sustained contribution made to the cause of refugees in their country and throughout the world over the years.”⁷⁰ What is especially significant about the events surrounding the mass admission to Canada of Southeast Asian refugees is that they show the ambivalence within the humanitarian meta-frame tending decidedly toward a policy of benevolence at a moment when there was strong, mobilized public support – even demand – for regarding and treating refugees as people who are in need of refuge. The ineffectiveness – or lack – of such citizen activism is conspicuous under the neo-humanitarian and securitization meta-frames that followed.

⁶⁹ The Nansen Medal was named in honour of Dr. Fridtjof Nansen (1861-1930), an eminent Norwegian scientist and humanist who assisted in coordinating the rapid repatriation of 450,000 prisoners of war after World War I, and became the first High Commissioner for Refugees for the League of Nations in 1921. The Nansen passport for (stateless) refugees was adopted by the League of Nations in 1922. Medal recipients, since the medal was struck in 1954, have included Eleanor Roosevelt and Franklin Delano Roosevelt, other heads of state, advocates, and individuals.

⁷⁰ UN Press Release, October 6, 1986. One irony is that, in the 1920s, Canada refused to recognize the Nansen Passport, an international identity certificate that facilitated the movement and resettlement of refugees uprooted by the events of World War I (Kaprielian-Churchill 1994, 281).

3.5 The Shift to Neo-Humanitarianism

Recall that the humanitarian meta-frame is intrinsically ambivalent: it embodies the liberal values of neutrality, impartiality and independence, while it is implicated in exclusionary practices and calculations about what counts as an authentic refugee and in what circumstances refugees can be admitted while still protecting national interests. By the early 1970s, despite post-Centennial popular and state discourses about Canada as a multicultural and welcoming country – and the commitment to refugee protection arising from Canada’s accession to the Convention (in 1969) – the global economic stresses of the period began to mitigate the empathy and altruism of humanitarianism. As neoliberalism gained traction worldwide, the discourses began to shift. They were less benevolent than in earlier years with respect to the central tensions of humanitarianism, and the individualization of the definition of refugee under the Convention played into the neoliberal agenda. Increasingly, the unexpected or uninvited arrivals were reframed as refugee crises in the sense that refugees now represented a potential threat to national interests. While Canada continued on the international stage to participate in UN sponsored humanitarianism, the national scene was becoming increasingly hostile to the arrival of immigrants and refugees, much as it always had during periods of economic stress.

The core presupposition of neo-humanitarianism is that refugees are risky individuals and potential criminals who represent a threat to public safety and social cohesion. This meta-frame grew out of the neoliberal commitment to opening borders to the movement of goods and services, while prohibiting the movement of people, especially irregular migrants and refugees. In the late 1970s, government deficits

increased significantly, unemployment reached double-digit levels for the first time since the Great Depression, inflation increased, and so did unemployment (Norris and Owrain 1991). The neo-humanitarian meta-frame began to emerge with the forces of neoliberalism, emphasizing the refugee as a potentially dangerous individual for purposes of excluding as many of them as possible. As we saw in international terms, the shift in meta-frames from humanitarianism to neo-humanitarianism involved a change in the understanding of the refugee. The refugee was renamed with such terms as *risky* or *criminal*, largely erasing the common-sense notion of the refugee. Refugees began to be reframed as representing danger – in both economic and security terms.

In the mid-1980s, the Immigration Act, for the first time, gave explicit recognition to duties and responsibilities toward refugees in order to ensure continuous awareness of and involvement in what immigration officials called “the refugee problem” (Dirks 1984, 288). In parallel developments, between 1978 and 1985, Canadian civil and human rights discourses underwent transformations associated with the national debates about enactment of the 1982 Charter of Rights and Freedoms – a signature development arising from Trudeau’s view of Canada. Prior to 1982, the government resisted the idea that all refugee claimants had the right to a full hearing; such a provision was not part of the refugee review process. In the view of senior government officials, such a right would

... create very real difficulties because to the extent we allow personal access to the refugee status Advisory Committee or the Appeal Board we expose the system to the danger of being overwhelmed by non-bona-fide claims, clogged by delay, and obstructed by legal entanglements.⁷¹

⁷¹ Internal Memorandum, Department of Manpower and Immigration, June 7, 1977; quoted in Dirks 1984, 293.

Despite its inclusive and liberal orientation, the 1978 Immigration Act in fact inaugurated a refugee determination system that precluded any possibility of an oral hearing should an applicant's petition for Convention refugee status be denied in the early stages of assessment. The stated purpose of this approach was to speed up the processing of refugee claims. In other words, administrative efficiency was to trump the extension of the new Charter of Rights and Freedoms to foreigners residing in Canada. After the Charter came into force, however, the Supreme Court, in a 1985 landmark ruling – the Singh decision⁷² – held that refugee claimants, like any residents of Canada, had a right to the safeguards and protections under the 1982 Charter of Rights and Freedoms. This right included access to an oral hearing, and the court ruled that that existing government policy and procedures were therefore in violation of the Charter (Lacroix 2004). The efficiency arguments presented by the government did not persuade the Supreme Court.

By the late 1980s, nonetheless, the neo-humanitarian meta-frame had come to dominate international and national refugee policy approaches in the context of significant increases in refugee flows. Pressures grew on Canada and other western countries to accept considerably more refugees at a time when economic conditions once again were precarious. As one senior official at Employment and Immigration Canada said about this period, “refugee issues, being hot and always in the media, got all the time and attention so that other [immigration] issues suffered.”⁷³ The United Nations refugee count was a little over one million in the early 1960s; by 1989, the world refugee

⁷² [Singh v. Minister of Employment and Immigration](#), [1985] 1 S.C.R. 177 – 1985-04-04 [23 June 10]

⁷³ Joe Bissett (executive director, Immigration Branch, Employment and Immigration Canada, 1985-90) quoted in “The Reorganization of Immigration,” *The Canadian Immigration Historical Society Bulletin*, No. 7, Supplement “C”, 1.

population had increased to nearly fifteen million (UNHCR 2000). This upsurge caused an international refugee crisis similar in scale to earlier mass displacements associated with the Russian Revolution and the two World Wars. International aid agencies and receiving countries struggled to meet overwhelming demands for refuge and protection of masses of displaced people. Measures to stop the flows of migrants by western refugee-receiving countries continued to expand into the twenty-first century.⁷⁴

By the mid-1980s, Canadian systems were dealing with between fifteen and eighteen thousand refugees each year, most of whom did not qualify under the Convention for refugee claimant status (CCR 2010). The increased flow of displaced people worldwide resulted in significant increases of refugees arriving at Canadian borders and called into question the capabilities of the Canadian immigration system to manage the flows of refugees. Nonetheless, Prime Minister Mulroney was at first quite sympathetic to the plight of refugees, particularly the so-called “boat people” and he drew explicit links between Canada’s response to such arrivals and the country’s failure to admit the European Jewish refugees during the War years.⁷⁵ Adding to the pressures was Canada’s willingness to accept refugees from Communist Bloc countries. The admission of Soviet bloc refugees *en masse* resulted in an increase in inland claims which added to

⁷⁴ As we shall see in Chapter 6, Canadian authorities from the RCMP, Canadian Security Intelligence Service (CSIS) and the Canada Border Services Agency (CBSA) are understood to have been involved in an “immigration sweep” in and around the Bangkok area and in doing so, to have pre-empted the departure of a vessel that could have carried Thai refugees to a Canadian port. Canada’s Foreign Affairs spokesperson would not comment on operational issues, but this initiative followed efforts by the Canadian government in August and September 2010 to forge working alliances with Southeast Asia and Australian governments to prevent the departure of ships carrying Tamil refugees. Thailand has deported all of the migrants that were rounded up back to Sri Lanka; Thailand is not a signatory of the 1951 Convention so it is not bound by the obligation of *non-refoulement*. Canada’s “moral complicity” in returning Tamils to potentially dangerous situations in Sri Lanka has caused concern among Canadian immigration law advocates (Freeze (2010), “Canada aids in Thai arrest of Tamil Migrants”).

⁷⁵ *Tamilweek* (1986), “Prime Minister Brian Mulroney beacon to Tamils in torment.”

an already growing administrative crisis – an unmanageable backlog in the refugee claimant system itself.

With the pressures of this backlog, came a neo-humanitarianism repositioning of refugee claimants as abusers of the system. Refugees were reframed as inauthentic and called “self-selected immigrants” (Whitaker 1991, 22) – with those who were already in the country allegedly making false claims for protection so as to gain Convention status. In addition to the tendency to name and frame refugee claimants as self-selected immigrants engaged in false depositions, Canadian immigration officials perceived significant upsurges in attempted abuses of the refugee claimant system by so-called economic migrants. Economic migrants, whose survival depended on finding work outside their home countries, were not recognized in either Canadian or international law as authentic refugees. Despite new exclusionary measures, the backlog of refugee claimants in Canada soared to over 80,000 by the late 1980s, and a sense of outrage was expressed in the media about the “clearly illegitimate applicants who deliberately made false claims” after arriving in Canada (Whitaker 1991, 22). This tendency in public discourse legitimized even more restrictive and exclusionary policy responses to the unexpected and unwanted arrivals of foreign others at the borders.

The refugee determination system in Canada was revised again in the 1988 Refugee Reform Bill, which was designed to speed up applications and to provide for an oral hearing, as required by the Supreme Court’s Singh decision. The Immigration and Refugee Board – an independent body, with members appointed by Cabinet – was established to determine the legitimacy of requests for asylum that were made at various

ports of entry, or from within Canada. During the hearing process, the refugee as a legal entity under the Charter was entitled to legal aid and legal representation (Hardy 2003).

Subsequent to the Singh decision, and in the context of the public debates about the oral appeal process, state policy discourses increasingly drew attention to a burgeoning refugee backlog that was becoming unmanageable. Reframing refugee programs in terms of the unacceptable burden that they represented for the state's administrative regimes set the scene for a public outcry that erupted when an unauthorized boat load of Sikhs landed on the east coast in the summer of 1987. That year, in the face of media spectacles that amplified a sense of panic about "boat people," Mulroney abandoned his former willingness to admit them for humanitarian reasons, declared an emergency, and recalled Parliament in order to enact new sanctions on those facilitating illegal entries into Canada (Vukov 2003). The government set out amendments to the Immigration Act in what was called the Refugee Deterrents and Detention Bill (Bill C-84), which contained measures authorizing new forms of interdiction and detention.⁷⁶

By the end of the 1980s, the discourses of refugee protection had shifted from an earlier humanitarian orientation to that of neo-humanitarianism; the refugee was framed not in humanitarian terms as deserving of protection, but almost entirely as a burden; and unexpected group arrivals were portrayed as threats to the national interest. For example, discourses portrayed "boat people" as "queue-jumpers" – people who hoped that the pressures of the backlog would lead the Canadian government to declare an amnesty

⁷⁶ One provision, later dropped by the government, would have allowed Canadian marine forces to turn away ships *suspected* of carrying undocumented refugees after they had reached Canadian waters (CCR 2010).

(CCR 2010). The government enacted the Immigration Act of 1987, which set in place provisions for various practices of exclusion and interdiction that remain central to Canadian refugee policy to the present day, such as interdicting suspected refugee claimants at their points of departure (e.g., at Heathrow Airport in London, England). Despite the new measures, the state did not always succeed in preventing the arrivals of refugees. Such failures catalyzed new rounds of controversy and debate about the effectiveness of extant immigration and refugee policy regimes, and the state often had recourse to *ad hoc* measures.⁷⁷

Canada's stature on the world stage depended in part on its developing statutory refugee provisions that would meet the standards of fairness set by the UNHCR.⁷⁸ Despite the state's professed humanitarian interests, though, refugees were increasingly portrayed in terms of criminality and risk. Canada at the time was turning away or deporting significant numbers of Indochinese refugees, as were many other western countries, thereby causing considerable concern to the UNHCR (UNHCR 1995). There was a tension between two conflicting mandates of the neo-humanitarianism policy

⁷⁷ Later, as we shall see in Chapter 6, legislation was passed in 2009 in order to tighten up the procedures for assessment of refugee claims, with the stated intention of approving legitimate claims faster, and deporting the rest; these new procedures were not yet in place, so there was great concern among government officials and advocacy groups that the "boat load" of up to 500 Tamil refugee claimants entering Canadian territorial waters on August 12, 2010 represented a problem for the system of assessing individual claims, as well as for ensuring that these refugees were treated no differently than anyone else who arrived on Canadian soil, claiming to be a refugee (*Globe & Mail*, August 12, 2010). The government sent RCMP vessels backed up by Navy vessels to interdict the MV Sun Sea upon entering territorial waters. The RCMP's role was to board the vessel to determine whether or not criminal activity was involved in the transportation of the refugees. The Navy's role was to "apply force" if necessary (Ibid). The Harper government had already taken steps to develop regulations dealing with boat loads of refugees, who were being reframed in emerging policy discourses as *terrorists* and *human smugglers* – a strategy that appeared designed to instill fear and gain support for additional, more stringent regulations governing any boat loads of potential refugee claimants. Although the circumstances were very different, this case was reminiscent of the turning away of ships with passengers seeking asylum in the past (the Indian ship Komagatu Maru turned away in 1914; and the St. Louis, bearing Jewish refugees, turned away in 1939, both with tragic results).

⁷⁸ Canada was not legally bound by the provisions of the Convention until the country acceded in 1969 to the international statutes including the principle of *non-refoulement*.

regime: on the one hand, the Canadian state was required by international law to protect refugees; on the other hand, successive Canadian governments mobilized increasingly restrictive measures in order to prevent refugees from reaching Canada. The conundrum for the Canadian state, as with any similar host country, was that the more highly regulated the policy environment, the greater was the perceived potential for disruption by contingencies. The uninvited arrival of “boat people” in the late 1980s and early 1990s, for example, was perceived as disruptive both in official policy responses and public opinion. As the perception of disruption intensified, the policy response was to enact even more complex and restrictive regulatory structures while, at the same time, increasing ministerial discretion in the interpretation of these regulations. Tighter regulations were aimed at preventing arrivals and when uninvited arrivals occurred anyway, the responsible minister typically had sufficient discretionary powers. With the neo-humanitarian focus on risk-management, discretionary powers were particularly important. And the more complex the policy environment became, the more problematic were the uninvited arrivals and the more it became necessary to construct new policy levers to respond to these contingencies.⁷⁹

⁷⁹ For example, refugee claimants from the Czech Republic continued to be primarily from a minority group, the Roma, who historically have been persecuted by various factions in their homeland. Because Canada has good relations with the Czech Republic, its usual interdiction methods – which would require intercepting all Roma travellers at their points of departure, and constructing them as *illegal* – could not be applied without creating a serious diplomatic rupture with the Czech Republic, as well as with the European Union, of which it is a member (see, for example, Kernerman 2008). Further, to shift the blame for the problem to a minority group with an acknowledged history of being persecuted (see, for example, Nafziger 2009) would bring into public awareness a range of issues having to do with discrimination and targeting of minorities that the Canadian state did not want to address openly. Instead, the state took the traditional (in the Canadian context) and more palatable public position that the problem was the bureaucracy itself, which needed to be fixed in order to treat everyone fairly. See *The Toronto Star*, “Crackdown on visas stands, Harper says” August 10, 2009. On the concept of contingency, see Chapter 1, where I discuss how contingencies work as fulcrums in the machinery of federal immigration and refugee policy.

The dual policy mandate that characterized the conflicted and ambivalent tendencies of Canadian humanitarianism required successive Canadian refugee policy regimes to be *both* facilitative and exclusionary (Adelman and Cox 1994). During the late 1970s and the 1980s, notwithstanding the shift to neo-humanitarianism, policy discourses espoused compassion and humanitarian ideals consistent with Canada's obligations under the Convention – practices became increasingly exclusionary and were framed in neo-humanitarian terms so as to portray the refugee as a potential threat to public safety and national interests generally. By the end of the 1980s, refugees were frequently constituted in neo-humanitarian terms as threats to the national interest, a move that legitimized new kinds of exclusionary practices.

3.6 Conclusion

In Canada, refugees were typically framed as posing a burden for the state, although at times, the state sought to import refugees having certain skills necessary for economic growth. Refugee-as-burden discourses tended to mitigate benevolent humanitarian tendencies during periods of economic downturn or perceived threats to national security. With the policy regime of nation-building in the Confederation era, “refugees” as such did not exist in policy parlance; many migrants, both recruited and uninvited, were selected on the basis of their suitability for agriculture and assimilation into the dominant Anglo-Saxon culture of the new country. All other groups of migrants (such as Chinese railway workers) were unwelcome, and therefore problematic, particularly if they attempted to settle permanently in Canada. During the regime of economic development associated with the Great Depression, the two World Wars, and the Holocaust, national unity was of paramount concern to the Canadian federal

government. The European Jewish refugees became a significant burden for state officials who were committed to maintaining national unity and to allaying concerns, particularly in Quebec, about any potential influx of Jews. Nonetheless, Canada's official deliberations on the plight of the Jewish refugees frequently demonstrated ambivalence. Contingencies were met with *ad hoc* policy responses by officials who wielded considerable discretionary authority.

In the years surrounding Canada's Centennial, when Canada gained considerable world attention, the refugee had been framed in strongly humanitarian, rights-based terms consistent with the emphasis on individual human rights enshrined in the Convention, and later in Canadian law, including the Charter of Rights and Freedoms. However, perceived national interests often conflicted with the more altruistic approaches to refugee protection during the Cold War. When the category of refugee officially established in 1969 and legislated in 1978, the refugee policy regime emerged as part of the state's bureaucratic field of power, and the refugee became a more-or-less permanent burden. By the late 1980s, neo-humanitarianism came to dominate refugee discourses, and the refugee was reframed as an emerging risk to public safety and social cohesion. (See Figure 3.7.1 for a summary of the shifts in Canadian refugee policy regimes up to that time.)

During this period, questions of border control and state sovereignty dominated refugee policy discourses and the highly contestable concept of refugee became the focus of policy that was both inclusive and exclusionary. The highly subjective and *ad hoc* ambivalence toward refugees during the Holocaust era and the period dominated by the humanitarian meta-frame had become institutionalized in refugee policy regimes; and

with the shift to neo-humanitarianism this institutionalization in a way that worked both to meet international refugee protection standards and increasingly to keep refugees from ever reaching Canadian borders. The shift in meta-frames occurred at the level of the core presuppositions, such that, by the early 1990s, refugees were no longer mainly constituted as individual persons (or as collectivities) in need of and entitled to protection, but as risky individuals and potential criminals who represented threats to public safety.

Common to both the meta-frames of humanitarianism and neo-humanitarianism was a pragmatism associated with whether or not to admit refugees, which operated in tension with the stated benevolence of official policy. However, ambivalence became much less evident in the period dominated by the neo-humanitarian meta-frame. Under neo-humanitarianism, access was quite selective (e.g., Soviet Bloc refugees were welcomed; South American refugees were not) while Canada nonetheless presented itself internationally as a welcoming and hospitable immigrant and refugee-receiving nation.

In the larger context of immigration policy, Canada's refugee policy regime evolved over the second half of the twentieth century into what came to be acknowledged as "one of the most sophisticated refugee determination systems in the world" (Kernerman 2007, 1). As I will show in the following chapters, successive Canadian governments used various policy mechanisms and frequently deployed particular framings to block access by refugees. In the late twentieth century, as neo-humanitarianism laid the foundation for the shift to securitization, new manifold and interrelated bureaucratic structures were established by the state, in such areas as security, immigration, and foreign relations (particularly with the United States) to consolidate and

coordinate policy responses to the now-dangerous refugee. Despite the efforts by the state to resolve the burden of the refugee, late twentieth century immigration and refugee policy, was unable to create effective, consistent systems of control and predictability – at least from the perspective of state officials. By the end of twentieth century, Canadian immigration and refugee policy had developed through recurring periods of informal, then institutionalized, tendencies against admitting so-called irregular migrants. (See Figure 3.7.1 below for a summary of these shifts.) Especially after September 11, 2001, as I will argue in the next chapter, the national security regime with its dominant discourse of securitization established new national policies to control the borders of Canada.

Figure 3.7.1: Dominant Canadian Policy Regimes affecting Refugee Questions – Confederation Years to Late Twentieth Century⁸⁰

Dominant Policy Regimes (overlapping, but associated with particular time periods)	Notable Events and Timelines	Characteristics of the Dominant Discourses with respect to Immigrants and Refugees
<i>Nation-Building, late 1800s to early 1900s (early Confederation years; focus on Immigration, Agriculture)</i>	Confederation 1867 – first Immigration Act 1869; National Policy 1878	Explicitly racist, sexist; policy preferences for immigrant farmer and women of good character from Great Britain; Anti-Asian and Anti-Oriental; anti-immigration in general except for specific groups (ideally from Great Britain) to build infrastructure and open West; category of <i>refugee</i> not central to nation-building; Immigration key strategy to settle West, prevent US annexation, build railways, work in lumbering and resource development ⁸¹
<i>Economic Development, early 1900s to post-World War II years (other regimes include National Interest, National Unity, Economic Development))</i>	Great Depression; Inter-war years; early World War II years; Holocaust	Allaying Quebec concerns about Jewish migration; shoring up federalism and interests of governing Liberal party; closing doors to newcomers during times of high unemployment; closing doors to European Jews fleeing Holocaust; discourses of “absorptive capacities”; ambivalence re Jewish refugees
<i>Humanitarianism, mid-twentieth century mid-1980s (other regimes included National Security, National Unity, Identity-based Rights)</i>	Rooted in World War I era, egalitarian world vision; broad commitment to liberal values and principles led to 1951 UN Convention; Cold War years; increased flows of European Soviet bloc refugees; other refugee flows from South America and Africa, etc.; Canada accedes to Convention (1969); points system; new Immigration Act 1978 – refugee becomes category in Canadian law; Charter of Rights 1982; admission of 60,000 Southeast Asian refugees 1979-80, for which Canadian people are awarded the Nansen Medal; Canada designates refugee-producing countries, to admit of groups/classes of refugees; Singh Decision, 1985 enshrines refugee rights to oral hearing on appeal	Foreign relations (anti-Communist) discourses; ideologically driven; aligned with American interests; rights based discourses, including rights of refugees; generally pro-immigration, pro-refugee (e.g., Indochinese refugees after Vietnam War); yet discourses persisted about “illegals” who were “swamping” the immigration system; shift from discourses of “absorptive capacity” to discourses of “human capital” and “human resources”, which reflected labour shortages in a number of sectors in the Canadian economy

... cont'd

⁸⁰ These categorizations are by no means mutually exclusive or exhaustive; they are presented so as to highlight key shifts in discourses and important changes in policy regime characteristics as they relate to refugees since Confederation.

⁸¹ See Avery 1979, *Dangerous Foreigners*.

<p><i>Neo-humanitarianism</i>, arose with neoliberalism in the late 1970s; became dominant by late 1980s (<i>shift from social welfare and questions of common good to individualization, criminalization, free movement of goods and services but not of people across borders, national security</i>)</p>	<p>World-wide refugee crisis and economic downturns of the late 1970s/early 1980s; beginning of decades of so-called refugee “crises”;</p>	<p>National security and social cohesion; refugees reframed as “illegals”; hostility to all irregular migration; emerging anti-terrorism discourses affecting border controls and questions of sovereignty; implicitly discriminatory in treatment of refugees; interdiction, deportation, and detention strategies emerged; refugee policies necessarily both inclusive and exclusionary; authentic versus inauthentic refugees (<i>authentic</i> refugees, by implication and practice, were always elsewhere)</p>
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CHAPTER 4

THE SHIFT TO SECURITIZATION

4.1 Introduction

The pervasive world-wide practice of constructing the unregulated mass movement of foreigners as a menace to national security is a relatively recent phenomenon. This construction constitutes a significant change in the way refugees are framed as difficulties: a global shift from neo-humanitarianism (with its core presupposition that refugees are risky individuals and represent a threat to public safety and social cohesion) to the securitization meta-frame (with its core presupposition that refugees are extremely risky individuals, potential terrorists, and a threat to both national and global security). This shift began in the post-Cold War period, as millions of displaced people moved across international boundaries to escape violence or seek work, and the securitization meta-frame remains firmly in place today.

In this chapter, I trace the emergence of the early anticipations of the securitization meta-frame during the 1990s in Canada and examine how refugees were (re)constituted as criminals and potential threats to social cohesion. In doing this, I show how the neo-humanitarian meta-frame shifted to securitization well before the attacks of September 11, 2001 (see Chapter 5). My focus is on how the figure of the refugee was framed as a risk, first to public safety and social cohesion, and later, to national security. I address these questions: How do we understand securitization? How did the

securitization meta-frame take shape in Canada? What is its relationship to the cross-border movements of refugees? And, how was the figure of the refugee increasingly securitized in the period leading up to the crisis of September 11, 2001?

As I have argued, there is no simple answer to the question *what counts as a refugee*. The category of refugee has been framed discursively over time and in geopolitical terms. What counts as a refugee is associated with changing meta-frames and the contingencies arising in relation to major international events. Further complicating the question, refugee discourses are mutually constitutive of western liberal-democratic discourses of sovereignty and security. The edifices of western sovereignty and security actually depend for their legitimacy and power on the unregulated movements of foreigners (e.g., Colson 2006; Honig 2001) – the so-called dangerous *others*. Their circulation both at the borders and within the boundaries of nation-states was understood first as the burden of humanitarianism, and then reformulated during the period of neo-humanitarianism as a danger to public safety and social cohesion, and has since been framed as a national security risk. Managing the movements of these potentially “dangerous” migrants is a function of the law-and-order agenda characteristic of neoliberal governance regimes – the unwanted foreigner is constituted as a threat to the public and personal safety of legitimate citizens.

In this way, state legitimacy, which is framed in relation to a particular notion of citizen legitimacy, actually depends upon constructing uninvited foreigners as a menace. Here I agree with Engin Isin who develops a compelling formulation of citizenship from the perspective of such alterity. Isin asserts that a focus on otherness as a condition of citizenship assumes that citizenship and its alterity always emerge “simultaneously in a

dialogical manner and constituted with each other” (Isin 2002, 4). To illustrate this point, Isin argues that women were not “simply excluded from ancient Greek citizenship, but were constituted as its other as an immanent group by citizens [...]. The alterity of citizenship, therefore, does not preexist, but is constituted by it” (Isin 2002, 4). This is how I understand the political relationships between refugees and the edifices of the state sovereignty that purport to protect the security of legitimate citizens. These relationships are foregrounded below as I map the shift to securitization in Canadian refugee policy.

4.2 Understanding Securitization

Since the early 1990s, when the concept of securitization emerged in critical discourse studies in Sweden, it has come to include a central concern with *both* language and social formations (Balzacq *et al.*, 2011). Securitization theory challenges traditional international relations and other mainstream political science approaches. Mainstream security theories – comprised of what Janine Brodie (2009) calls “canonical security discourses” – have been most closely associated with the field of international relations (IR) and the two dominant paradigms of IR studies – realism and liberalism.⁸² Mainstream security theory explains insecurity by identifying and studying events that are constituted as an external threat (e.g., the threat of communism to western interests during the Cold War). These theories assume that security threats are always outside the entities being threatened. As Thierry Balzacq and others argue (2011), this core presupposition underpinning mainstream security theory actually obscures the various ways in which many different actors are involved in constituting the security crisis. In

⁸² For detailed discussions of IR theories and the underpinnings of mainstream and other approaches, see Burchill and Linklater (2005); Jackson and Sorensen (2006); Weber (2004).

such a scenario, accountability rests solely with the political leaders, and the multiplicity of other involved actors is not taken into account.

In other words, security theory associated with traditional international relations approaches does not account for the politics of security framings. In contrast, contemporary securitization theories, particularly those adopting sociological or constructivist approaches, assume that threats are “not separable from the intersubjective representations in which communities come to know them” and that “... insecurity partakes of a distinctive type of *shared knowledge*” (Balzacq 2011, xiii) [emphasis added]. Securitization theory, thus understood, holds that the social design of security problems both constitutes and legitimizes the means used to forestall threats. Securitization theory portrays threats as framed discursively over time in changing contexts.

Balzacq’s conception of securitization is exemplary in helping us understand the shift to securitization in refugee policy in the late twentieth century. Balzacq draws our attention to the role of metaphors, securitizing actors, and the audience in evoking and then legitimizing a threat in terms sufficiently compelling as to warrant special or emergency policy responses. He addresses the manifold relationships among various forms of practices and the struggles among those operating within the fields of power that comprise the state’s security regime, particularly within the bureaucratic field of power:

[Securitization is] an articulated assemblage of practices whereby heuristic artefacts (metaphors, policy tools, image repertoires, analogies, stereotypes, emotions, etc.) are contextually mobilized by a securitizing actor, who works to prompt an audience to build a coherent network of implications (feelings, sensations, thoughts, and intuitions), about the critical vulnerability of a referent object, that concurs with the securitizing actor’s reasons for choices

and actions, by investing the referent subject with such an aura of unprecedented threatening complexion that a *customized policy* must be undertaken immediately to block its development (2011, 3) [emphasis added].

Critical and sociologically based securitization theory thus holds that the state is never the only actor involved in framing the unexpected arrival of refugees as a threat; other actors participate in both defining the threat and legitimizing special policy responses. These other actors include the media and societal segments that have a stake in particular threat discourses and their material effects (e.g., law and order institutions, political parties, and people suffering from the effects of economic downturns). Securitization arises from frame contestations and also requires, according to Balzacq, an “empowering audience” – that is, public acceptance of the enactment of the new policies (the “securitizing moves”) by the state. Actors, engaged together in altering perspectives and defining new threats, either through frame contestations or strategic collaborations, perform what Balzacq calls “security repertoires” (2011, 3). Security repertoires are contextual; knowledge is acquired of the concept of security and securitization through both competing and convergent discourses that circulate regularly and over time.

Security practices are enacted mainly through policy tools that are understood in this context as social devices through which security professionals think about a threat (Balzacq 2011, 15-16).⁸³ Policy-makers and other “policy entrepreneurs” operate in the different spheres of the administrative state and civil society to shape the framing of the

⁸³ In a sociological approach to security studies, as Sjöstedt explains, three mutually constitutive dimensions comprise the context in which an issue, such as the unexpected arrival of refugees, becomes securitized – the international context, the domestic political context, and the domestic social context (Sjöstedt 2011, 152). The international context is comprised of the normative discourses and legal frameworks that influence and legitimize the orientation and policy approaches taken by the elite policy-makers in domestic political contexts. The international context contributes to the emergence of what I have called a meta-frame.

security threat. I contend, following Balzacq (2011), that frame contestations, different narratives, and different social structures of authority all influence the perception of the threat, the appropriateness of the policy solutions from various perspectives, and the legitimation of emergency action. Technocratic policy discourses may fail to coalesce with public opinion around a particular issue to be identified as a security threat. When this happens, securitizing actors are unable to invoke the urgency of an emergency that would otherwise remove the issue from the scope of deliberative politics (Salter 2011, 116). When technocratic policy discourses do coalesce with public discourses of emergency, as happened in the 1990s, the category of refugee is reframed, through broad consensus, as a threat – notwithstanding the strong resistance mounted against such securitizing moves by key humanitarian and advocacy organizations (such as the UNHCR and the Canadian Council for Refugees).

4.3 From Neo-Humanitarianism to Securitization in Canada

I argued earlier that neo-humanitarianism arose as western states adopted a strategically narrow focus on the legal definition of the refugee as an individual. By the 1980s, a new protection paradigm – preventive protection – emerged, whereby refugees were warehoused outside industrialized countries, and the principle of asylum was significantly eroded. Under the neo-humanitarian meta-frame, as we have seen, what counted as a refugee was a person who, by virtue of waiting elsewhere to be selected and granted refuge, was deemed to be a *deserving* refugee. Yet, uninvited foreigners who managed to make their way, with or without documentation, to the borders and frontiers of receiving nation-states were reconstituted as cheats, criminals, queue jumpers, and more recently, as potential terrorists. The shift from humanitarianism to neo-

humanitarianism can be regarded as the key discursive shift of the twentieth century, with respect to the question of what now counts as a refugee, because the shift entailed the foregrounding of a new figuration of the refugee as a risky individual. This shift was tectonic in the sense that it dislodged the core commitment – the duty of care (Barnett 2011) – that characterized the framing of refugees in the period of humanitarianism. As I will show, this earlier discursive shift set the scene for the shift to securitization of refugee policy in 1990s – a shift that was an extreme intensification of the framing of the refugee as a risky individual (rather than as an individual at risk) that, taken to its extreme forms, saw during the period of securitization the framing of the refugee as a potential terrorist with the capacity to threaten not just national, but global security.

Since the early 1990s, Canada's refugee policy orientation has shifted with Canada again becoming a country of first asylum as well as a country of resettlement (Lacroix 2004, 147).⁸⁴ What this meant was that so-called irregular migrants found the means to land with growing frequency and in increasing numbers in Canadian international airports and at the sea ports without stopping in other jurisdictions en route to Canada. Western refugee-receiving countries such as Canada resisted becoming first-asylum destinations and increased efforts that put pressure on proximate first-asylum countries (mainly developing, poor countries in Africa and Latin America) to resettle refugees themselves. A new first asylum approach emerged as western countries

⁸⁴ As David Matas explains, “first asylum” countries typically are proximate countries in the “Third World” – the “bulk of refugee outflow comes from the Third World [and these are] countries of proximate refuge or first asylum for the majority of today’s refugees” (1989, 276). In a more hospitable spirit, consistent with the emerging humanitarian meta-frame, Canada was a country of first asylum for refugees during the two World Wars and during other mass migrations arising from geopolitical upheavals, such as the migration of Russian refugees in the early twentieth century (discussed in Chapter 2).

responded to the growing pressures by reframing refugees as problematic risks (e.g., as in the Canada-US Safe Third Country Agreement, to be discussed later).

This new approach to first-asylum pressures (which has its roots in earlier Canadian discourses of exclusion) consisted of increasingly restrictive refugee claimant measures (Lacroix 2004; Knowles 2007; Dench 2000). As in Europe and Australia, a preoccupation with deterring illegal migration dominated Canadian policy (Aiken 2002, Razack 2000; Whitaker 1998; Abu-Laban 1998; Abu-Laban and Gabriel, 2002; Folson 2004; Pratt 2005). Despite the shift to more exclusionary practices during the early 1990s, non-governmental organizations and advocacy groups persisted in their attempts to shift the framing back into a more hospitable register. Groups that mobilized during this period included law societies, university-based groups (frequently led by the York University Centre for Refugee Studies), faith-based groups, ethnic groups, women's organizations, the Canadian Council on Social Development, labour organizations, settlement services, and the Canadian Council for Refugees (e.g., CCR, 2001; Kelley and Trebilcock 2000; Whitaker 1998). I contend that this return to being a country of first asylum catalyzed the early stages of the shift from neo-humanitarianism to securitization during the 1990s.

By the late 1990s, securitization had refocused and honed the neo-humanitarianism of the late twentieth century by linking questions of public safety and national security to immigration and refugee policy. The emphasis in this era on security, terrorism, and border protection was part of what has been recognized as a pattern comprised of grand international gestures of humanitarianism, domestic acts of political expedience, and institutionalized racist exclusions (Aiken 2009; Richmond 2001;

Simmons 1998; Dauvergne 2003, 743). In this context, by making explicit links between migration and security within the policy frameworks dealing with refugee protection as well as with foreign affairs, the state reinforced and institutionalized the profoundly contradictory framing of refugees as being *both* dangerous and worthy of protection, while foregrounding the potential danger represented by such persons.

In the 1990s, the Canadian state made national security one of its priorities and adopted an array of counter-terrorism laws and policies that repositioned “immigration remedies” as a key component of the national security agenda (Aiken 2009, 172). Deterring “spontaneous arrivals,” transnational crime, and terrorism became the central preoccupation of Canadian security policy as the discourses of Cold War security began to fade away.⁸⁵ Canadian state actors became convinced during this period of the need for new and better deterrents to prevent the arrival of potentially dangerous migrants of all kinds, responding with a significant securitizing move in 1992 by inserting terrorism into the list of exclusions under the Immigration Act.

Exclusions under the Act were obviously open to interpretation by those who administered the legislation and by the judiciary because the terms “terrorist” and “terrorism” were (until fairly recently) left undefined. This lack of definition can be seen as a securitizing move that maintained confusion about the term thus increasing the discretionary powers of the relevant ministers to deny entry to refugees.⁸⁶ With the use

⁸⁵ Similarly, during the 1990s, immigration policies aimed at “cracking down” on “illegal” migration were enacted in the US, Australia and Europe (Aiken 2009; Dauvergne 2003, 735).

⁸⁶ To illustrate the categorical confusion around the definition of terrorist or “terrorist organization” emerging in the late 1980s, in February 1988, Canadian pro-life leaders demanded a public apology from the Chairman of a Senate Committee that identified pro-life groups as a possible terrorist threat. In a Special Senate Committee report, pro-life and “certain anti-abortion groups” were noted as among “those groups that have recently been, are currently viewed to be, or could become sources of domestic terrorism in Canada ... and that although the major threat to Canadian security was international terrorism, the

of discretionary security certificates, in particular, the state was able to arrest, detain, and deport non-citizens on national security grounds without being required to show the non-citizen any of the evidence.⁸⁷

Under legislation in the early 1990s refugee claimants labeled a “security risk” were, notwithstanding the Singh decision, denied the right to a refugee hearing. Adjudication of such cases was done *in camera* on the basis of foreign-provided security information (CSIS was not mandated to operate outside Canadian territory). In response to criticisms by various advocacy groups, including the Canadian Council for Refugees, then Minister of Immigration Benoit Bouchard said, “No country has an obligation to protect a person who ... constitutes a threat to its security ... they should and will be removed whether they are refugees or not.” Canadian policy makers saw globalized terrorism and transnational crime as significant and persistently increasing challenges to the effective control of refugee movements and to the management of Canada’s refugee systems (Aiken 2002). Framing refugees in this manner further reinforced the securitization of state policies and regulations.⁸⁸

“secondary threat is from domestic terrorism, particularly from radical right-wing/racist groups, radical ‘animal liberation’ groups and the extreme elements of certain anti-abortion groups” (*Interim*, “Are you a Terrorist?”, February 14, 1988).

⁸⁷ Special procedures for security cases were not new in Canadian immigration law; such mechanisms have existed in various forms since the neo-humanitarian period was beginning in the late 1970s. By the late 1980s, jurisdiction shifted out of the administration of immigration policies and into the security policy milieu. After the emergency parliamentary session was convened to respond to the arrival by ship of approximately 200 Sikh refugee claimants, the jurisdiction over security certificates was transferred to a judge of the Federal Court, and this transfer remained in effect until the implementation of the new Immigration and Refugee Protection Act in 2002 (Aiken 2009).

⁸⁸ When the Immigration Act of 1976 was implemented, Canada admitted 1,200 refugee claimants a year, all of whom were fleeing Soviet Bloc regimes. By 1992, in a significantly more securitized context, Canada was admitting 34,340 refugee claimants from all continents (see Knowles 2007; also M. Young, “Canada’s Immigration Program,” Parliamentary Research Branch, Revised 1999).

In 1991, Section 40.1 of the Immigration Act came into force, advanced by then Immigration Minister Bernard Valcourt, who was very concerned about the high volume of refugee claimants and the growing backlog.⁸⁹ He argued that inadmissibility provisions for refugees and immigrants should be extended to make it “easier” for the state to “exclude those whose admission would be contrary to the national interest.”⁹⁰ I suggest that Valcourt’s securitizing move, and his deployment of the language of risk management, was strategic in that it offered another avenue for building consensus on approaches to addressing what was actually an administrative rather than a security problem – the growing backlog of refugee claimants and the refugee review board’s inability to deal with it.

Securitization of refugee policy became even further entrenched when, in 1992, Bill C-86 instituted new “non-arrival” policies and approaches, particularly with respect to unwanted movements of migrants from poor countries. The Bill included security measures that, according to former Solicitor General Doug Lewis, would ensure that Canada did not become a safe haven for retired or active “terrorists.”⁹¹ Bill C-86 set out the purposes of new Safety and Security provisions:

Recognizing that persons who are not Canadian citizens or permanent residents have no right to come into or remain in Canada and that permanent residents have only a qualified right to do so, and recognizing the necessity of cooperation

⁸⁹ See, for example, a report on the treatment of Palestinian refugee claimant Mahmoud Abu Shandi by Hunter, “Security-Risk Law; Challenging a Process that May Fail Refugees,” *Ottawa Citizen*, January 24, 1992, A.3. See also Farrow, “Refugee System Cited as ‘Open Door’ to Terrorists; Refugees: Comments described as ‘tempest in a teapot’,” *The Vancouver Sun*, August 30, 1994, B.1

⁹⁰ Morkel (1995), “When Security Services are Judge and Jury Palestinian Baroud is a Casualty of Security Legislation.”

⁹¹ Aiken 2002, 14; ref. *House of Commons Debates* 22 June 1992 at 12533, Doug Lewis.

with foreign governments and agencies on maintaining national security, the purposes of sections 39 to 40.2 are

- (a) to enable the Government of Canada to fulfill its duty to remove persons who constitute a threat to the security or interests of Canada whose presence endangers the lives or safety of persons in Canada;
- (b) to ensure the protection of sensitive security and criminal intelligence information; and
- (c) to provide a process for the expeditious removal of persons found to be members of an inadmissible class...

In a statement to the Legislative Committee of the House of Commons on Bill C-86 (1992), Fernand Jourdenais, a federal Progressive Conservative Member of Parliament, said that “simple logic dictates that Canada should protect itself against any Tom, Dick or Harry wanting to enter the country” (quoted in Aiken 2002, 14).

Bill C-86 introduced a new form of criminality in order to render refugees and immigrants “inadmissible” where there were “reasonable grounds” to believe that they would “engage in terrorism” or did have connections to terrorist organizations. The minister of immigration was granted extensive discretionary powers. If the minister found “reasonable grounds” that were “contrary to the public interest,” refugee claimants were denied the right to pursue their claims (Aiken 2000, 63-4). The amended Immigration Act assigned responsibility for identifying possible terrorists to CSIS, but final authority for deciding on each case remained with the immigration department. Proponents of these highly securitized provisions asserted that failure to enact Bill C-86 would put “the safety and security of Canadians at risk ... we have to face the fact that

the world of the 1990s is a world of increasingly sophisticated, internationally organized criminals and terrorists.”⁹²

These shifts in jurisdictional responsibility accompanied the shifts in refugee policy discourses from the ambivalent practices of protection under neo-humanitarianism, to the much less ambivalent practices focused mainly on the protection of national security, particularly from terrorism. For example, in late 1992, the immigration policy function and its associated bureaucracy were moved into a newly created Department of Public Security. The effect of this administrative restructuring was to generate discourses that reframed refugees as “dangerous outlaws” who were viewed as persons intent on destabilizing Canadian society and taking advantage of Canadian openness and support services (Aiken 2009).

In 1993, then Prime Minister Kim Campbell undertook a very high-profile securitizing move by shifting immigration into the Department of Public Security, a move that was met with considerable resistance by critics and advocacy groups, including Canadian law societies and the Canadian Council for Refugees. For example, the President of the Montreal Chinese Neighbourhood Society, speaking on behalf of Montreal’s Asian communities, said that “it is not a simple matter of administration ... it is the symbolism ... that’s the most insulting thing.” Asian advocates charged that the government was equating immigrants (and refugees) with criminals.⁹³ Later that year, the newly elected Liberal government transferred refugee policy back into the Department of Citizenship and Immigration. While, on the surface, this reorganization

⁹² House of Commons Debates, 22 June 1992, at 12504-5, Jack Shields; cited in Aiken 2002, 14.

⁹³ Boucek (1993), “Don’t Lump Immigrants in with Crooks, Ottawa told – Bureaucratic Shuffle would put Immigration in Hands of Public-Security Ministry.”

seemed to suggest a retreat from an overtly securitized approach to refugee policy, securitization of the category of refugee nonetheless continued to intensify throughout the 1990s.

During the 1990s, refugee policy was affected by the new emphasis on connections between crime and security, which became the foundation for increasingly exclusionary laws and policies governing the admission of refugees. For example, in 1991, for the first time, the Department of Foreign Affairs and International Trade (DFAIT) linked security and irregular migration in an official policy statement (Bourbeau 2011, 20): “We need to address transnational security threats such as proliferation, drug trafficking, terrorism, and irregular migration” (DFAIT 1991, 91). This securitizing move encouraged fears about the unexpected arrivals of foreign migrants on Canadian soil and linked these fears with threats to national security.

As Philippe Bourbeau found, this link reappeared in a Department of National Defence (DND) White Paper on Defence (1994) and again in a DFAIT policy document, “Canada and the World,” which asserted that “... the threats to security now are more complex than ever before ... [A] whole range of issues that transcend borders – including mass migration, etc. – have peace and security implications” (DFAIT 1995, ii, cited in Bourbeau 2011, 21). Further, the government invoked the dangers of the growing backlog in the refugee determination systems as evidence of bureaucratic inefficiency and irresponsible management that would represent a national security threat if left uncorrected. The solution to these management problems, suggested by a highly securitized policy framing, lay in halting what the government saw as the flow of fraudulent claims being made by inauthentic and presumably criminal refugees.

However, David Matas, a Canadian immigration and refugee lawyer, who studied decisions by the Immigration and Refugee Board between 1989 and 1994, found that only 38 individuals out of 122,000 processed by the board had actually committed fraud.⁹⁴

4.4 Bill C-44: Accelerating the Shift

In 1995, the emergent securitization meta-frame was present in the government's response to the "Just Desserts" case⁹⁵ in the form of Bill C-44.⁹⁶ In Parliament, questions were raised by the Reform Party member, Art Hanger (Calgary Northeast) about one of the individuals arrested in connection with the Just Desserts murder case, claiming that he "had an ongoing involvement with Canadian immigration officials and with [Minister Marchi's] department." Hanger asked why this alleged murderer had been given a "stay on his deportation order in 1993 by the minister's department" (Parliament House Publications, April 27, 1994). Hanger's point was that, in his view, the immigration system had failed to meet its obligations to protect Canadians from criminals posing as legitimate immigrants.

⁹⁴ *Vancouver Sun*, "Tales of Refugee Fraud Not True, Lawyer Says," 16 March 1995.

⁹⁵ The "Just Desserts" case refers to killing of a young white woman, Georgina Leimonis, who was working in the Just Desserts café in Toronto when she was killed by gunshots fired by two young black men of Caribbean heritage. Following the incident, the print media in particular, racialized the crime as a violent act perpetrated by Jamaicans from inner city Toronto on helpless white women. It was a familiar recreation of a moral panic associated with the history of slavery. In a comprehensive study of racist discourse in Canada's English print media, Frances Henry and Carol Tator (2000) found complex, crime-related language throughout the coverage of the case, including phrases like "cultural deviance" and "Jamaican or Black crime" (2000, 14). As Henry and Tator argue, the linking of "race and crime by the media becomes a wake-up call to all Canadians, and especially politicians, to re-evaluate their ideas about authority, control and public policy" (2000, 14-15).

⁹⁶ An Act to Amend the Immigration Act and the Citizenship Act and to Make a Consequential Amendment to the Customs Act, SC. 1995, c. 15 [hereafter Bill C-44]. The Act received Royal Assent on 15 June 1995 and came into force on 10 July 1995.

In his reply, Sergio Marchi (Liberal Minister of Citizenship and Immigration) confirmed that his department had moved to deport “that individual” but that the immigration appeals board, which was not controlled by his department, did not order the deportation as recommended. Marchi’s next comment alluded to the growing conviction on the part of state officials that the immigration and refugee protection legislation required a greater emphasis on preventing the admission of potential criminals:

I will say the system failed us on this case. That strengthens my convictions that the amendments [to immigration legislation] that I have been discussing with my officials to strengthen the criminality provisions and to close the loopholes are the right course” (Parliament House Publications, April 27, 1994).⁹⁷

The Just Desserts case, which sparked widespread public outrage, thus helped to promote the new security provisions under Bill C-44. The Just Desserts case intensified the already present framing of the refugee as a potentially dangerous criminal and contributed to the growing emphasis on security questions by the state in its efforts to curtail refugee arrivals.⁹⁸ In my view, following Balzacq’s critical approach to securitization (2011), what the case also suggests is that when the state portrays a menace to security *and* there is broad public consensus, securitization gains legitimacy.

Bill C-44 contributed to the entrenchment of the securitization meta-frame as it constructed and regulated a new category of refugee – that of the “criminal foreigner.” The Bill imposed provisions for mandatory detention and deportation⁹⁹ of refugees

⁹⁷ Parliament of Canada, House Publications, April 27, 1994.

⁹⁸ However, the two men ultimately convicted in the case were actually Canadian citizens (Aiken 2002, n. 28, 6).

⁹⁹ The conditions under which deportation orders could be issued were expanded and immigration officers’ powers of search and seizure were increased (Citizenship and Immigration Canada *Update 8* 1997).

deemed to be a “danger to the public.” Danger was inferred when a foreigner was *accused* (but not necessarily convicted) of offences carrying a potential sentence of ten years or more. The minister’s discretionary powers were expanded significantly under the “danger to the public” provision of the Act to allow for deportation by the minister, without appeal. This provision applied to permanent residents, landed immigrants, and Convention refugees, regardless of how long they had lived in Canada.

Retaining from earlier legislation a persistent (and strategic) vagueness in the legal definitions of terrorism and “membership in a terrorist group,” Bill C-44 worked in concert with the provisions of the 1984 Canadian Security Intelligence Service Act (which established the agency CSIS) to promote a new policy regime. The new regime transferred national security issues from the jurisdiction of the RCMP to that of CSIS; enabled discretionary bypassing of judicial refugee appeals processes; and authorized the deportation of suspected terrorists among refugees, rendering them ineligible to apply for Convention refugee status. The Bill made explicit for the first time the framing of the figure of the refugee applicant as a potential “terrorist.” In other words, Bill C-44, in concert with other legislation of this period respecting national security, accelerated the shift to securitization.

4.5 Broadening and Intensifying the Shift

The shift to securitization later expanded its ambit and led to the further integration of security and immigration/migration regimes in Canadian policy. Between 1996 and 2001, approximately 33,000 people were “successfully” intercepted well before they reached Canada’s borders (Thompson 2001). Refugee communities in Canada increasingly came under surveillance by CSIS. Refugee diaspora with transnational

connections of any kind to people in homelands were of particular interest to CSIS because they represented the possible existence of terrorist networks. Political activism on behalf of refugees was suspect. Activism “that was lawful for citizens had become a basis for expelling non-citizens” (Aiken 2009, 173). Security interviews increased and information collected by CSIS was often classified on security grounds, being therefore not subject to disclosure to the persons concerned.

In the late 1990s, CSIS undertook a study of the “unpredictable forces that might adversely affect Canada” – from the “mass migration of refugees to the collapse of ecosystems,” which was released in 1998. The CSIS study presented a wide-ranging shift to the securitization of geo-political issues such as “ethnic and religious conflicts, UN registered refugees, the rise and appeal of cult organizations, inequities in global income and national product, exportable health problems and communicable diseases, and food and water scarcity” (CSIS 1998). CSIS spokesperson Marcia Wetherup said, “It’s sort of like an early warning of emerging issues that could impact on national security or public safety concerns.”¹⁰⁰ The former CSIS chief of strategic planning, David Harris, said:

... you’ve got to know your challenge, know your enemy before you’re in any position to deal with it ... an overseas famine can bring not only a wave of refugees to Canada but internal squabbles from their home countries ... this has big implications as well ... then, for the whole shape of how we define our security in the 21st century.¹⁰¹

In the discourses of securitization that took shape during the 1990s, refugees were thus generally framed as a menace – assigned the kind of threat level associated with disease

¹⁰⁰ Quoted in Bronskill (1998), “Agency Watching for Threats to National Security.”

¹⁰¹ Bronskill (1998), “Agency Watching for Threats to National Security.”

pandemics and catastrophic natural disasters. Yet there were nonetheless clear tensions. As immigration from China increased significantly in 1999, for example, such a tension emerged: on the one hand, Chinese immigrants, particularly those with investment potential and students, were courted and welcomed; on the other hand, there was a “backlash of hate,” according to Prime Minister Paul Martin, in the wake of the arrival by boat of Chinese refugees.¹⁰² Not only were questions of refugee protection merged with those of dealing with natural disasters and communicable diseases, refugees increasingly were framed as potential terrorists by the agency charged with the gathering of intelligence and the protection of Canada’s national security.

In the 1990s, discourses that constituted the figure of the deserving refugee as a genuine victim of state-sanctioned persecution (though still unwelcome and potentially dangerous in neo-humanitarian terms) shifted into a securitization framing such that refugees who managed to arrive at Canadian borders were reconstituted as potential terrorists. Despite the legal prohibition under the 1951 Convention against *refoulement*, and Canada’s accession to the UN Convention against torture,¹⁰³ the state continued to send back people deemed to pose a risk to Canada, whether or not they could face torture on their return. For example, responding to the Ontario appeals court decision to delay deportation of a refugee claimant with connections to a so-called terrorist organization (the World Tamil Movement), CSIS Director Ward Elcock, said that Canada had become a “safe haven” for terrorists: “with perhaps the singular exception of the United States,

¹⁰² O’Neill (1999), “Immigration from China Skyrocketing.”

¹⁰³ United Nations, Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, 1984, 1465 U.N.T.S. 85 (CAT) (adopted 10 December 1984, entered into force 26 June 1987) [hereafter the Convention against Torture].

there are more international terrorist groups active here than any other country in the world.”¹⁰⁴ Elcock’s remarks focused on what he saw as the need for greater rigour in the application of the “national security” clause in the Immigration Act in order to stem the flow of terrorists into Canada.

In the late 1990s, the federal Liberal government appeared partially to adopt a more conciliatory approach to refugee protection in relation to national security issues, but nonetheless retained an accent on securitization. The government launched a national consultation on immigration policy, under the aegis of the Minister of Citizenship and Immigration, which tabled a report entitled, “Building a Strong Foundation for the 21st Century – New Directions for Immigration and Refugee Policy Legislation” (CIC 1998). In the introduction to the report, the Minister, Lucienne Robillard, spoke about ensuring principles of fairness, while responding to emerging issues and pressures, including the growing pressures of refugee flows worldwide.

Based on the consultations with some 2,200 individuals and agencies nationwide, the report noted that the Immigration Act had been amended some thirty times since it was first proclaimed.¹⁰⁵ Nonetheless, many new principles were identified to reform and consolidate the Act. These principles addressed questions of national security and public safety in the context of Canada’s obligations under the UN Convention and other international treaties respecting the protection of refugees. They included: prioritizing social cohesion and economic well-being; renewing humanitarian commitments; describing Canada as a “compassionate society”; emphasizing Canada as a values-based,

¹⁰⁴ See, for example, *National Post* (1999), “Courting Terrorism.”

¹⁰⁵ See Appendix I for highlights of the changing Canadian immigration and refugee policies since the Confederation years.

family-oriented society (stress on family reunification policies); promoting public safety; and, ensuring fairness and transparency in decision-making (CIC 1998).

Of interest here are three proposed directions for reform resulting from the consultations: strengthening refugee protection; maintaining the safety of Canadian society; and refocusing discretionary powers. I suggest that these directions were, taken together, emblematic of the status of vestigial humanitarian tendencies while being subsumed by the intensified securitization of refugee policy. The directions proposed strengthening refugee protection by reiterating “Canada’s humanitarian tradition of resettling from abroad refugees and people in refugee-like situations for whom no other solution can be found” (CIC 1998, 39). The emphasis here was clearly on refugee protection. Yet this echo of a more humanitarian approach was also qualified in the same report by an equally strong emphasis on protecting only those refugees deemed to be “genuine” (CIC 1998, 39) – a move that I believe continued to validate the presuppositions of criminality and danger associated with irregular migration, and the arrival of unwanted refugees. Serious concern was expressed in the report about the fact that “more than half of the refugee claimants do not present a passport or other legitimate travel document at the time they claim status” (CIC 1998, 41). This concern posed more questions of claimant credibility and suggested criminalizing refugees who, as is well known, often must flee often without documentation or any other possessions or resources.

Abuse of the system was a common theme of the consultation report, which drew parallels between criminality and those who tried to enter Canada without documentation. In two excerpts from the report, we can see how commitment to humanitarian duties is

undermined with the shift to securitization. This tendency is first evident in the coupling of protection for authentic refugees with the notion of preventing the dangers represented by inauthentic refugees:

Mass population movements are a significant phenomenon confronting governments today. One hundred and twenty-five million people are on the move internationally. The United Nations estimates that there are over 30 million refugees and displaced persons worldwide. Many make refugee claims in Western countries. The flow of refugee claimants to Canada has increased from 500 in 1977 to 24,000 in 1997. *The critical challenge is to grant Canada's protection to those who need it while discouraging those who are clearly not genuine refugees* (CIC 1998, 2; emphasis added).

The next excerpt illustrates how the securitization meta-frame operated, with the refugee crisis presented as an element of globalized organized crime and terrorism; and how, by implication, refugees caught up in these webs of crime were also seen as potentially dangerous criminals:

In a world where borders are ever more frequently crossed and therefore less easy to control, transnational criminal organizations ranging from drug cartels to ethnically based criminal gangs have prospered. People smuggling has become a lucrative business. Ever increasing trade links underscore the need to facilitate the entry of business travelers at ports of entry while maintaining vigilance to detect people who aim to circumvent legitimate immigration requirements. Openness must be coupled with a concern for system integrity and a determination to stem abuse (CIC 1998, 2).

Other measures proposed in the consultation report to maintain the “safety of Canadian society” included tightening the admissibility/inadmissibility criteria, implementing stricter measures to deal with undocumented or improperly documented arrivals,

enhancing the effectiveness of the removal system, and defining more stringent penalties for contravening the Immigration Act (CIC 1998, 45).

4.6 Securitizing Moves by Senate Inquiries

The Canadian policy response to the attacks of September 11, 2001 occurred in the context of an already heightened attention to the potential dangers represented by refugees. In the pre-September 11, 2001 period, the Canadian federal government, through Senate committees, focused on concerns about protection of public safety and national security. Preventing terrorist acts was an overriding preoccupation of one Senate Committee in particular. On January 14, 1999 (about a year before the so-called “Millennium Bomber” incident), William J. Kelly, Chair of the Special Senate Committee on Security and Intelligence, tabled a report.¹⁰⁶ Two previous special Senate committee reports (also chaired by Kelly) had reviewed Canada’s immigration policies and procedures. Kelly decided to launch a third special committee inquiry due to his dismay about the disorganized response to the crash of a wayward vehicle on Parliament Hill: “Everything that could go wrong did go wrong,” he said (Special Senate Committee Report, 1998, 4). He expressed concern that tourists and reporters were able to mill around the vehicle, placing them in grave danger if a bomb had been on board. In Kelly’s view, it was a good reason to reopen the question of Canada’s preparedness for security threats posed by groups ranging from terrorists and political radicals to economic spies and organized criminals. For Kelly, the end of the Cold War had “spawned new threats”

¹⁰⁶ “The Report of the Special Senate Committee on Security and Intelligence,” including Extract from the Journals of the Senate, Tuesday, September 29, 1998 which contain the motions that established the committee. This was the third of three reports undertaken by the Special Senate Committee under Kelly’s leadership; the other two were tabled on August 10, 1987 and June 28, 1989, respectively.

that must be anticipated and prevented. The Senate committee also argued that Canada's "leaky" refugee determination system was exposing the United States to undue security risks and suggested that the two countries adopt a common approach to immigration into North America.¹⁰⁷

In Kelly's 1999 report on terrorism and national security, the links were re-forged in the discursive chains binding together immigration policy, "illegal migration" and terrorism. This time, the Senate committee concluded that immigration and refugee policies had been devised "before international terrorism became a major threat or concern to policy makers" and that "our immigration policies and procedures were ill-suited to the threat-environment" (Special Senate Committee 1999, 7). The premise that the existing refugee determination system contributed to a growing terrorist threat coloured the Senate committee's assessment of existing policies and programs. The committee cited a systemic lack of adequate resources "affecting our ability to weed out security threats" in the refugee determination process and the inappropriateness of relying on other countries' police or security intelligence agencies for "vetting our immigration applicants" (Special Senate Committee 1999, 8).

The Senate committee maintained that the refugee determination system was a means by which "terrorists may circumvent our vetting process abroad and enter Canada," thereby gaining the opportunity to enter the United States. The committee reported that, during the first nine months of 1998, 75 per cent of the refugee claimants arriving at Canadian airports each year were improperly documented, and that a majority

¹⁰⁷ See Bronskill (1998), "Senator Calls for Security Review: Some Fear Proposal could Crate 'soapbox for scaremongers.'" and Bronskill (1999) "Spy Service Needs New Powers to Battle Terrorism: Senate Committee Report: Report Targets Charitable Groups Disguised for Illegal Fundraising"; and Toulin (1999), "Porous Canadian Border puts U.S. at Risk: Senators – 'Gutsy' Committee Report, a Call for a Common North American Immigration Policy."

had no documents at all. The assumptions about the dangers posed by refugee claimants also shaped the committee's assessment of the need for greater detention of refugees:

The vast majority of people who arrive in Canada and claim refugee status are not detained, but are allowed to circulate freely in Canadian society pending a decision on their status ... thousands of persons awaiting inquiry or removal, or who are undergoing the refugee determination process are physically in Canada, and thousands of others have voluntarily left the country, but the immigration department is not aware of their whereabouts (Special Senate Committee 1999, 9).

The Senate Committee further reinforced connections between refugees and criminality:

... the significant number of refugee claimants [who] are brought into Canada by organized smuggling rings ... that generate substantial profits ... involve organized crime ... and could be used to smuggle terrorists (Special Senate Committee 1999, 10).¹⁰⁸

Notwithstanding a lack of clarity or consistency in its definitions of terrorist and terrorism (or, for that matter, what constituted a national security threat), the committee urged in its final recommendations that the government bring into the Immigration Act the language of "security exclusion" contained in the Canadian Security Intelligence Service Act and the Security Offences Act (Special Senate Committee 1999, 11).¹⁰⁹

Thus, the work of the Kelly Senate Committee and, in particular, its 1999 report reinforced the late-twentieth century securitization of the figure of the refugee in

¹⁰⁸ The committee also made specific connections between the decline in tobacco smuggling by "gangs" located in Aboriginal border Reserves and their increased participation in the smuggling of "illegal migrants," thereby alleging that Aboriginal groups' "smuggling infrastructure" could also pose a threat to national security. Despite its concerns, the Senate committee report notably acknowledged the "value" of immigration to Canada, and that "contrary to public perception, crimes committed by visitors, refugee claimants, refugees, and immigrants are proportionately less than crimes committed by the general Canadian population" (Special Senate Committee 1999, 10).

¹⁰⁹ The focus of other recommendations was on enhancing airport security, increasing resources and training for border guards, improving inter-agency collaboration and enforcement of existing laws, and recommending the drafting of new provisions to address the "problem of fundraising by groups with terrorist affiliations" that had charitable registration.

Canadian policy. In the work of the Senate Committee, we can see how various securitizing moves had started to affect the legislative and policy milieu. And the report also laid a foundation for the securitization of the next round of uninvited arrivals –the Chinese “boat people” who came later that year.

4.7 The Entrenchment of Securitization: Turning a “Refugee Crisis” into a National Security Crisis

During the summer of 1999, in a context of heightened general concern about questions of national security and the prevention of terrorism, four boats transporting 599 migrants from the Fujian Province of China arrived off Canada’s west coast. Reactions to these arrivals highlighted how refugees were being framed as a serious threat to social cohesion and national security. In contrast to the welcoming responses to the Southeast Asian refugees in 1979 and 1980 (see Chapter 3, p. 107), media reactions in 1999 reinforced a general perception that the new Chinese refugees had become a new and serious menace. The dominant narratives that emerged portray them as risks to the health of the Canadian population, as criminals, and as a potential drain on the already significantly diminished Canadian welfare state (Ibrahim 2005, 174). Media coverage of the arrivals of the Chinese refugees was so effective in creating the link between “illegal” migrants and security that the entire Canadian immigration system was called into question (Ibrahim 2005, 173). By the end of the summer of 1999, the arrival of the Chinese refugees had been framed not as a refugee crisis in humanitarian terms, but as a national security crisis – a move that signaled the entrenchment of securitization in Canadian refugee policy.

These securitizing moves focused on perceptions of the difference, foreignness, and potential criminality of the Chinese refugees. The narrative forms constructed in the press coverage of the various arrivals of Chinese refugees demonstrated links, as others have argued, to a “broader political, cultural and economic context in the historical treatment of Chinese people by the Canadian state” (Hier and Greenberg 2002, 502). The negative framing of the Chinese refugees was validated by the RCMP, which launched a criminal investigation into the incident.¹¹⁰ These events illustrate how the state’s approach in the late 1990s, long before the attacks on the US of September 11, 2001, reinforced the links between the arrival of uninvited migrants – particularly from Asian countries – and terrorism. Despite humanitarian tendencies that had found some voice in government consultations on refugee policy by the end of the 1990s, the foundations of securitization were firmly in place in Canada by the close of that decade.

4.8 Cross-Border Securitization Prior to September 11, 2001: The Case of the “Millennium Bomber”

In the late 1990s, the federal Liberal government’s approach to the refugee-as-security-crisis problem was both to reiterate the government’s commitment to humanitarian principles and to increase efforts to target suspected refugees for interdiction or exclusion at points of departure. Airline carriers, for example, were required to ensure that they intercepted and prevented the departure of inauthentic refugees. Despite earlier consultations in 1998 on humanitarian changes to immigration and refugee legislation, by the end of 1999, securitization had become the dominant

¹¹⁰ This was a pattern that would be repeated with each uninvited arrival of groups of refugees in eastern and western Canadian waters, most recently with the arrival on the west coast in the summer of 2010 of 477 Tamil refugees (discussed in section 6.4).

meta-frame in immigration and refugee policy. In particular, the “Millennium Bomber” case indicates the heightened levels of cross-border anxiety regarding dangerous foreigners as well as the entrenchment of securitization.

The case of Ahmed Ressam, the so-called “Millennium Bomber” is important for two reasons: First, the case is a watershed moment in joint Canadian-US securitization of immigration and refugee policy in response to what critics on both sides of the border saw as serious weaknesses in Canadian border security measures, particularly those administered under immigration and refugee protection legislation. Second, the outrage sparked by the security breach was so intense that it resonated for many years, well after the attacks of September 11, 2001, and contributed to the further entrenchment of the securitization meta-frame in the post-September 11 period, as both countries moved to enact wide-reaching new legislation (discussed in Chapter 5). Under the now-dominant securitization meta-frame, both Canada and the US undertook in concert a major overhaul of their respective national security and border control policies. The Ressam case illustrates how securitization had already become the dominant immigration and refugee policy framing in both countries.

In mid-December 1999, Ahmed Ressam – an Algerian who had entered Canada through the refugee protection system, who had lived in Montreal for several years, and who had traveled to and from al Qaeda training camps with a false Canadian passport – was arrested at the US border station in Port Angeles, Washington state. He arrived aboard a ferry from Victoria, British Columbia. Customs inspectors found bomb-making materials and four timing devices in his car. In late December 1999, the mayor of Seattle cancelled the New Year’s Eve celebrations at Seattle Center amid reports that an

Algerian fundamentalist group, or a terrorist group linked to Saudi militant Osama bin Laden, might be targeting holiday celebrations in the area.¹¹¹ The Canadian Reform Party and various American officials moved quickly to criticize the Canadian refugee system. For example, Leon Benoit, the Reform Party's immigration critic said, "our system is a sieve and it is allowing terrorists and others into the country."¹¹² Lamar Smith, head of the US House of Representatives Immigration Subcommittee, called the Ressay arrest "the best wake-up call that either Canada or the US are going to get about our porous shared border ... how many near misses can we tolerate?"¹¹³

The Ressay case sparked outrage in the American media that impacted Canadian responses to questions of national security and border control. Canada was accused by US media and US officials of creating a safe haven for terrorists, who were attempting to carry out attacks against the US. In an interview on PBS conducted in May 2001 (and posted by PBS in October 2001), US Congressman Lamar Smith (R., Texas), Chairman of the House Immigration Subcommittee from 1994 to 2000, said that Canadian immigration laws were lax and allowed terrorist organizations to "set up shop in Canada." Smith insisted that the Ressay case would have "raised red flags" to US officials and that, "here [in the US system], if you are claiming asylum and seeking asylum and there are concerns, you are detained. In Canada, you are not."¹¹⁴ Smith's main concern was that refugees in Canada during the late 1990s were left to their own

¹¹¹ *Seattle Times* Archives (1999), "Timeline of the Ahmed Ressay Case", December 14, 1999 to December 3, 2008.

¹¹² *Ibid*, 1999.

¹¹³ Bell *et al.* (1999), "Canada is a 'sieve' leaking terrorists, critics charge: PM defends security: 'How many near misses can we tolerate?'" U.S. Congressman asks."

¹¹⁴ *Frontline*, PBS Interview, May 2001.

devices, and often failed to show up for hearings. Connecting refugee flows with national security concerns, Smith claimed that the Ressam case was not an isolated one. He feared that lapses in Canadian immigration policy would be repeated at the expense of American homeland security.

Securitization of refugee discourse was also evident in the ways that Congressman Smith's views were echoed by prominent Canadians in the same PBS interview series.¹¹⁵ For example, Bill Bauer, a former member of the Canadian Immigration and Refugee Board, said that Canada was looked upon as a welcoming country for "terrorists," war criminals, and others. Bauer argued that reforms to the Immigration and Refugee Protection Act, then under consideration by Minister Elinor Caplan, were fraught with legislative loopholes and that the reforms would not solve the problems or prevent another incident like the Ressam case. Given that the Canadian passport office had mistakenly issued a passport to Ressam under a false name, Bauer further said that the Ressam case highlighted serious deficiencies in the passport control system and that "... the only good thing to come out of this is the continuing level of cooperation on the part of security intelligence communities across the border. This is a warning of things to come, and we should be ready for it ..."¹¹⁶

David Harris, former chief of strategic planning for CSIS, reinforced the links between refugee movements and terrorism when he asserted that there was a "dire risk" of Canada becoming a safe haven for terrorists and that, as he testified at hearings in the United States, "... there is the perception internationally that we in Canada are simply not

¹¹⁵ Ibid May 2001.

¹¹⁶ Ibid May 2001.

meeting our obligations on the level of counter terrorism ... as the Ressam case itself demonstrated ...”¹¹⁷ Harris’s comments exemplified the emergent discourses of securitization prior to September 11, 2001, and they foreshadowed the kinds of views that came to dominate in the post-September 11 period. His views were emblematic of the extent to which senior Canadian officials were determined to position refugee policy within a national security frame, as this extended passage illustrates:

There is a war on. It’s a global, terrorist-based war that we are all going to be facing, and it is increasingly going to be coming home here to Canada. We have got to get our laws and our attitudes into line to meet the threat before it’s too late. We may need to look at legislation changes. But, above all, all of us have got to be more aware that no matter what kind of emphasis we want to place on multiculturalism and the benefits of diversity, some of those issues open us to struggles that are going on around the world, and that we don’t want to have come home ... As a Canadian, I am uncomfortable with [keeping people in custody pending hearings] but I can no longer deny that this might be the only appropriate solution as we find more and more lethal people among some of our immigrant streams. In terms of Islamic extremists in Canada, they regard the proximity of Canada to the US, it’s making Canada a kind of Islamic extremist aircraft carrier for the launching of major assaults against the US mainland, and that is something we have got to remember.”¹¹⁸

Securitization tended to arrest the ambivalent tendencies in state refugee policy framings that characterized the earlier formations and framings, thereby foregrounding practices that were inhospitable, to say the least. In the face of such perceived dangers, no longer was the state obliged to pay significant public attention to humanitarian commitments. Advocacy groups had a difficult time countering the national security

¹¹⁷ Ibid May 2001.

¹¹⁸ Ibid May 2001.

arguments as debates continued about the implications of the Ressam case. For example, the case gave then Federal Immigration Minister Elinor Caplan significant political leverage to counter the objections of national advocacy groups such as the Canadian Council on Refugees and to undertake more stringent policy development that would “close the back door to those who would abuse our rules, in order to open the front door wider to those who would come to us from around the world to help us build our country” (Standing Committee on Citizenship and Immigration 2001).

In May of 2001, building on the momentum generated by reactions to the Ressam case, Caplan declared she was

... confident that we will have in place a streamlined procedure that will give us the chance to identify as soon as we can those people that we either want to detain or not give access to Canada [sic]; and that we will be able, with our partners, RCMP, CSIS, and others to take action to protect Canada's borders.¹¹⁹

In this statement, Caplan brought into focus the effects on Canadian refugee policy discourse of the shift from neo-humanitarianism to securitization – the category of refugee was officially reframed from that of a potential criminal and a threat to public safety, to that of a potential terrorist and a threat to national and international security. This policy framing persisted in changes made to Canadian legislation in the spring of 2001 when the government proposed a new Immigration and Refugee Protection Act (IRPA). By the time the IRPA was proclaimed, which occurred after the attacks of September 11, 2001, it contained considerably enhanced security provisions with respect to managing the flows of refugees across the Canada-US border.

¹¹⁹ PBS Interview, May 2001, as part of a PBS documentary entitled “The Millennium Plot” aired in October 2001.

4.9 Conclusion

The shift to securitization in the decade before September 11, 2001 represented a new and more comprehensive approach by state security policy-makers. Securitization not only stressed the links between security threats and the arrival of refugees, but also constituted new, specific links among immigration and refugee policy and policies of national security, crime prevention, intelligence-gathering, and anti-terrorism. In other words, the shift to securitization represented a significant change in the orientation of immigration and refugee policy-making. Refugee protection, according to the legal requirements comprising the UN Convention, remained official state policy; however, in practice, refugee claimants were subjected to policies designed with an explicit concern for the protection of sovereign borders and national security from incursions by terrorists, along with other kinds of criminals.

As I have argued, the seeds of post-September 11, 2001 securitization were sown in Canada long before the 1990s. Moreover, the crisis of September 11, 2001, as I will show in the next chapter, intensified the focus of the securitization meta-frame on refugees as potential criminals and “terrorists.” Further, the Canadian immigration system continued to be criticized by American officials for many years after September 11, 2001, a criticism that indicated the persistence and resonance of the dominant ethos of securitization.

Long after the attacks of September 2001, remarks made by Homeland Security Secretary Janet Napolitano in 2008 were exemplary of the ways in which the Ressay case continued for almost a decade to resonate in criticisms directed at Canadian policy-makers. Napolitano declared in an interview with the CBC that terrorists arriving in the

US entered “mostly from Canada”: ... “to the extent that terrorists have come into our country, or suspected or known terrorists have entered our country across a border, it’s been across the Canadian border.”¹²⁰ Although Canadian diplomatic officials issued a strong, public objection, Napolitano amended her position only slightly:

I know that the September 11th hijackers did not come through Canada to the United States ... but there are other instances ... when suspected terrorists have attempted to enter our country from Canada ... some of these are well known to the public – such as the Millennium Bomber.¹²¹

Napolitano and other US officials and members of Congress persisted in claiming that “Canada has less vigorous immigration standards than the US and that Canada allows people into their country that we do not allow into ours”¹²² This view still persists.¹²³

In the period leading up to September 2001, securitization practices were developed across the Canada-US border, while both countries stressed the links between refugees and terrorism. There was pressure by the US to address what were seen to be critical vulnerabilities in Canadian policies and practices with respect to admitting foreigners. The relations between the US and Canada were dominated in this period by US insistence that Canada undertake customized policy changes to address the potential threats to American “homeland security.” Put another way, relations between the two countries were dominated by the shift to securitization. In the post- September 11, 2001 period, this shift intensified and became even more deeply entrenched in both countries, both of which institutionalized new border protection and refugee control practices.

¹²⁰ Koring (2010), “Among U.S. politicians, claim that terrorists use Canada as base dies hard.”

¹²¹ Koring (2010).

¹²² Alberts (2008), “Envoy rebukes U.S. for linking September 11, 2001 terrorists to Canada.”

¹²³ Koring (2010).

CHAPTER 5

THE REFUGEE AS TERRORIST: THE CANADIAN POLICY RESPONSE TO THE SEPTEMBER 11, 2001 ATTACKS

5.1 Introduction

In the aftermath of the attacks of September 11, 2001, the category of refugee became indelibly linked to terrorism. “Terrorism” and “terrorist” are highly contested, political and legal terms. European Union members, for example, developed their own approach after 2001 and agreed to “regard terrorist acts as those which aim to intimidate populations, compel states to comply with the perpetrators’ demands and/or destabilize the fundamental political, constitutional economical, or social structures of a country or an international organization” (Europol 2011). The United Nations General Assembly and several of its *ad hoc* committees had convened over 200 meetings since 1996 to develop a terrorism convention. To date, no consensus exists among member states on definitions of either “terrorism” or “terrorist.”¹²⁴ It is this lack of consensus that enables regimes of all types to mobilize the terms of “terrorist” and “terrorism” in a multiplicity of ways, now in the context of the dominant meta-frame of securitization.

The effects of the September 11 attacks solidified and codified a significant reframing of refugees, especially those from predominantly Arab or Muslim countries, in much the same way that European Jewish refugees were framed during the Holocaust. I

¹²⁴ See, for example, United Nations, Ad Hoc Committee on Assembly, Resolution 51/210, 48th Meeting, as of December 1996, and the 2012 update.

have argued that Canadian immigration and refugee policy discourses evolved since the mid-twentieth century in the context of three overlapping and mutually constitutive meta-framings – humanitarianism, neo-humanitarianism, and securitization. Tensions persisted throughout these framings between the altruistic humanitarianism that characterized twentieth century international refugee protection regimes and the exclusionary practices that operated in the interests of protecting state sovereignty. Within each of the three meta-framings, the tension between sovereignty and refugee protection operated in different registers, and with different intensities.

In the post-September 11 period, securitization became so deeply entrenched that it muted the vestigial humanitarianism carried over in official policy discourses from earlier eras, emphasizing national security to such an extent that ambivalent tendencies all but disappeared from these discourses. In Canada, in 2010, revisions were made to the Criminal Code to incorporate a detailed and comprehensive definition of “terrorist activity” and of “terrorism” committed inside or outside Canada. The list of offences that constituted “terrorist activity” included hijacking aircraft and other civil aviation offences, crimes against diplomatic agents, hostage-taking, violence at airports, maritime safety, bombings, and financing terrorist organizations including specified charities operating in Canada and elsewhere.¹²⁵

What has remained consistent since Confederation in Canadian immigration and refugee policy-making has been that the unexpected arrivals of refugees on Canadian shores typically catalyze discourses of fear and suspicion. With the shifts in meta-frames, however the category of refugee was reframed, and new exclusionary modes and techniques of crisis management were mobilized and legitimized to control the flows of

¹²⁵ Criminal Code (R.S.C., 1985, c.C-46); 2001, c.41, ss. 4, 126; 2010, c. 19, s. 1; Section 83.01 (1).

irregular migrants or to prevent their arrival altogether. In the period leading up to September 11, 2001, while the borders of western nation-states were generally being demilitarized and economically liberalized to facilitate commercial exchange, the category of the refugee was also becoming more criminalized, as part of a policy orientation meant to deter those who were “perceived as trespassers” (Andreas 2000, 3; 2003). Of the three meta-framings, the emergence of securitization beginning in the 1990s, with its roots in neo-humanitarianism, ushered in another significant shift in the framing of the refugee – to that of a potential terrorist.¹²⁶ National security (Canada) or homeland security (US) became the dominant policy environments in North America through which policies were framed that affected regular and irregular arrivals of foreign others.

This shift led to the categorizing of many refugees as potential security threats, associating them with an extreme form of criminality. Recasting classes of refugees as dangerous was not a new phenomenon; what changed in both Canada and the US after the September 11, 2001 attacks, however, was the intensity and frequency by which refugees were framed as dangerous, “risky subjects.”¹²⁷ As I showed in Chapter 4, there emerged in particular a willingness on the part of Canadian state officials to accept the US view that the Canadian immigration and refugee system effectively constituted a serious risk to American homeland security.¹²⁸ Beginning immediately after September

¹²⁶ Brodie argues that this shift is “marked by a new regime of enunciation – one that mimics canonical security discourses. It promises to protect national borders and the citizens within from a racial threatening other, an unrelenting force of evil fired by irrationalism, an uncompromising clash of cultures, or, indeed, ‘Islamofascism’” (2009, 700).

¹²⁷ See Anna Pratt (2005) for her development of the concept of “risky subjects.”

¹²⁸ In early October 2001, for example, the Liberal Federal Government named Foreign Affairs Minister John Manley to head a Cabinet committee to review Canada’s national security. Among Manley’s

11, 2001, moreover, links between security and terrorism intensified in the Canadian policy response. This pattern appeared in a variety of policy discourses, such as statements and reports linking irregular migration, refugees, and immigration with security questions and anti-terrorism initiatives. Public discourses, as in the coverage of refugee movements in relation to national security by several major Canadian print media, as we will see, reinforced the link between the Canadian state's policy responses and the perceived threats of terrorism.

Beginning with the attacks of September 11 2001, the ambivalence of Canadian state policy-makers waned further. To be precise, this was a discursive ambivalence: even if the humanitarian frame weakened and was no longer decisive, it remained present throughout the periods dominated by neo-humanitarianism and securitization in that it continued to be deployed by various actors, much as it was during the Holocaust years (see Chapter 3, pp. 89-101). The remnants of this discursive ambivalence still gave a kind of pride of place to humanitarian values, interests, and forces associated with refugee protection while, at the same time, the advance of securitization worked to legitimize state efforts to reconstitute the category of refugee as a terrorist. However, national security trumped humanitarian tendencies after September 11. This chapter focuses on Canadian policy priorities in the post-September 11 period while also looking back to past developments, especially to how the Holocaust period might be seen to anticipate, or even mirror, aspects of the period after September 11.

activities was to meet with the US Ambassador Paul Cellucci and Pennsylvania Governor Tom Ridge, director of the new US homeland security office, to get a clear understanding about possible Canadian weak links in continental defence. See Bronskill and Mofina (2001), "PM Boosts Anti-Terror Tactics: 10 Cabinet Ministers to Co-ordinate Response to Attacks." See also Arnold (2001), "US to call for Tighter Security at Borders: Refugee Policy under Fire: No Indication Terrorists entered from Canada: PM."

5.2 The American Security Focus following September 11, 2001

On the morning of September 11, 2001, within minutes of each other, two fully-fuelled hijacked airliners hit the two towers of the World Trade Center in Lower Manhattan. Not long afterwards, a third hijacked airliner hit the western face of the Pentagon, and a fourth hijacked airliner crashed in a field in southern Pennsylvania. Approximately 3,000 people died in the attacks. The death toll surpassed that of the only other major attack by an outside force on US soil – the World War II Japanese attacks on Pearl Harbour on December 7, 1941 (The 9/11 Commission Report, 2004). The 9/11 Commission made this link to indicate the extent and seriousness of the September 2001 attacks and to put into context the trauma experienced by US citizens.

The attacks were carried out by nineteen Muslim extremists associated with al Qaeda and led by Osama bin Laden, then located in Afghanistan. Some of the attackers had been in the US for over a year, four trained as pilots, most spoke little English, and significantly, *none* had entered the US through Canada. The 9/11 Commission viewed the attacks as “shocking, but not surprising,” given the history of threats and attacks against the US by Muslim extremists that had escalated during the 1990s. The Commission cited the previous 1993 bombing at the World Trade Center, the attacks on US helicopters in 1993 in Somalia, the various attacks carried out in the Middle East and Asian countries in the mid-1990s, and coordinated attacks in 1998 by al Qaeda on US embassies in Nairobi, Kenya, and Dar es Salaam. The Commission also noted the arrest of Ahmed Ressam (the so-called “Millennium Bomber”) at the US-Canada border in December 1999, but made no other connections to Canada or to Canadian immigration and refugee policy (9/11 Commission 2004).

The attacks confirmed fears about foreign others on US soil and set the scene for new foreign policy militarization, focusing on the Canada-US border, while also serving to firmly entrench securitization of immigration and refugee policy in both the US and Canada. On September 16, 2001, President George W. Bush placed American troops on a war footing and received Congressional approval to use “all necessary and appropriate force” to respond to the attacks. Bush declared, “We’re at war ... there has been an act of war declared upon America by terrorists, and we will respond accordingly.” He reiterated in his weekly radio address, saying that “those who make war against the United States have chosen their own destruction ... we will find those who did it; we will smoke them out of their holes ... we will get them running and we’ll bring them to justice.”¹²⁹

Canadian officials immediately began to express their concerns about the prospects of heightened border control with the US, given the extent to which the two economies were integrated and inter-dependent. In view of these concerns, Canadian Deputy Prime Minister John Manley responded for the Liberal government of Jean Chrétien, declaring that “Canada will stand shoulder to shoulder” with the US and by noting an economic imperative:

... it is self-evident that the US is going to have an increased level of concern about security and homeland defence ... their reaction may well be to try to live in a gated community or to put up some kind of barrier around themselves ... we need to be inside that, our economy depends on it, our jobs and well-being depend on it.¹³⁰

¹²⁹ *Ottawa Citizen* (2001a), “Taliban threatens ‘jihad’: ‘Get ready,’ Bush tells his military: ‘We are at war.’”

¹³⁰ *Ottawa Citizen* (2001b) “Canada ‘at war with terrorism’: Government will support US attack, Manley says.”

US militarization of foreign and economic policy and US preoccupation with border control continued to intensify after the attacks. This was a familiar pattern but it reached new intensities after September 11, 2001. At this time, the framing of US policy shifted to that of a “homeland security state” (De Genova 2007, 422). This emphasis on homeland security introduced a strong sense of nation, nationality, and patriotism into what had previously been largely multi-lateral approaches to US foreign and economic policy. It signaled a return to cultural isolationism, despite the escalation of involvement in wars on foreign soil (De Genova 2007). The US moved into an era of deep suspicion of foreigners – an era that later came to be characterized as the establishment of “Fortress North America” with respect to irregular migration (discussed in Chapter 6).¹³¹ In this sense, the homeland security state renovated the national security state of the 1990s by moving to securitize *all* domestic and international aspects of immigration and refugee policy in the context of the new American-led “war on terror.”

In the national security state, undocumented migrants were categorized as “illegal aliens”; in the homeland security state, such migrants tended to become “enemy aliens,” a category that harkened back to the early years of World War II and the categorization most notably of Japanese-American citizens as “enemy aliens.” This term had emerged even earlier in World War I American national security policy and had persisted through the World War II years, but had typically been associated with being at war with other

¹³¹ As such, during this period, US refugee policy began to resemble the exclusionary practices of “Fortress Europe,” which is a characterization of the entrenchment of securitization and the pushing outward of the border to the frontiers – with Africa, the Middle East, and so on by the European Union (EU). Detention centers in these three European Union countries were often overcrowded, unhygienic and lacking medical care. Further, detainees experienced barriers to accessing the asylum determination processes and were unable to challenge the legality of removal orders. EU member practices were often found to be violations of the provisions of the 1951 Convention, particularly with respect to the conditions of detention and often large-scale practices of *refoulement* (Amnesty International, June 20, 2005). As we shall see in Chapter 6, some of the exclusionary practices implemented by Canada and the US mirrored those of the EU, particularly after September 11, 2001.

nation-states (Ismaili 2010, 69). In early 2001, the US found itself at war once again – this time framed as a much more amorphous, potentially endless, war on terror.

In addition to mobilizing their military, beginning in October 2001, the US enacted a series of laws as part of its newly declared war on terror. These new laws had a significant impact on immigrants and refugees already in the US and influenced, as well, the trajectories of Canadian immigration and refugee policies that were already in the final stages of revision by Parliamentary committee. The effects on refugees and immigrants in both countries was extreme in many cases, particularly when new surveillance techniques (such as ethno-racial profiling) targeted people from predominantly Muslim and/or Arab countries. What emerged in this period, coinciding with the US-led war on terror, was an equally profound “war on immigrants” in both countries – a war that, although never publicly announced, became for non-citizens an “intrusive and unwanted feature of daily life, revealing itself in a variety of social contexts with far-reaching and often devastating consequences” (Ismaili 2010, 71).

Several years before 2001, attacks on US soil and against US personnel worldwide had brought the “spectre of terrorism” to the country’s doorstep, and had “forged an association between non-citizens and terrorists in the public consciousness” (Ismaili 2010, 72). In 1996, for example, the US federal government enacted the Anti-Terrorism and Effective Death Penalty Act (AEDPA) and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), which both made explicit an association between terrorists and non-citizens (Welch 2003, 319). US refugee policy hardened significantly after September 2001, as tens of thousands of annual slots for refugees were left unfilled in the US refugee resettlement programs.

American resettlement programs, in earlier years, were the largest refugee resettlement programs in any advanced industrialized country (UNHCR 2006). Of the hundreds of thousands of Iraqi refugees displaced as the result of US-led invasions, only a few thousand were eventually offered refuge in the US, and only after widespread public criticism of the failure to admit this group in larger numbers.¹³² Admission and adjudication measures became extremely restrictive, and interdiction measures were enhanced to prevent future mass arrivals, especially from Cuba and Haiti.¹³³ Non-citizen Middle Eastern Muslim men resident in the US became the targets of intense formal and informal surveillance. Public and government scrutiny intensified and expanded in scope to include “virtually all non-citizen people of color” (Ismaili 2010, 73).

The US state increasingly deployed new refugee and immigration control mechanisms during the post-September 11, 2001 period to capture, interrogate, detain and deport any non-citizen who was deemed a suspected terrorist. In much the same way as Canadian immigration laws were deployed during this period, the US Department of Justice mandated explicit use of federal immigration laws to carry out a variety of criminal law enforcement activities focused on non-citizens-as-terrorists (Miller 2005, 90). This securitizing move enabled law enforcement officials to “circumvent constitutional safeguards” because the juridical standards were less stringent in immigration law (Ismaili 2010, 74). Further, the American immigration system was reoriented to emphasize security and risk management. There emerged a culture of fear

¹³² Mohammed (2007), “US to Take More Iraqi Refugees After Criticism.” As Mohammed explained, the “United States said on Wednesday it aimed to interview about 7,000 Iraqi refugees for possible US resettlement by the end of September as it sought to blunt criticism that it took in only 202 last year.”

¹³³ See for example, Bauer (2004).

and an ongoing sense of heightened emergency in an ethos of extreme suspicion, hostility toward strangers, and criminalization of certain alien others (Angel-Ajani 2003).

A number of other major policy and legislative initiatives were undertaken beginning immediately after September 11, 2001, including the enactment of the US Patriot Act.¹³⁴ The Patriot Act came into force within six weeks of the attacks and “codified suspicion” based on national origin, race, ethnicity, political identity, and religion. The Act “perpetuated and reinforced the perception that non-citizens posed a serious threat to the citizenry” (Ismaili 2010, 75). Other legislative and policy initiatives included: the enforcement of various immigration orders, including requiring non-citizens to notify the authorities of address changes; the creation of a special registration program (in effect, a racial profiling program) to track and monitor male visitors between the ages of sixteen and sixty-four from more than two dozen Arab and Muslim countries; and the establishment of the federal Department of Homeland Security, which unified all federal activities and initiatives under a single authority¹³⁵ (Ismaili 2010).

The US also set up a new, national detention program in the interests of homeland security to detain refugees, including children and youth, in jails and jail-like facilities often with criminal inmates and “aliens” with criminal convictions. Later, after years of

¹³⁴ The official title of the Act was “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism.”

¹³⁵ The Department of Homeland Security subsumed the Immigration and Naturalization Service; immigration and naturalization were eliminated as separate policy functions. Of particular note was the short-lived plan, Operation Liberty Shield, which called for the automatic detention of refugees from any country where al Qaeda or any potentially related terrorist organization might be operating, or was known to be operating (Miller 2005, 93). This policy was discontinued after a few weeks because of strong criticism by various human rights organizations that it was “targeting the very people who have stood up to and in some cases been persecuted and tortured by, the same regimes the USA has singled out for condemnation” (Human Rights First 2003, 1).

review and two major studies, a bipartisan US Commission reported that the treatment of refugees had

... helped turn the United States, a nation founded by people fleeing repression, into a country of bureaucratic walls and mazes where victims are sent back to their tormentors or thrown into US jails alongside criminals pending a judgment on asylum (US Commission on International Religious Freedom, 2007).¹³⁶

These policies were supported by a persistent media framing of undocumented migrants of all kinds as “enemy aliens” – a framing that dominated many mainstream media portrayals of migrants, including the undocumented Mexican migrants living in US border communities. For example, Lou Dobbs, a prominent prime-time commentator on the US television network CNN during this period, devoted considerable amounts of air time every evening for several years to addressing what he saw as a serious threat to US homeland security – what he repeatedly called an “illegal alien invasion.”

The category “enemy aliens” that re-emerged in a new National Security Strategy for the Department of Homeland Security (USOHS 2002, vii) worked to establish a renewed belief in a distinctly demarcated and non-porous boundary of the American nation-state – only those entitled to reside inside the boundary were legitimate, all others were potential enemies of the country. Further, the US government declared that it had “no greater mission” than “securing the American homeland ... from terrorist attacks” (USOHS 2002, 1). This was to be a “permanent mission” – in other words, a permanent state of war on terror (USOHS 2002, 4). Bush, in fact, declared that the “war against terrorists is a global enterprise of uncertain duration” (National Security Strategy of the United States of America, September 17, 2002). The shift to a policy orientation that

¹³⁶ See US Commission on International Religious Freedom (2007), “USCIRF expresses concern to DHS over new policy directive on asylum-seekers.”

presumed a direct link between uninvited arrivals and terrorism had significant and often devastating effects on particular groups of documented and undocumented foreigners residing in the US. But it was particularly problematic for refugees, who faced an extremely hostile reception on arrival in the US after September 11, 2001.

Few of the US policy developments were unique or particularly innovative; the convergence of immigration control and crime control policies in the period following September 11, 2001 represented a broadening and strengthening of a range of mechanisms and techniques of governance that had already emerged in previous decades, influenced by earlier refugee crises. What changed was the extent to which the narratives of risk and danger came to dominate the framing of all forms of migration, particularly the arrivals of refugees from predominantly Muslim and/or Arab countries. In the US, this convergence “elevates the discourse of immigrant ‘threat’ to new heights in the culture, justifies crackdowns against non-citizens without concern for the collateral consequences of such actions, [and] fosters the perception of safety and security at the expense of non-citizens” (Ismaili 2010, 86). The shift in the Canadian approach to national security following September 11, 2001 led to a similar convergence, with similar effects.

5.3 The Canadian Security Focus following September 11, 2001

In the shift to securitization long before September 11, 2001, as I have shown, refugees tended already to be reframed at times as potential terrorists. Nonetheless, the September 11 attacks on the United States had significant consequences for Canadian immigration and refugee policy, as the state moved comprehensively in a way that entrenched the securitization meta-frame while reconstituting immigration and border controls accordingly. As Wesley Wark writes, “It was in this initial period that the shock

of the attacks was greatest and the sense of urgency most acute. A widespread concern existed about the possibility of further terrorist attacks against North America” (Wark 2006, 5).

Prior to 2001, Canada already had the means within existing immigration and criminal justice legislation to deport any permanent resident convicted of crimes, and to interdict or deport refugees who failed to qualify for Convention refugee status. Nonetheless, in the aftermath of September 11, 2001, the government introduced comprehensive omnibus legislation – Bill C-36, The Anti-Terrorism Act – that further codified this intensified convergence between the criminal code and immigration law. As Wark indicates, Canadian government policy focused on three priority issues: counter-terrorism resources; legal powers; and the Canada-US border (Wark 2006, 5). At the same time, a series of events ensued that reinforced the perceived connection between refugees and terrorism.

After September 11, 2001, two refugee claimants, Manickavasagam Suresh (who had been granted refugee status in 1991) and Mansour Ahani (resident in Canada seeking refugee status), awaited rulings by the Supreme Court of Canada.¹³⁷ These cases are important because they demonstrate the ways in which the state, through the considerable discretionary powers vested in government ministers, was able to detain individuals and ultimately deport them back into situations where they might be subject to torture. In the context of the extreme securitization regimes of this period, even those who had refugee status were subject to detention under a security certificate, and could be held for

¹³⁷ Manickavasagam Suresh v. The Minister of Citizenship and Immigration, et al. (FC) (Civil) (By Leave) (27790). and Mansour Ahani v. The Minister of Citizenship and Immigration et al (FC) (Civil) (By Leave) (27792). <http://scc.lexum.org/decisia-scc-csc/scc-csc/news/en/item/1223/index> [28 November 2012].

extensive periods without legal representation. The two cases were similar in content, and I will focus mainly on the Suresh decision.

The use of security certificates¹³⁸ in the post-September 2001 context was what Wark characterizes as the “impossible effort to decide between the extent of a threat posed by an individual to national security and possibility of subjecting a person to torture [by *refoulement*]” (2006, 7). This is the nub of the problem faced by the Canadian Supreme Court in the Suresh case. The Court was asked some time before the attacks on the US to strike down a law allowing the state to deport refugees on security grounds.¹³⁹ Indeed, the Court had already played a major role in changing the direction of Canadian refugee law when it declared in the *Singh* decision that every refugee claimant is entitled to an individual hearing before a decision is made about whether or not to deport the claimant. One of the issues raised in the Suresh case, unlike the *Singh* case, however, was whether fundraising in support of a national self-determination movement (Liberation of Tamil Eelam Tigers) constituted a “terrorist act.”¹⁴⁰

Two important issues arose: the first was that “terrorism” had not been defined in the Bill C-36, The Anti-Terrorism Act; the second was that the phrase “detrimental to the national interest” was left unspecified and without legal interpretation. Assessments of

¹³⁸ The security certificate is a mechanism that allows ministers of the Canadian government to detain and deport permanent residents or foreign nationals considered to be a security threat. The use of these certificates is outlined in the Immigration and Refugee Protection Act, 2002. The Minister of Citizenship and Immigration and the Solicitor General must co-sign a security certificate, which is then assessed by a federal court judge to determine whether the certificate is reasonable. If it is found to be unreasonable, it is quashed; if not, the certificate becomes an order for removal of the person and the removal order cannot be appealed (CBC 2009, “Security Certificates and Secret Evidence”).

¹³⁹ See my discussion in Chapter 3, section 3.6. Jurisdiction over security certificates was transferred to a judge of the Federal Court, and this transfer remained in effect until the implementation of the new Immigration and Refugee Protection Act in 2002 (Aiken 2009).

¹⁴⁰ *Manickavasagam Suresh v. The Minister of Citizenship and Immigration, et al.*

these two criteria in particular were left to the discretion of the minister, posing a matter of great concern to refugee advocacy groups. One of the key arguments that refugee advocates made on behalf of Suresh, who was charged with connections to terrorist organizations, was that the law was “void for vagueness” because it allowed for the deportation, or *refoulement*, of refugee claimants in such circumstances “without defining terrorism.”¹⁴¹ For example, the Canadian Arab Federation (CAF) argued that “terrorism”, a critical term on which “a person’s very presence in Canada might turn, is left to the undefined *discretion* of the decision-maker” (CAF 2002; emphasis added).¹⁴² Further, the CAF argued that the imprecise use of “terrorism” in immigration legislation violated international law, which prohibited violent terrorist acts but which at the same time made a distinction between such acts and self-determination movements (CAF 2002). According to the CAF:

... the broad definition of terrorism used in the Immigration Act violates Charter rights such as the right to freedom of expression because it effectively prohibits lawful activity that supports national self-determination movements ... [and] ... an overly broad definition of terrorism promotes decision-making based on stereotypes ... that Arabs and Muslims are among those who are particularly subjected to being stereotyped as ‘terrorists’ (CAF 2002).

Other organizations, including the Canadian Council for Refugees (CCR), the Federation of Associations of Canadian Tamils, and the UNHCR argued that the threat to national

¹⁴¹ *National Post* (2001), “Liberty v. security: Drawing the legal line on terrorism: Terrorist attacks make Supreme Court’s ruling on refugees even more difficult

¹⁴² CAF Press Release, (2002), “The Supreme Court of Canada to Rule on a Landmark Immigration Case,” January 11, 2002.

security must be very strong and apparent before any state could consider returning a refugee to a potentially dangerous situation.¹⁴³

In January 2002, the Supreme Court ruled on Suresh unanimously that torture is “abhorrent” under Canadian and international law, but that in rare and “extraordinary circumstances” of a “serious threat to the security of Canada” the state may be justified in deporting a refugee claimant. Citing protections under the Charter of Rights, the Court declared, however, that “the balance will rarely be struck in favour of expulsion where there is a *serious* risk of torture” (emphasis added).¹⁴⁴ The Court did not specify the conditions under which such a risk would be considered “serious” – this was left to the discretion of the responsible ministers.

In a climate of heightened anxiety about terrorist attacks, the United Nations Security Council in October 2001 passed a resolution, drafted by the US, which called on countries to ensure that “terrorists disguised as refugees” do not enter and remain in US territories. Although Canada was not specifically named, it was apparent to US and Canadian officials that Canadian immigration and refugee practices were of paramount concern to the American drafters of the resolution. Despite evidence to the contrary, critics of Canadian immigration and refugee policies persisted in their claims that Canada was “a staging ground” for terrorist activities and potential assaults on the US. As one US official stated, “there has been a history of official concern about harmonizing

¹⁴³ Ibid, *National Post*.

¹⁴⁴ See, for example, *Toronto Star* (2002), “Terrorism fight gets legal clout; Supreme Court rules Ottawa can deport people who face possible torture in ‘exceptional’ cases.” ,

standards between the US and Canada, and this resolution will put the interface of asylum systems front and centre.”¹⁴⁵

In late 2001, Canadian and American officials released a joint “Statement on Common Security Priorities” that included proposals for increased border security measures, coordinated visa policies and more offshore immigration officers to control migration at points of departure. It was in this statement that Canada first proposed the implementation of the long-dormant “safe third country” agreement. Then Solicitor General Laurence MacAulay said that “anything that helps US security helps Canada,” while Immigration Minister Elinor Caplan explained that the agreement would eliminate “queue-jumpers, criminals, those who pose security risks, or terrorists ... before they even get to Canada and the US.”¹⁴⁶ Canadian officials were explicit in their commitment to cooperating with the US on a variety of border control measures designed to regulate the flow of migrants, particularly unwanted refugees.

At the same time, in a major securitizing move that alarmed Canadian officials despite their stated goal of harmonization on border control policy, the US announced that 600 National Guard troops would be used to assist in patrolling the Canada-US border. Stockwell Day, Conservative Party of Canada (CPC) MP and Leader of the Opposition, stated that “Canadians now watch with dismay as the longest undefended border in modern history, a source of pride for over a century to Canadians, is being defended by hundreds of US troops.”¹⁴⁷ When concerns were raised on both sides of the

¹⁴⁵ See, for example, *National Post* (2001), “UN resolution targets Canada: Security Council calls for stricter refugee laws.”

¹⁴⁶ CBCNews.ca, (2001), “Canada, US Agree to More Secure Border.”

¹⁴⁷ Clark (2001), “The Border Debate: The Ashcroft Plan.”

border about the unreasonable delays caused by the additional troop controls, which were a threat to the efficient flows of cross-border trade, the troops were withdrawn (Roach 2003, 137).

Before September 11, various protections were understood to be firmly in place in US jurisprudence and law enforcement – protections against excessive bail provisions and imprisonment without probable cause. Although the US Attorney General did speak about the Justice Department’s law enforcement mandate before September 11, he spoke afterwards mainly about preventing terrorism¹⁴⁸. After September 11, under the US Patriot Act, there was a “dramatic erosion” of the basic principles of protection of the rights of those accused of crimes.¹⁴⁹ Similarly, in Canada, preventive detention – although not a new practice – was foregrounded as an enhanced security measure, and continued to be carried out under the aegis of the Minister of Justice. The minister maintained considerable discretionary power, through the use of security certificates, to require the detention of those persons deemed to be potential threats to national security. The minister was not obliged to divulge the criteria used to make specific determinations.

The federal Liberal government also moved quickly to enact a variety of other new security measures consistent with the securitization of refugee policy in the US. Despite the overall atmosphere of shared urgency and heightened cooperation between Canadian and US officials about what should constitute appropriately secure joint border control practices, there were also some significant tensions. Lines were drawn by Canadian officials concerning the extent of policy convergence between the two states,

¹⁴⁸ Department of Justice, Transcript (2001): Attorney General John Ashcroft Announces Reorganization and Mobilization of Nation’s Justice and Law Enforcement Resources, November 8, 2001, 27.

¹⁴⁹ Ibid, 24.

for example, with respect to visa requirements. For Canadian officials, there was a question of protecting Canadian sovereignty. Eventually, despite the pressure by the US to impose visa requirements on a number of countries, particularly on twenty-six predominantly Muslim or Arab countries, the Canadian government resisted full convergence with the US (Roach 2003).

Amidst the debates about protecting Canadian sovereignty while ensuring that terrorists did not cross from Canada into the US, a number of prominent Canadian militarists urged the Federal Government to honour a long-standing promise made by Prime Minister Mackenzie King to President Roosevelt in 1938. At that time, King promised that no attack on the US would ever come through Canadian territory (see for example, Bland 2002, 27; Granatstein 2002). In the aftermath of September 11, 2001, there was considerable public sympathy in Canada for these views, which were published at a time when Canadians were inclined in large numbers to agree with the majority of Americans and accept the blame for allowing terrorists to “slip” into the US.¹⁵⁰

Before September 11, 2001, there was no consensus in Canadian policy discourses or laws about what constituted terrorism or “terrorist acts.” Even after September 11, 2001, despite the intense focus on national security and terrorism, and the introduction of new legal frameworks in which terrorism was featured prominently, there was no official definition in the Criminal Code until 2009. The term was instead left open to interpretation for many years, enhancing the discretionary powers of various state officials and members of Parliament. Nonetheless, through the enactment of three major policy initiatives – the Anti-terrorism Act, the new Immigration and Refugee Protection

¹⁵⁰ Ipsos Reid (2002), “Three-quarters (77%) of Americans believe Potential Terrorists have Slipped into US through Canada.”

Act, and the Safe Third Country Agreement – Canada followed the trend in securitization to erect stronger barriers to the entry of immigrants and refugees.

5.3.1 The Anti-Terrorism Act

Shortly after the attacks on the US on September 11, 2001, news media reported incorrectly that, like Ahmed Ressam¹⁵¹ in 1999, some of the terrorists had entered the US from Canada.¹⁵² As I have shown, this view persisted and Canada was declared by many to be the base from which the hijackings were launched, even though none of the hijackers actually entered the US from Canada.¹⁵³ Nonetheless, to allay US concerns and to respond to the “threat of terrorism,” the federal Liberal government introduced the Anti-terrorism Act (Bill C-36) within a few weeks after September 11, 2001. Bill C-36 brought into focus a strong concern among state officials that the Canadian state was succumbing to US pressure to such an extent that Canadian sovereignty was being threatened.¹⁵⁴

The Canadian Act, which was “massive and hastily drafted,” included new legal concepts – such as investigative hearings, preventive arrests, and terrorist watch lists – together with new discretionary powers for border security agencies and officers (Roach

¹⁵¹ I discuss the Ressam case in Chapter 4.

¹⁵² See, for example, Sallot *et al* (2001), “Canadian Connection Suspected in Hijackings.” Sallot and his colleagues reported that Vince Cannistraro, a former head of counterterrorism at the Central Intelligence Agency, said that “as many as five suspects in the attacks are believed to have entered the US via Canada.” He said that he was told that the “group was probably part of a single cell operating in Canada as ‘sleepers’” ... and criticized Canada “for failing to tighten its borders” after Ahmed Ressam tried to cross into the US from BC almost two years earlier. Unnamed officials in Washington also stated that the group of hijackers may have entered the US from Canada.

¹⁵³ See, for example, Krauss, (2001), “Canada Alters Security Policies to Ease Concerns of US.” Krauss asserted that “Canada’s liberal refugee and immigration policies are of particular concern” notwithstanding the changes made to Canadian policies since the attacks of September 11, 2001.

¹⁵⁴ See, for example, *Gazette*, “Canadians keep control: But Ottawa still guards sovereignty in wake of anti-terrorism measures.”

2003). Ten cabinet ministers were mandated to coordinate comprehensive responses to the attacks, in ways that reinforced the links among criminality, refugee protection, immigration, economic policy, and social policy domains. The Anti-terrorism Act created new inadmissibility provisions, made it easier to arrest and detain permanent residents and foreign nationals, and expanded the state's ability to use secret evidence in admissions hearings, detention reviews, and immigration appeals (Citizenship and Immigration Canada 2002).

There was significant and wide-ranging criticism of the proposed legislation from organized labour, Aboriginal people, refugee communities, and groups representing Muslim and Arab Canadians (Roach 2003). A great deal of the criticism centred on the open-ended approach to the categorization of terrorism contained in the proposed Act. For example, according to some critics, the approach included “attempts to intimidate a population with regard to its economic security; to compel persons to act in a certain way; and to cause serious disruption to essential public or private services” (Roach 2003, 30). These provisions provoked debates about future interpretations (given the broad discretionary powers envisioned for state officials) with respect to the nature and activities of, for example, Canadian labour unions during strike actions. These debates were, in fact, reminiscent of debates during the late 1980s and early 1990s about the confusion surrounding the definition of “terrorist” in a report by a special senate committee, which had claimed that forms of “domestic terrorism” could be taken to include unsanctioned strikes.¹⁵⁵

Terrorist groups were also categorized in extremely broad terms as entities established to carry out terrorist activities. Past associations and potential future

¹⁵⁵ *Interim*, “Are you a Terrorist?” February 14, 1988.

activities were made explicitly prosecutable. Further, the Act entrenched greater discretionary powers of cabinet ministers, who could add individuals or groups to terror watch lists, as they saw fit, in the “national interest.” Those on a watch list would have little recourse after the fact. These debates and the Anti-terrorism Act itself were emblematic of the entrenchment of the securitization meta-frame during this period.

The Anti-terrorism Act received Royal Assent on December 18, 2001, ushering in a range of new discretionary powers for cabinet ministers across several policy areas. These powers trumped judicial powers on questions of national security. Many refugee advocates, including the CCR, expressed concern that refugees would be further criminalized under Bill C-36 for activities that were not criminal. The Act’s broad and open-ended approach to defining “terrorism,” “terrorist group,” and “facilitation of terrorism” intensified the concerns held by the CCR and other groups about the ways in which criminal laws were being brought to bear on social policy issues and, particularly, on immigration and refugee policy. The effect of the provisions of the Anti-terrorism Act, as a major securitizing move, was to overlay onto immigration law a range of prosecution and adjudication techniques that were typically found only in criminal law (Aiken 2001, 2002). Immigrants, refugees and their advocates confronted for many years the open-endedness of the terrorism provisions under earlier versions of the Immigration Act – particularly the provision for adjudication without disclosure of information to the refugee applicant, and the provisions for interdiction and deportation without appeal. The Anti-Terrorism Act raised new levels of concern for them about the emerging directions

of refugee policy in Canada – concerns that influenced analysis of the proposed new Immigration and Refugee Protection Act (IRPA)¹⁵⁶ discussed in the next section.

5.3.2 The Immigration and Refugee Protection Act (IRPA)

The changes in the proposed IRPA had been settled before September 11, 2001, but, as the Act did not come into force until afterwards, more measures were added that further entrenched securitization in immigration and refugee policy. Work on revising Canada's Immigration Act had begun late in 1996 with the appointment of a three-person panel charged with reviewing all aspects of immigration law, policies and practices. Its members consulted widely, and their report was publicly released in January 1998.¹⁵⁷ The Minister of the time, Elinor Caplan, continued to consult the public and in January 1999 released a discussion document that further contributed to the reform process.¹⁵⁸ In the summer of 1999, as we saw in Chapter 4, the arrival of four boatloads of Chinese refugees had drawn considerable public attention and was portrayed by state officials as a crisis for Canada's immigration and refugee systems. In total, 599 refugees arrived without documentation and many requested refugee status. The arrivals intensified the process of legislative review and reform. As Greenberg explained, "this was a series of events which precipitated among political elites, media observers, and Canadian citizens a general consensus that the immigration and refugee systems were in a state of crisis" (Greenberg 2000, 2).

¹⁵⁶ Bill C-11, An Act respecting immigration to Canada and the granting of refugee protection to persons who are displaced, persecuted or in danger (the *Immigration and Refugee Protection Act*), received Royal Assent: 1 November 2001 Statutes of Canada 2001, c. 27.

¹⁵⁷ Immigration Legislative Review (1998), *Not Just Numbers: A Canadian Framework for Future Immigration*.

¹⁵⁸ Citizenship and Immigration Canada (1999).

The media framing of these seaborne arrivals tended to convey the notion that the immigration and refugee systems were being “flooded by an influx of Asian ‘gatecrashers,’” characterized as threats to public safety and social cohesion (Greenberg 2000, 3). For example, the *Vancouver Sun* declared in an editorial:

If Canada gives safe haven to the 122 people aboard a decrepit ship; it will give the green light to the criminals who traffic in people. Bypassing immigration channels cannot be sanctioned ... these people should get food, medical treatment, clean clothing – and a safe passage home.¹⁵⁹

These were not new sentiments. Throughout the 1990s, seaborne arrivals had evoked similar responses, as I have shown. However, media coverage of the so-called Chinese boat people incident in 1999 illustrates the extent to which migration discourses had by that time already been subsumed by the securitization meta-frame, a point which supports my claim that securitization was already established long before September 11, 2001.

In this declared climate of “crisis” (Greenberg 2000, 2), the House Committee responsible for developing the IRPA proposal set out several policy priorities related to immigration and refugee protection, including: “enriching and strengthening the cultural fabric of Canadian society, while respecting the federal and bilingual character of Canada”; “promoting international justice and security” including promoting “respect for human rights”; establishing “fair and efficient procedures to maintain the integrity of the refugee protection system”; promoting “international justice and security by denying access to foreign nationals, including refugee claimants, who are serious criminals or security risks”; complying with international human rights instruments to which Canada

¹⁵⁹ Vancouver Sun, “Ship’s Passengers Must be sent Home,” 1999, p. A10.

is a signatory; and “furthering Canada’s interests.”¹⁶⁰ The term “interests” was left unspecified in the various legal instruments and introductory material. In April 2000, then Minister of Citizenship and Immigration Elinor Caplan tabled the new legislation (Bill C-11) to replace the 1976 Immigration Act.

Early in 2001, however, a revised and more highly securitized version of the bill was introduced. The security provisions that were proposed for including in the IRPA and, in particular, the open-endedness of the definitions of “terrorism” and “terrorist” can be inferred from the following excerpt from the Act¹⁶¹, which deals with “Security Grounds” for barring from Canada permanent residents or foreign nationals (while leaving the Minister of Immigration the authority to make exceptions):

- a. Engaging in an act of espionage or an act of subversion against a democratic government, institution or process as they are understood in Canada;
- b. Engaging in or instigating the subversion by force of any government;
- c. Engaging in terrorism;
- d. Being a danger to the security of Canada;
- e. Engaging in acts of violence that would or might endanger the lives or safety of persons in Canada; or
- f. Being a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in acts referred to in paragraph (a), (b) or (c).

Without more precise definitions, the Act expanded administrative discretion under the overall authority of the Immigration Minister.

¹⁶⁰ Sinha, Young (2002), “Background” to Bill C-11: *The Immigration and Refugee Protection Act*, 26, January 2002.

¹⁶¹ Department of Justice, Canada: Consolidation, Immigration and Refugee Protection Act (IRPA), S.C. 2001, c. 27 Current to November 25, 2012; last amended on August 15, 2012.

Citizenship and Immigration Canada began to promote the IRPA as “first and most important” a legislative initiative designed to enhance the protection of the health, safety and security of *Canadians* (not, in other words, of immigrants, refugees, or other migrants). A new impetus of risk management entered policy discourses, including a focus on measures to counter the perceived threats posed by migrants. After September 11, 2001, the emphasis was on crime and this emphasis was “supplemented by the reinvigorated threat of terrorism” that circulated in policy and public discourses (Pratt 2006, 3). The IRPA included the protection of refugees as one of its objectives, but this protection was made contingent on the identification and exclusion of the so-called risky refugee. In an exemplary securitizing move that characterized the contemporary iterations of *officially* ambivalent policy discourse, Citizenship and Immigration Canada made this claim:

Our ability to fulfil Canada’s humanitarian and international obligations is determined, in large part, by our capacity to quickly and fairly determine refugee status in a manner that safeguards the security of Canadians and extends our protection only to people in *genuine* need of it” (CIC 2002-2003) [emphasis added].

There were few measures in the IRPA that would enable refugees to reach or be admitted to Canada; instead, the new Act bolstered the prevention and interdiction policies that kept refugees away from the country’s shores and borders.

The IRPA was intended to be framework legislation that left the details of standards and specific mandates to the regulatory process. In this way, the Act provided increased latitude for the deployment of discretionary powers by those charged with regulating migrant flows. Unskilled, uninvited migrants, particularly refugees from conflict zones, continued to be a major security concern, and the risks they represented

were to be managed within a security context (rather than in the context of refugee protection regimes) as part of the drafting of regulations to accompany the Act. The core principle that guided decision-making at all levels of the risk-management process was the distinction made between desirable and undesirable migrants. As stated by Citizenship and Immigration Canada in their overview of the Act:

[Canadians] want to preserve *our* safe society and uphold respect for *our* values and norms of social responsibility. The proposed legislation will give Canada the tools to say ‘no’ more quickly, in order to remove serious criminals, and to say ‘yes’ more often to the immigrants and refugees it needs to continue to grow ... [The Act carries] a dual mandate: closing the back door to criminals and others who would abuse Canada’s openness and generosity while opening the front door to *genuine* refugees and to the immigrants the country needs (CIC 2002b). [emphasis added]

The Act focused on the removal of dangerous people,¹⁶² on the creation of broader grounds for refusing entry or for deporting people, and on additional provisions to streamline the process for removing security threats. Despite the “refugee protection” part of its title, the IRPA was not primarily about protecting refugees; rather, it was, as Pratt has argued, about protecting the “Canadian public, nation, borders, and integrity of Canada’s administrative systems”; the legislation was about “Canadians who needed to be protected from the threats posed by ‘foreign nationals’ – the manifestly alienating term

¹⁶² For example, Subsection 34(1) of the IRPA allowed for the “inadmissibility” (i.e., denial of residency or refugee status and then deportation) of a foreign national or permanent resident on security grounds, specified in very broad terms. In October 2012, the Supreme Court of Canada granted intervener status to the Canadian Arab Federation (CAF) in a case being brought against permanent resident Arab community members who were being told by the Minister of Public Safety under the IRPA that they would not be permitted to have their status in Canada “regularized.” The CAF claimed that many of their community members were being affected, including second-generation Arab-Canadians, by practices that are “rooted in issues of speech and association” and residual forms of racial profiling in the post-September 2001 period (CAF 2012).

used in the legislation to refer to prospective immigrants and refugees who were non-citizens of Canada” (Pratt 2005, 5).

Discretionary powers expanded again, and immigration officers were able to arrest and detain non-citizens on entry to Canada, thereby increasing the scope for detention without warrant when an officer was not satisfied with a person’s identification papers or identity (Aiken 2009). Increasingly, the decision to detain was based on the mode of arrival and on the number of people arriving. The mode of arrival was often problematic because many groups of refugees became ensnared by multi-national smuggling enterprises. For this reason, the UNHCR frequently cautioned receiving countries against establishing a policy based solely on the mode of arrival as “[m]any asylum-seekers are forced to resort to the services of smugglers to reach safety” (UNHCR 1999) [emphasis added]. As I have shown, however, refugees were frequently categorized by Canadian authorities as “illegal aliens” or “illegals” solely on the basis of their mode of arrival – for example, the Chinese refugees who arrived by sea in 1999.

During public consultations on the IRPA, the Canadian Council for Refugees (CCR) presented several briefs to various Parliamentary committees. The CCR reiterated its concerns that, during times of perceived “crisis,” the state had a tendency to over-react in the name of preventing terrorism and to subject many groups to harassment, surveillance, infiltration and “dirty tricks” (Roach 2003).¹⁶³ In their brief to the House of Commons Subcommittee on Public Safety and National Security, the CCR argued that provisions relating to terrorism in the IRPA (Bill C-11) “introduced vagueness, confusion and politicization and would lead to arbitrary, inconsistent and discriminatory decisions.”

¹⁶³ Standing Committee on Justice and Human Rights, November 5, 2001; 2005; 2010.

To no avail, the CCR recommended that the reference to terrorism be deleted from the proposed legislation (CCR 2001).

The revised IRPA came into force in June 2002. The Act retained the dual, and as I have argued, ambivalent mandate, of preventing the arrival of dangerous others while admitting those deemed deserving and in need of protection. However, in this highly securitized context, although the mandate appeared to give refugee protection equal weight with preventing the arrival of potential terrorists, the IRPA focused on protection of national security at the expense of a more hospitable approach to refugee protection. In other words, when doubt arose as to the authenticity of a refugee claimant, particularly one who arrived from predominantly Arab or Muslim countries after September 2001, the tendency was for security concerns to trump humanitarian ones. This newly racialized approach was intended to “modernize” the Act. According to Citizenship and Immigration Canada (CIC):

[The] new Act modernizes Canada’s immigration policy. It provides Canada with the tools to attract workers with flexible skills and it speeds up family reunification. The Act is tough on those who pose a threat to Canadian security, while maintaining Canada’s humanitarian tradition of providing a safe haven to people in need of protection (2002b).

I interpret the concept of modernization as it appears in this policy statement as code for integration with US homeland security policies, and for taking approaches consistent with those also in force in the European Union with respect to migrants.

The IRPA, in its final iteration, retained explicit ambivalence by affirming a national commitment to international law, but the application of the new framework – reinforcing the accent on securitization – was decidedly not in favour of increasing access

by refugees, but rather made it even more difficult for any migrant to gain access to Canadian territory. In 2002, the Supreme Court of Canada, indeed, echoed the CCR's concern about the open-endedness of the definition of terrorism in making this statement:

... there is no single definition [of terrorism] that is accepted internationally. The absence of an authoritative definition means that, *at least at the margins*, the term is open to *politicized manipulation, conjecture and polemical interpretation* [emphasis added].¹⁶⁴

It was precisely these uncertainties about the definition of terrorism – together with the ways securitization dominated state immigration and refugee policy discourse – that legitimized the state's emphasis on risk management, rather than on humanitarianism, in confronting the uninvited and unexpected flows of certain migrants. Refugees continued to be of particular concern to both Canada and the US, and these migrants became the focus of new cross-border agreements between the two countries after September 11, 2001.

5.3.3 The Canada-US Safe Third Country Agreement

Immediately following the September 11, 2001 attacks, the Canadian government took the initiative to sponsor a new, joint program of border control measures with the United States, called the “Smart Border Action Plan” (US Department of State, 2002). The Plan aimed to establish a “zone of confidence against terrorist activities.” The new policy framework set out five priority areas: to prevent terrorists from getting into Canada; to protect Canadians from terrorist acts; to bring forward tools to identify, prosecute, convict, and punish terrorists; to keep the Canada-US border secure and open to legitimate trade; and, to work with the international community to bring terrorists to

¹⁶⁴ Ref. *Suresh v. Canada* (2002), 208 DLR (4th) I at para 94 (SCC).

justice. Canada also included the objective of addressing the “root causes” of terrorism.¹⁶⁵ Administration of the Action Plan included implementation of a new Safe Third Country Agreement that involved increased front-end screening for refugee claimants, increased detention and deportation capacity, and additional documentation requirements (Government of Canada 2003). Signed by Canadian and US state officials, the Action Plan went into force on December 29, 2004 (CIC 2004) and thereby launched the Canada-US Safe Third Country Agreement (hereafter, the Agreement).¹⁶⁶

The term “third country” referred to the country through which a refugee passed *en route* from the country of nationality to the destination country. The designation “safe” signified the judgement by the signatories that the third country would provide refugee protection as required by the 1951 UN Convention, and that refugee applications would be adjudicated fairly (Macklin 2004, 370). Under the Agreement, all refugee claimants who arrived at a Canadian land border from the US were required to pursue their asylum claims in the US, and vice versa. (The provisions applied only to those arriving along the Canada-US border and not to arrivals by air or sea.) There were two major components in the Agreement: a readmission component required the country of last presence to accept the return of the refugee; and a refugee determination component committed the country of final asylum to adjudicate the refugee claim. These components were intended to prevent the possibility of refugees being bounced back and

¹⁶⁵ Department of Foreign Affairs and International Trade (DFAIT), 2005, “Canada’s actions against terrorism since September 11.”

¹⁶⁶ A similar administrative agreement was proposed by US and Canadian state officials in the early 1990s, but it was abandoned in the mid-1990s after US public interest groups, with the support of Canadian groups such as the CCR, were successful in their lobbying efforts against it (Aiken 2009).

forth between countries, and eventually deported (*refouled*) without any adjudication of claims.

Previously, more than a third of all those who received refugee claimant status in Canada under the 1951 UN Convention landed first in the US. Under the Safe Third Country Agreement, most of these refugees would be required to apply for refugee status in the US, which was generally recognized as having a more “punitive” system (Roach 2003, 143). Deputy Prime Minister John Manley argued at the time, however, that the Agreement was not designed to stop refugee claims, but rather to deal with them in a more “effective way.”¹⁶⁷ Nonetheless, the Agreement, as Roach as argued, “responded to American perceptions that Canada’s ‘liberal’ refugee policies constituted a threat to American security.” At the same time, he added, the Agreement “also provided a means for Canada to make its refugee policy less generous, consistent with the securitization of Canadian refugee policy, under the cover of a security agreement with the Americans” (Roach 2003, 143). The Agreement did acknowledge the specific duty under the 1951 UN Convention of *non-refoulement* and re-affirmed that nothing in the Agreement *should* undermine the identification of persons in need of protection. However, it is by no means clear that the US constituted a “safe country” in this context, since most detained refugees ultimately were *refouled*, in contravention of the Convention.¹⁶⁸

¹⁶⁷ Timmerman (2001), in notes for an Address by Hon. John Manley to the US Foreign Policy Association, November 5, 2001. At this meeting, Manley responded to questions about the “Millennium Bomber” by saying “the issues surrounding [Ressam's] ability to operate in Canada have been addressed.” He continued, “Do we believe that terrorist sympathizers have operated on Canadian soil? Unfortunately, yes, this is probably the ugly truth – as it is in the United States, Germany, Britain and many other countries around the globe.”

¹⁶⁸ The CCR, Canada’s largest and best established advocacy group for refugees, regularly carried out assessment of policies and programs affecting refugees. In 2005, the first year of implementation, Canada received the lowest number of refugee claims since the mid-1980s – the drop in claims at the US-Canada land border was most significant, at only 51 per cent of what they had been the year before. Colombian

The preamble to the Agreement included the principle of promoting the orderly handling of asylum applications by the responsible party, and a joint commitment to the principle of burden-sharing. Burden-sharing included identifying persons who were legitimately in need of protection while endeavoring to “avoid” breaches of the principle of *non-refoulement* (CIC 2002c). Burden-sharing in this context meant preventing so-called illegitimate or inauthentic refugees from reaching Canadian borders by creating the conditions under which they would have little choice but to move to the nearest or adjacent country of refuge. The commitment to burden-sharing thus, in effect, shifted the burden for providing refuge to another jurisdiction. To encourage such practices, Canadian foreign aid was targeted to such countries of refuge, although the resources made available were small in relation to the needs of such migrants (CCR 2010).

When documentation was scarce or not available, as was often the case with people fleeing conflict zones, it was extremely difficult for refugees to prove that they met the exceptions to the safe third country rule. In legal terms, the US deployed a “preponderance of evidence” approach to determine the eligibility of an asylum seeker for refuge. Canada used a “balance of probabilities” standard, which was understood to be less stringent than the US standard (Aiken 2009). However, both countries stipulated on signing the Agreement that “these standards are functionally equivalent” (CIC 2002c). Nonetheless, the Canadian Council for Refugees argued that these different orientations

refugee claimants who were attempting to reach Canada through the US were turned back in record numbers: in 2005, less than one third of the 2004 number of Columbians were able to obtain refugee claimant status in Canada, a drop of over 2,500 people. Historically, Canada’s acceptance rate of Columbian refugees had been approximately 80 per cent (compared to 45 per cent in the US). Implementing the Agreement meant that Canada “closed the door” on this group of claimants; evidence indicated that the majority of them did not necessarily find safety in the US (CCR 2005).

by officials of the two countries in exercising their discretionary powers likely contributed to numerous inconsistencies in the treatment of refugees (CCR 2005).

Critics argued further that the Agreement, if not actually in conflict with Canadian human rights laws, breached international norms that mandate protection for migrants (Crépeau and Nakache 2006, 14). Various organizations in Canada, including the Canadian Council for Refugees (CCR), as well as the UN High Commissioner on Refugees (UNHCR), continued to question the basic premise of the Agreement that the US is actually a safe country for all refugees (Crépeau and Nakache 2006, 17). A number of US practices caused concern to advocacy groups, including detention procedures and an expedited removal process (that excluded a full hearing of claims and provided no guarantees against *refoulement*, or return to a country where there is a risk of torture).

Faith-based groups echoed the concerns of other observers by arguing that the US could not be considered a “safe” country for refugees (see, for example, KAIROS 2004). Concerns were often expressed by advocacy groups – such as US and international human rights organizations – about the US detention practices, particularly when children were placed in detention facilities for immigration-related reasons (Crépeau and Nakache 2006; Macklin 2003; Roach 2003).¹⁶⁹

5.4 Canada-US Tensions and Convergences after September 11

Despite the explicit Canadian propensity to be cooperative, relations between the Canada and the US were often tense during policy development and implementation after September 11, 2001. Tension was exacerbated by mainstream media coverage that

¹⁶⁹ There was also evidence that the Agreement created a large market for migrant smugglers, a development that further criminalized the framing of the refugee (Crépeau and Nakache 2006; Macklin 2003).

persisted in giving weight to various claims made on both sides of the border about the failures of the Canadian immigration system. As discussed earlier, these views were echoed widely by American officials and the mainstream American media, and continued to resonate for many years in cross-border discussions of security issues. For example, Denis Coderre, then Minister of Immigration, was incensed by reports that ran on an American television network about criticism, voiced soon after September 11, 2001, by David Harris (a former official of the Canadian Security Intelligence Service) and by Joe Bissett (formerly of the Canadian Immigration Department). Harris had claimed that some fifty groups with terrorist links were operating in Canada. Bissett had asserted that refugee claimants arriving in Canada since September 11, 2001 included significant numbers of people from “terrorist countries like Algeria, Pakistan, and Afghanistan.” Coderre responded by pointing out that in 2001, 72 per cent of refugee claimants in Canada (some 14,000 people) arrived by travelling through the US,¹⁷⁰ a fact that suggested to Coderre that, if there were terrorists among the new arrivals, the problems were in the US system.

Pressure nonetheless continued to be brought to bear by the US on Canadian policy-makers. The US Ambassador to Canada, Paul Cellucci, declared that Canada should bring its immigration laws into line with the US in order to help combat terrorists, calling for more stringent and consistent immigration policies to “establish a North

¹⁷⁰ See *Sudbury Star* (2002), “Alliance seeking police state, says Manley”,

American perimeter¹⁷¹ that would apply more rigorous controls for people landing from overseas.”¹⁷²

In December 2002, under the federal Liberal Government, the House of Commons Standing Committee on Citizenship and Immigration published a report on the regulations under the Safe Third Country Agreement (CCR 2005). The Liberal Committee members endorsed the findings of the report, which confirmed the success of the Agreement, from the perspective of officials, in its first year of operation. As a policy instrument with the goal of decreasing the number of refugees who claimed refugee status in Canada, the Agreement was seen by the Liberal Government to be a resounding success. However, other Standing Committee members had concerns, which included the detainment of people in the US who are not subject to detention in Canada; the treating of gender-based claims differently in the two countries, in particular with respect to refugee claims based on domestic violence; and the bolstering of smuggling operations, which increased the risk to migrants of being killed or injured in the course of attempting to enter Canada. The Progressive Conservatives, the official opposition party, specified their objections to the Agreement, citing Canada’s “moral responsibility” as a signatory to the 1951 UN Convention to ensure that refugees have access to a fair and equitable system, and asserting that the Agreement “will tarnish our reputation in the world community” (Progressive Conservative Opinion; cited in CCR 2005, 40).

¹⁷¹ This move echoed the establishment of “Fortress Europe” by EU countries, discussed earlier, (see, for example, fn. 131, p. 166) and foreshadowed the establishment of what came to be called “Fortress North America” as I will discuss later in this chapter.

¹⁷² See *National Post* (2001), “Canada needs tight perimeter: U.S. Ambassador”; and, *Edmonton Journal* (2001).

In 2003, the new Liberal Prime Minister, Paul Martin, overhauled the administrative structures dealing with national security, establishing new leadership “nodes” in the Canadian government, such as the new Department of Public Safety and Emergency Preparedness Canada, as well as the office of National Security Advisor to the Prime Minister. These changes set the scene for the “first-ever comprehensive statement of our National Security Policy” (Office of the Prime Minister, Background, 2003).

In 2004, during the weeks leading to a federal election, the federal Liberal Government released a status report and action plan addressing intelligence, emergency planning and management, public health, transport security, border security and international security. The report, entitled “Securing an Open Society: Canada’s National Security Policy,”¹⁷³ included a commitment to undertake a legislative review to ensure that post-September 11, 2001 measures taken to increase border security have “struck the appropriate balance.”¹⁷⁴ In his preface to the policy, Martin advanced the objectives of securitization while still echoing the old humanitarianism:

Securing an Open Society articulates core national security interests and proposes a framework for addressing threats to Canadians. It does so in a way that fully reflects and supports key Canadian values of democracy, human rights, respect for the rule of law, and pluralism (National Security Policy 2003, Foreword).

The report itself included reference to reforming the refugee system in Canada to “... better provide protection to those genuinely in need and to more efficiently identify and remove those individuals who may be attempting to abuse our refugee and immigration

¹⁷³ Privy Council Office (2004).

¹⁷⁴ Ibid 2004, 2.

system.”¹⁷⁵ Despite the humanitarian gestures of the report, refugee policy was thus officially framed as a component of the national security policy, through which the government would meet its “core responsibility ... to provide for the security of Canadians.”¹⁷⁶

Border security was one of the main components of the plan, which included a commitment to “streamline the refugee determination process.”¹⁷⁷ The National Security Policy also connected refugee policy and border protection with public health issues, particularly with the “global outbreak” of severe acute respiratory syndrome (SARS) in 2002, which “demonstrated the power of individuals to unintentionally transmit threats around the globe at the speed of air travel.” In another securitizing move, the government policy statement framed the threat of global pandemics as an issue of security, and then linked it with irregular migration. Specifically, under the umbrella of a national security policy, threats posed by communicable diseases were associated with the threats posed by “terrorists,” which further stigmatized as a potential security risk any foreign visitor, tourist, or refugee, particularly from Asian and predominantly Muslim or Arab countries.

The National Security Policy included a wide range of new coercive and surveillance mechanisms focused on interrupting the “flow of higher-risk travellers,” including refugees from countries on US watch lists. An additional ten countries were added to the Canadian visa requirement list, including countries that the US identified as

¹⁷⁵ Ibid 2004, 45.

¹⁷⁶ Ibid 2004, 5.

¹⁷⁷ Ibid 2004, 27.

potential sources or sponsors of terrorist activities. Notwithstanding these new measures, the federal Liberal government still indicated a vestigial humanitarianism in its policy:

... we reject the stigmatization of any community and we do not accept the notion that our diversity or our openness to newcomers needs to be limited to ensure our security. Canada's openness to refugees is a reflection of our international commitments to a humanitarian tradition (NSP 2004, 4).

Despite these allusions to Canada's image as a welcoming and open society, the inclusion of questions of refugee protection, as well as border control, in a report on national security, was suggestive of a highly securitized discourse. Indeed, the national security report raised concerns among scholars and refugee advocates that Canada was "on the brink of caving in to ongoing pressure from Washington to restrict the refugee program" (Aiken 2009, 193).

When the Harper Conservative government came into power in 2006, one of its policy priorities was to develop a close working relationship with the US. Although the Conservatives did not include refugee or immigration issues as a priority in their first Throne Speech (Brodie 2009), a law-and-order orientation and the meta-framing of securitization can be seen to have dominated the government's approach to refugee issues. In a securitizing move that signaled the Conservatives' view of what constituted a legitimate refugee, the incoming Minister of Immigration, Monte Solberg, suggested that the only "genuine" refugees in need of Canada's protection were overseas, and that the continued allocation of significant resources to claimants already inside Canada or attempting to enter Canada from the US constituted an "inefficiency" – one that his government intended to address (Aiken 2009, 197). Once again, immigration and refugee policy, key features of the law-and-order agenda when the neo-humanitarianism

frame dominated, was recast in securitization terms and refugees were portrayed as potential terrorists. This move, in turn, reinforced the further entrenchment of the securitization meta-frame that has shaped Canadian refugee policy into the current period.

In sum, on both sides of the border, new legislative powers emerged in highly securitized policy environments – rooted first in neo-humanitarianism, which had advanced the notion of the risky refugee and which had clearly characterized the refugee in terms of potential criminality by the end of the 1980s; and, then, in the securitization discourses of the 1990s that built upon this criminalization. The entrenchment of securitization in Canadian refugee policy in the post-September 11, 2001 period reinforced the already strong links between refugee and terrorist that had rendered refugees as potential threats – first to public safety and social cohesion and, then in the context of late-twentieth century securitization, as threats to national security. Although the securitization framing pre-dated the attacks, there was afterwards a sustained and explicit rendering of the category of refugee as a potential terrorist.

The notion of a *dangerous other* and the tendency to frame the refugee in terms of potential danger were, as I have shown, latent and sometimes manifest, long before the attacks of September 11. What makes this later period significant, however, is the explicit nature of this framing of the refugee, such that it became extremely difficult – in the face of assumed certainty about the dangers represented by refugees – for refugee advocates to be heard. This difficulty was particularly evident when advocates attempted to prevent the state from implementing practices such as racial profiling, interdiction,

deportation and incarceration that were being deployed against anyone who resembled the September 11, 2001 attackers.

The US war on terror – launched by President George W. Bush after September 11, 2001 with homeland security as its priority – exerted discernible and significant influence on Canadian refugee policy. As we have seen, this influence generated considerable tension for Canadian officials who wanted to support the US while protecting Canadian sovereignty and trade with that country. Canada's response to the attacks of September 11, 2001 was actually consistent with (and, in the case of the Safe Third Country Agreement, ahead of) that of the United States, in terms of securitization, including the enactment of a wide range of more restrictive and coercive legislative initiatives associated with the reframing of the refugee as a potential terrorist. Indeed, the intensity of securitization in this period was an extension of earlier framings that arose from presuppositions emphasizing risk, rather than need, with respect to refugees.

5.5 Historical Parallels in Refugee Policy: The Holocaust and the Post-September 11, 2001 Period

It is instructive to look back and consider historical parallels in refugee policy between the period of the Holocaust and the period following the attacks of September 11, 2001. There were massive worldwide movements of refugees in both the 1930s and the late 1990s. In both periods, states adopted extreme measures of exclusion to cope with the new inflows of refugees. In the 1930s and 1940s, the persecution of Jews in Germany created millions of Jewish refugees, who were not welcome anywhere. Framed as the “Jewish problem,” the movements of Jewish refugees were the focus of the 1938 Evian Conference, which declared in an intergovernmental resolution that “... countries

of refuge and settlement are faced with *problems* not only of an economic and *social nature*, but also of *public order*, and that there is a severe strain on the administrative facilities and *absorptive capacities* of the receiving countries” (in Adler-Rudel 1968, 272-273 [emphases added]).

Anti-refugee sentiments were voiced in discussions at the Evian Conference, in large part because of anxieties about the effects on member states of the extreme economic downturn of the late 1930s. Just before the outbreak of World War II, as we have seen, the figuration of the refugee arose as a potentially dangerous, destabilizing, and economically debilitating invader – one who could send socially and economically fragile post-Depression societies into disarray. This figuration was repeated in different forms in the periods of humanitarianism, neo-humanitarianism, and present-day securitization.

The securitization of refugee and immigration policy began in the late 1990s, as I have shown, when the increased inflows of refugees were seen as threats to social cohesion and national security; and this a framing recalled similar depictions prominent during the Holocaust era. The economic and geopolitical conditions certainly differed between the Holocaust era and the period following the attacks of September 11, 2001. Nonetheless, practices of exclusion in these two periods of crisis exhibited similar perspectives on particular groups of uninvited arrivals, and arose from similar presuppositions about what these refugee groups represented in terms of risk.

During the Holocaust era, as we saw in Chapter 3, the Jewish refugees seeking asylum in Canada were viewed by senior officials and some members of Cabinet as threats to Canadian unity and social cohesion. Prime Minister Mackenzie King shared

this view in the early years of the Holocaust, but became increasingly ambivalent toward the question of providing refuge to the Jews. His overriding concern, however, was to maintain Liberal Party control of the Federal government, which he saw as critical to sustaining national unity, particularly in light of the deep resistance that dominated Quebec society on the question of Jewish refugees. National unity, for Mackenzie King, was integral to the rebuilding of the Canadian economy. A strong federalist state that included Quebec was essential; anything that threatened the state's capacity to ensure national unity, including an influx of European Jews, was to be avoided, a view shared by the majority of his Cabinet.

During the September 11 period, with the heightening of securitization, policy discourses resonated with those of the Holocaust era, as collectivities of refugees from predominantly Muslim and/or Arab countries were framed in exclusionary terms, as terrorists. The danger represented by the Jewish refugees had been cast in terms of risks to social cohesion and national unity. After September 11, 2001, the danger represented by categories of refugees, particularly from Muslim and/or Arab countries, was seen in Canada as well as in the US as a potentially lethal threat to national security. In Canada, the language of the legislative changes shifted from protecting refugees to protecting national security and ensuring the free flow of goods and services across the Canada-US border. Canada maintained its stated commitments to refugee protection; however, the basic presupposition that uninvited refugees threatened security and stability, which had featured prominently in the Holocaust years, re-emerged in the aftermath of September 11, 2001, albeit with even greater intensity.

In her study of “security talk” in the Speeches from the Throne (SFT), Janine Brodie has provided a vivid demonstration of how the language of the 1942 Speech from the Throne “telegraphs the contemporary construction of the war on terror as a zero-sum confrontation between good and evil” (2009, 696). The words of the Speech portray a “world-wide conflict between irreconcilable forces”:

On every continent, including the confines of our own, and on all oceans, forces that aim at world domination oppose forces that seek the preservation of freedom. In every quarter of the globe, civilization is confronted by savagery. The conflict can have but one of two outcomes. Either tyranny, based on terror and brutality, must be overthrown; or the free peoples of the world, one and all, slowly but eventually, will be reduced to a state of bondage. Upon the outcome depends, for generations, the future well-being of mankind (quoted in Brodie 2009, 696).

This important excerpt from the war-time Throne Speech shows a strong resonance between security discourses of the Holocaust era and of the period following the attacks of September 11, 2001. Indeed, many of the declarations of President George W. Bush after the attacks mirrored the framing of the 1942 speech and portrayed the war on terror in similar terms.

Both the Holocaust and the attacks of September 11, 2001 legitimized a wide range of highly restrictive and coercive measures. The effect was to bolster the policy orientations towards increased border security and off-shore interdiction, as well as other extreme measures such as detention without due process as well as deportation. In other words, the arrival of refugees in both of these periods mobilized policy discourses that set apart the foreigner from the citizen, while at the same time, legitimizing exclusionary, coercive, and discretionary policy responses. In this way, refugee policies continued to be integral components of the state’s power to frame what constituted citizenship,

sovereignty, and the national identity, in ethno-cultural terms. Without the anxieties provoked by mass movements of Jewish refugees during the Holocaust and by the global flows of Arabs from predominantly Muslim countries in the post-September 11, 2001 period, western states generally, and Canada in particular, would likely not have garnered the kind of widespread public support they did for such exclusionary practices. The policy response to the Holocaust in Canada, moreover, can be seen as a prelude to the securitization that began to emerge prior to September 11, 2001 and culminated in its aftermath.¹⁷⁸

5.6 Conclusion

In the late 1990s, securitization intensified the neo-humanitarian shift toward the framing of the refugee as a risky subject. This framing no longer saw the refugee in old terms mainly as a person in need of state protection, but mainly as a figure posing a threat. The particular concern with terrorism, left undefined in the statutes until 2009, was part of Canadian immigration policy long before September 11, 2001. So it is not surprising that, with established associations in federal policy of the refugee with criminality and terrorism, the figure of the refugee could become, as Macklin argues, the “archetypal menace” to the cultural, social, and political “vitality” of the nation (2001, 392).

Securitization in Canada echoed the larger international context in which the frame of liberal altruism that had characterized earlier international post-war humanitarian regimes was replaced by refugee-as-terrorist refrains, imbricated with

¹⁷⁸ It is important to note that the September 11 attacks were perpetrated by a relatively very small number of extremists, while state measures would come to target through various mechanisms, including racial profiling, all those migrants from Arab or predominantly Muslim countries seen to pose a terrorist threat. The displaced European Jews, in contrast, were not at all perceived as potential terrorists.

discourses of criminality. During this period, liberal altruism tended to fade out of the discourses of humanitarianism and then neo-humanitarianism. By the beginning of the twenty-first century, the refugee was no longer framed primarily as a person in need of refuge and protection, but as a threat to national security (Macklin 2001, 388; Whitaker 1998). The refugee became a voiceless figuration of danger to the state and the nation – and thereby an object requiring risk management.

The aftermath of September 11, 2001 entrenched and codified the figuration of the “refugee-as-terrorist” – a figuration that repeats anxieties about the foreign other that go back to earlier periods, including the Holocaust. In the post-September 11, 2001 period, as before, the Canadian state denied access to particular groups of refugees in the interest of goals other than humanitarian ones – those of maintaining national unity, social cohesion, and national security: particular classes of refugees were constituted as significant threats to the sovereignty, safety, and security of Canada. After the attacks of September 11, 2001, Canadian refugee policy was subsumed under the concerns and priorities of national security policy. However, as I have argued, policy changes after the attacks, often heralded as emblematic of the beginning of a new era in Canadian immigration and refugee policy (e.g., Aiken 2009; Whitaker 2003), were also a repetition of earlier responses to mass movements of migrants – responses that were characteristic of policies instituted during other periods of crisis.

CHAPTER 6

CANADIAN REFUGEE POLICY IN CONTEXT

6.1 Introduction

Canadian refugee policy today has arisen from an historical context. As I have shown, three meta-framings shaped Canadian refugee discourse during different periods: humanitarianism, neo-humanitarianism, and securitization. From the time following World War I until the early post-World War II period, humanitarianism, with all of its internal tensions, was salient in official, international discourses, while, in Canadian domestic policy, ambivalence was evident in responses to refugees. In the decades following World War II, the ambivalence intrinsic to humanitarianism in Canadian refugee policy discourse diminished with the advent of neoliberalism and the accompanying meta-frame that I call neo-humanitarianism.

Reg Whitaker earlier offered an account of tendencies that enter into my formulation of the neo-humanitarian meta-frame, while also suggesting the nascent securitization of the post-Cold War period:

... although there are multiple causes for declining generosity towards refugees [in the 1990s], arguments that refugees pose security problems to host nations have been particularly prominent ... refugees now tend to be seen as importers of external political conflicts into the West (Whitaker 1998, 413).

By the end of the twentieth century, the securitization tendencies within neo-humanitarianism overtook the ways in which the state framed the category of refugee, and by the early twenty-first century, in the period around the attacks on the US of September 2001, securitization became entrenched while ambivalent tendencies receded almost entirely.

The shift from neo-humanitarianism to securitization, beginning in the decade before September 11, 2001 and reinforced by the events of that day, largely displaced humanitarian tendencies in official policy and the potential for a more hospitable orientation toward refugees. Even though different meta-frames dominated different periods, there was also evidence of recurring frame contestations. These contestations – the politics of the frame – have continued to play out during recent years in very vivid ways, as I will show. The purpose of this chapter, then, is to bring into sharper focus today's politics of the frame and to illustrate some of the ways in which the shift to securitization since September 2001 has largely put an end to residual humanitarian and ambivalent tendencies in current Canadian refugee policy-making.

I begin with a reconsideration of the history of ambivalence, or more precisely, ambivalent tendencies, in Canadian refugee policy. Then I proceed to show the influence of emergent securitization on residual ambivalent tendencies by focusing on the policy priorities of successive federal governments, beginning with the Trudeau period. I draw attention again to how the shift to more intense forms of securitization after the attacks of September 11, 2001 not only placed increased emphasis on security and safety, but also tended to portray refugees in the guise of potential terrorists. This shift set the scene for the final transformation, characterized by an arrest of ambivalence, which has occurred

under the majority Conservative government of Prime Minister Stephen Harper. To provide concreteness to my account of securitization during the current period, I examine a case involving Tamil refugees, which unfolded in a crisis atmosphere in 2010 and proved to be a central event in the securitizing moves of the Harper government.

Efforts by the Harper government to implement increasingly restrictive refugee policies have been aided not only by the overall shift to securitization, but also by the new approaches that link refugee policy to public safety and crime prevention more broadly, thus reinforcing the framing of refugees as criminals. In other words, for this government, with its strong law-and-order agenda, the entrenched meta-frame of securitization creates the opportunity to link restrictive changes in refugee policy to its larger anti-crime posture.¹⁷⁹ Indeed, this link is being institutionalized in both legislative terms and as part of the restructuring of the cabinet portfolios that situate immigration and refugee protection within the edifices of law and order. We will see through particular examples how the Conservative government explicitly constitutes the refugee in law-and-order terms.

The government has brought forward policy initiatives, including legislation to prevent human smugglers from “abusing Canada’s immigration system” (Public Safety 2005). This legislation came in the wake of the crisis atmosphere involving the arrival by boat of Sri Lankan Tamil refugees in the summer of 2010. Before turning to this case

¹⁷⁹ Emblematic of this posture was the introduction of Bill C-10, known as The Safe Streets and Communities Act, in June 2011, immediately after the Harper Conservatives formed a new majority government. This Act, which was proclaimed in 2012, contains nine separate pieces of legislation that failed under the previous Harper minority government. The new legislation has far-reaching implications for both federal and provincial law enforcement agencies and the judiciary. It includes provisions for mandatory minimum sentencing for a range of minor, non-violent offences, a practice that is being abandoned in other jurisdictions (e.g., California) because of the social and fiscal costs involved. The Canadian Bar Association representing some 37,000 lawyers across Canada, declared “Bill C-10 a mistake and a setback for Canada.” See, for example, Ernst (2010); and, Hutton (2020).

and its implications, I first offer historical contextualizations from two distinct perspectives: a reconsideration of ambivalence in Canadian refugee policy, and an examination of Canadian refugee politics through successive governments. I then examine the case in three sections: first, I consider the government's portrayal of, and response to, this event as a security crisis; second, I examine the government's policy response; and third, in order to illustrate the nature of the ensuing frame contestations, I look at the public controversy that arose in response to the government's approach. As I have shown, controversies prior to this one – such as the introduction of the Anti-Terrorism Act, changes to the Immigration and Refugee Protection Act (IRPA), and the implementation of the Canada-US Safe Third Country Agreement – illustrate how ambivalence has been significantly arrested since September 11, 2001. The controversies arising from the government's response to the case of the Tamil refugees demonstrate the extent to which securitization is now so deeply entrenched that even the most cogent and sustained criticisms by actors with recognized legitimacy and credibility are unable to significantly influence, let alone prevent, the enactment of major structural and policy changes affecting the framing and treatment of refugees.

Under the Harper government, especially with majority status, it makes sense to say that ambivalence has come to an end. Critics such as advocacy groups and opposition parties still object to this government's extremely exclusionary policies and practices, but these efforts are muted in the face of an entrenched meta-framing that not only prioritizes national security over humanitarian considerations, but also makes restrictive refugee policies part of a larger agenda of fighting crime. In other words, there is a normalizing or deepening of the association between the refugee and the criminal that

goes beyond the *ad hoc* approaches taken immediately after September 11, 2001. In this new milieu, refugee advocacy groups, such as the Canadian Council for Refugees (CCR), largely find themselves in a marginalized position, unable to effectively move the focus of policy discourse toward a more hospitable register.

6.2 Reconsidering Ambivalence in the Framing of Canadian Refugee Policy

As I explained in Chapter 1, the concept of ambivalence can be understood most simply as the holding of simultaneous and contradictory attitudes toward something, such as an object, person, or action. In terms of policy formation, ambivalence involves a continual and discernible fluctuation in official policy discourses between one direction and its opposite, as well as apparent uncertainty about which to follow. In this study, I conceive of ambivalence in somewhat stronger and more specific terms as the simultaneous deployment by the state of contrary framings that work both to affirm and to deny a particular categorization of the refugee.

Immigration and refugee protection legislation is an example of the ways in which the state frames the refugee in ambivalent terms, as I have shown. Put another way, there is a discursive ambivalence in official discourses that has concrete material effects in relation to different actors. In current refugee policy, however, there is both clarity and certainty in the ways in which the category of refugee is framed because of the entrenchment of the securitization meta-frame. In this sense, judging by the ways in which public safety and the law-and-order agenda have subsumed refugee policy, it makes sense to say that policy ambivalence has been arrested, if not ended.

To illustrate what I mean, it is helpful to look at a current example. On December 14, 2012, Minister of Immigration Jason Kenney announced the state's first list of "safe

countries” that normally do not produce refugees (EU countries, Croatia, the UK and the US) for purposes of “fast-tracking” refugees originating in these countries and, under the assumption that they are likely bogus, deporting them back more quickly.¹⁸⁰ In his remarks, we see the oft-repeated official declarations about Canada as a welcoming society, one dedicated to the protection of genuine refugees, but we also see how Canada’s tradition of protecting refugees is now positioned as a matter of law and order. Minister Kenney declared:

In order for Canadians to continue to strongly support Canada’s tradition of providing protection to victims of persecution, they must have faith in the integrity of our asylum system ... with these improvements, we are ensuring that genuine refugees fleeing persecution will receive protection more quickly, while, at the same time, failed asylum claimants from generally safe countries will be removed much faster (CIC News Release).¹⁸¹

This declaration suggests the shift to a crime-prevention approach, particularly targeting European refugees and declaring them, from the outset, to be inauthentic (because they come from “generally safe countries”), in order to discourage them from leaving their homelands, and certainly to prevent their arrival in Canada.

The approach has quite another purpose than hospitality and asylum. While Kenney deploys the language of humanitarianism, his move obscures the ongoing efforts by the Canadian government to target, in particular, the large numbers of Hungarian Roma refugees who come to Canada each year in order to flee persecution. The new “safe country” list, therefore, now serves to camouflage a policy that still targets the

¹⁸⁰ See Cohen’s article “Hungarian, Latvian refugee claims among those to be fast-tracked as Canada unveils ‘safe country list,’ December 14, 2012.

¹⁸¹ See Citizenship and Immigration Canada 2012, “Making Canada’s Asylum System Faster and Fairer – List of Designated Countries of Origin Announced.”

Roma, apparently to avoid a public controversy like the one in 2009 when the Harper government required special visas for Roma from the Czech Republic (ref. FN 76, page 115; see also, Kernerman 2008).

Ambivalence was a key feature of western refugee policy regimes, beginning with ambivalent nature of humanitarianism itself, as I have discussed, and the multiple and contradictory ways in which the category of refugee was framed. It is a category that connoted humanitarian benevolence while tending to impose institutionalized dependency. It assigned a particular identity, yet this identity was also stereotypical and universalized. The category of refugee evoked humanitarian sentiments, yet it was often deployed in order to prevent intimate contact with refugees and to relegate them to distant administrative spaces of displacement and statelessness. It is a category that suggests apolitical altruism, humanism,¹⁸² and benevolence, yet it is also political. It is a paradoxical category that both threatens *and* bolsters state sovereignty (Barnett 2011, Colson 2006; Haddad 2008; Zetter 1991).

The principle of upholding human rights, enshrined in international laws including the 1951 UN Refugee Convention, evokes frames that focus attention on the protection of refugees, while the principle of state sovereignty serves to cast many refugees as “bogus” or as “economic migrants” whose access to a country must therefore be controlled (Hardy and Phillips 1999). Thus, the international refugee regime has embodied degrees of ambivalence. Hardy and Phillips indeed describe Canadian refugee politics in terms of a “discursive struggle”:

... underlying the social reality of the Canadian refugee system is an intense discursive struggle to determine the

¹⁸²According to Hannah Arendt, to be fully human, and to recognize the humanity of others, requires both intimacy and a genuine appreciation of difference (Arendt 1951/1968, 336, cited in Barnett 2011, 228).

nature of concepts ... this leads to an ambiguous and contested set of discursive structures full of contradiction ... (1999, 12).

Ambivalent tendencies are associated, in other words, with disagreement about the meaning of terms. When the framing is ambivalent, disagreement about meaning is more likely to arise in frame contestations as actors compete to control discourse or in efforts to shape refugee policies. With the shift to the meta-framing of securitization, ambivalent tendencies that would have lent more importance to the concern with human rights that characterized the humanitarian meta-framing receded to such an extent that few opportunities, if any, remained for refugee advocates effectively to destabilize the securitization meta-frame. This development is not simply a function of policy formation in the context of government power; it is also a function of the power of meta-frames to constitute “common sense” approaches. Nonetheless, policy approaches are typically associated with governments of the day, reflected in their throne speeches, and in other forms of official discourse, as I will show.

Ambivalence in the treatment of immigrants and refugees is rooted as far back as the Confederation-era discourses associated with migration and nation-building. During World War II, in the context of persistent international struggles around the category of refugee, discourses of humanitarianism clashed with Canadian discourses focused on a concept of the national interest that promoted exclusionism and border protection. The Holocaust era involved substantial ambivalence toward refugees. Perhaps no single Canadian official was more emblematic of that ambivalence than Prime Minister Mackenzie King. He struggled with his growing empathy for the plight of Jewish refugees and his conviction that they must be helped, while taking steps to ensure that, in

the national interest, they were not admitted. During the Holocaust era, the benevolent tendencies of international humanitarianism thus were in considerable tension with the domestic political priority of ensuring Canadian national unity.

By the late 1970s, globalization, or more precisely, the restructuring of the global economy and the emergence of the neoliberal free trade agenda, helped promote both ambivalence to and distance from displaced people. This tendency helped begin the shift from humanitarian to neo-humanitarian discourses, as irregular migration was increasingly linked to crime. With concern focused on cost-effectiveness and security, the refugee – already a profoundly contradictory figure – was reframed as a global problem. The stranger in need (the “authentic” refugee) was framed in neoliberal discourses as someone who needs refuge *and* is always and necessarily elsewhere, out of sight. During this period, the refugee-as-queue-jumper emerged in policy framings by western countries that were increasingly reluctant to admit irregular migrants. Canada was no exception.

As neoliberalism came to dominate domestic policy-making by the end of the 1980s, liberal democracies such as Canada rolled back social programs and curtailed social welfare expenditures, including the funding of immigrant and refugee resettlement. Irregular migration upset this calculus and presented western countries with additional costs that they were increasingly unwilling to absorb. Again, the refugee was framed in ambivalent terms, as being in need *and* deserving of refuge while, at the same time, representing a significant and preventable drain on social resources. Deportation, interdiction, detention, and other practices began to take shape as strategies to prevent arrivals of unwanted refugees.

The UNHCR, ironically given its altruistic orientation, played a central and unintended role in reinforcing the neoliberal agenda. Recognizing that forces at work in a restructuring global economy were displacing millions of people in developing countries, the UNHCR (as explained in Chapter 2) advocated a program of offshore “preventive protection” – a program to set up safe havens for refugees in or near their countries of origin, thereby preventing their having to travel long distances at great risk to western countries that were increasingly unwilling to open borders to such arrivals. In this period, deserving refugees were, virtually by definition, located indefinitely in camps overseas. Preventive protection, in effect, ensured that deserving refugees were generally caught between conflicting and ambivalent policy regimes – on the one hand designed to protect their rights under the Convention, and on the other, to prevent their movement, especially into western countries.

At the height of the Cold War (as explained in Chapter 4) ambivalent tendencies were evident in Canada’s policy responses to the admission of different classes of refugees. For example, refugees from Communist bloc countries were welcomed; others were not (e.g., those from South American states). Later in the Cold War period, neo-humanitarianism – which took as its point of departure the presupposition that refugees were risky individuals, potential criminals and threats to social cohesion and public safety – dominated refugee discourses, and ambivalence began to wane. As the refugee, indeed all irregular migration, was more intensely reframed as a risk, the meta-framing of securitization – which took as its point of departure the presupposition that refugees were potential terrorists – by the end of the 1990s became established in policy regimes worldwide, and security considerations tended to trump humanitarian ones.

Although not always framing foreigners as a danger to the social order, Canadian security regimes throughout the twentieth century frequently operated to prevent incursions by unwelcome, uninvited others. As the threads of emergent security discourses were woven together in relation to refugee crises during the century, institutional capacity to prevent the arrivals of uninvited foreigners was strengthened. Liberal democratic states signatory to the UN Convention employed a range of interdiction methods to block access to their refugee determination processes. Canadian refugee policy in particular incorporated a persistently ambivalent dual mandate – to be both exclusionary *and* inclusionary – while enacting policies that increasingly denied inclusion.

Canadian officials frequently moved to institutionalize restrictive border control regimes that were contrary to both the letter and spirit of the 1951 UN Refugee Convention, while at the same time suggesting through official language Canada's support for international conventions and norms. These ambivalent framings played out in the discursive struggles within the context of a crisis atmosphere regarding refugees at different periods in Canadian policy development. Each time a new piece of legislation was introduced (e.g., Bill C-55, Bill C-84, and the "safe third country" agreement) that restricted the numbers of refugees arriving in Canada, the bill was justified by policy officials both in terms of humanitarianism *and* border-control. By the late twentieth-century, however, the framings associated with border control and protecting national security tended to dominate the framing and justification of Canadian refugee policy. Official approaches to refugee policy were subsumed under the discourses of national security and policy ambivalence effectively came to an end.

6.3 Canadian Refugee Politics: From Trudeau to Harper

The context of shifting meta-framings from humanitarianism to neo-humanitarianism to securitization in Canadian refugee policy comes into focus through an examination of federal government regimes, beginning in the late 1960s. I look first at the Liberal government under Prime Minister Pierre Trudeau (1968 to 1979 and 1980 to 1984); then at the Progressive Conservative government under Prime Minister Brian Mulroney (1984 to 1993); at a securitizing move made by Prime Minister Kim Campbell (1993); at securitization under the Liberal government of Jean Chrétien (1993 to 2003); at securitization under the minority Liberal government of Prime Minister Paul Martin (2003-2006); and finally at the recent, acute intensification of securitization under Stephen Harper (2006 to 2013). I argue that, by the time Prime Minister Chrétien's Liberal government left office, shortly after the attacks of September 11, 2001, securitization was entrenched and ambivalence had waned significantly. What is striking in the current period is how the shift to securitization bolstered subsequent law-and-order policy changes, long after September 2001, by Prime Minister Stephen Harper and the Conservative Party of Canada.

Under Trudeau, as seen in Chapter 3, Canada finally acceded in 1969 to the 1951 UN refugee Convention and continued the orientation of post-War liberal humanitarianism. The federal Liberal government also overhauled Canadian immigration policy. Consistent with Trudeau's new national unity and economic development goals, his strongly federalist Liberal government implemented a series of amendments to the 1952 Immigration Act that eliminated explicitly racist language and changed the composition of immigrant intake in response to economic development needs (Dirks

1995). These initiatives were undertaken in the context of Trudeau's efforts to implement a new national policy on multiculturalism as well as to enshrine Quebec's place in the context of official bilingualism.

Liberal egalitarian notions of tolerance played out in the language of Trudeau's new Immigration Act, in which the category of "refugee" was finally established in 1978 as a legal entity within Canada's legislative framework. Moreover, it was during the brief interlude of Joe Clark's time as Prime Minister in 1979-1980 that the benevolent tendencies in Canadian humanitarianism found internationally recognized expression with the admission of 60,000 refugees from Southeast Asia. However, by the time Trudeau finally left office in 1984, the neo-humanitarian meta-frame had begun to dominate refugee policy approaches. The framing of the category of refugee shifted in the face of unexpectedly high numbers of refugees reaching Canadian borders in the early 1980s. At this time, ambivalence toward refugees remained apparent – welcoming hospitality for newcomers was the dominant message of multiculturalism, but the refugee was increasingly framed in terms of concerns about the economy, social cohesion, and the "flood" of foreigners that strained a system that was not equipped to deal with them (Dirks 1995).

In September 1984, Brian Mulroney's Progressive Conservative Party won a majority. In the early part of his tenure, Mulroney seemed to be a strong advocate for more hospitable approaches to dealing with refugees, regardless of how they managed to reach Canadian borders or coastal waters. In 1986 – the same year Canadians received the Nansen Medal – notwithstanding a growing backlog of over 50,000 refugee claims (Dirks 1995) and despite a public backlash against admitting a group of Tamil refugees,

Mulroney seemed ready to receive the Tamils on humanitarian grounds. “We don’t want people jumping to the head of the line ...,” he said, “[but] if we err, we will always err on the side of justice and on the side of compassion.”¹⁸³ The idea of erring on the side of compassion contrasts sharply with the later ethos of securitization. However, pressures increased on an overburdened refugee review system, and Mulroney’s openness to admitting seaborne refugees waned as did public support for a policy of openness (Dirks 1995, 15; 83-9). In the face of demands for more restrictive measures, the Mulroney government responded by portraying the 1986 seaborne arrival of Tamil refugees from Sri Lanka not as a crisis for the refugees, but for the interests of the country. This move legitimized the introduction of a number of new regulatory changes targeting what were regarded as queue jumpers and criminals who attempt to cheat the immigration system.

During this period, the Mulroney government developed the safe third country initiative, although it was not implemented until after the attacks of September 11, 2001 under the Liberal government of Jean Chrétien. The safe third country initiative was first proposed in 1987 as part of the tabling of new legislation creating the Immigration and Refugee Board.¹⁸⁴ The idea was, in fact, the government’s response to growing pressures from Mexican and Latin American refugees, travelling through the US in order to apply for refugee status in Canada.

In 1991, late in Mulroney’s term, more than 12,000 refugees indeed travelled through the US in order to reach the Canadian border (Oziewisz 1991). At the time, the US was moving to close its borders to Central American refugees fleeing right-wing

¹⁸³ See, for example, *Tamilweek* (1986), “Prime Minister Brian Mulroney beacon to Tamils in torment.”

¹⁸⁴ Two Acts to Amend the Immigration Act, 1976 – Bill C-55 (Refugee Deterrents and Detention Bill), S.C., c.35, and Bill C-84 (Refugee Reform Bill), S.C., c. 36, came into force on January 1, 1989.

regimes, and the European countries were implementing new restrictions. Canada became a destination of refuge – a country of first asylum – for many thousands of people fleeing conflicts and persecution in Central America. In response to US pressures, Immigration Minister Bernard Valcourt confirmed that his priority was to reach a tripartite agreement with the US and Mexico that would control the movement of refugees. He asked, “Why should I, in Canada, be caught up with this whole thing when I could simply direct them back where they belong or where they came through, the United States?” (quoted in Oziewicz 1991). Central American nationals were stopped by Canadian border control officials if they attempted to cross into Canada; US officials deported them if there was any so-called “derogatory information” filed against them – in this context, a code, Whitaker suggests, for “national security risk” (Whitaker 1987).¹⁸⁵

Valcourt suggested that the safe third country agreement with the US, or a trilateral agreement involving Mexico and the US, could overcome concerns expressed by advocacy groups, particularly the Canadian Council for Refugees, about the potential for *refoulement* of vulnerable refugees. Several refugee advocacy groups and refugee lawyers signaled their intention to challenge the provision in court.¹⁸⁶ However, the safe third country provision was not proclaimed as part of the new immigration act.

Mulroney’s Conservative government had other priorities and was unwilling to test the validity of the measure under the 1982 Charter. Even though the agreement was not enacted until after September 11, 2001, the Mulroney government’s proposal stands as a clear and early signal that Canada, like many other countries, was no longer prepared to

¹⁸⁵ See for example, Irwin Block, 1987, “How Eugenia Marroquin made a Tragic Point about Canada.”

¹⁸⁶ See for example Estanislao Oziewicz, 1991, “Canada seeking to stem flow of refugee claimants: Options being explored with United States, Mexico include use of safe-country provision.”

deal hospitably with mass movements of refugees. It was a significant early move toward securitization. It also set the stage for enacting the safe third country agreement with the US after the attacks of September 2001, thereby helping to entrench the securitization meta-frame.

The Reform Party (which emerged in 1987) intervened in refugee discourses in a way that recalled the explicit racism of earlier policies. The party's Chief Policy Officer, a young Stephen Harper, played a major role in drafting Reform Party positions.¹⁸⁷ In its 1988 "Blue Book," which outlined the party's platform on wide array of political, economic, and social issues, the party claimed to want to eliminate racialized selection of immigrants, yet it proclaimed that immigration should sustain the existing (i.e., predominantly white) "ethnic makeup" of the country: "... immigration should not be based on race or creed, as it was in the past; nor should it be explicitly designed to radically or suddenly alter the ethnic makeup of Canada, as it increasingly seems to be" (Reform Party 1988, 23). Later, the Reform Party's 1991 Blue Book would modify this position by eliminating reference to the "ethnic makeup" of Canada, but would commit the party to opposing "the current concept of multiculturalism and hyphenated Canadianism" and to abolishing the program and ministry dedicated to multiculturalism (Reform Party 1991, 35). Such anti-multicultural views, expressed openly and expanded upon in the media, reinforced negative images regarding both immigrants and refugees in public discourse.

¹⁸⁷ As I will show, this was a pattern that would be repeated in the economic downturn of 2008, when the Conservative Party of Canada under Stephen Harper created a negative climate for immigration by ramping up the fear of others once again.

In the context of the economic downturn of the early 1990s, the scene was set for another public backlash against immigrants and refugees, even though commissioned reports argued that increased immigration would not adversely affect employment levels (CIC 1994). These developments on the right wing of Canadian politics are the foundation for the approach to refugee policy later developed by successive Conservative governments under Stephen Harper.

After Mulroney left office in 1993, Kim Campbell, the new Progressive Conservative Prime Minister, apparently responding to what she saw as a shift in public sentiment about the refugee problem, moved immigration policy to the Department of Public Security. This was a move that, as Bourbeau (2011) points out, for the first time in Canadian history officially positioned a major social policy/economic development program within the ministerial ambit of public safety and national security. Later in 1993, under Prime Minister Chrétien's new Liberal government (1993-2006) this decision was reversed. Nonetheless, Chrétien's approach to immigration and refugee policy – in the period before and after September 11, 2001 – stood in stark contrast to that of his Liberal predecessor, Trudeau, by shifting to securitization.

Chrétien took measures to stem the flow of refugees into Canada. For example, in 1995 he downloaded a significant proportion of monetary costs to migrants themselves; in neoliberal terms, migrants were framed as entrepreneurial subjects, required to invest in their own futures. The new right-of-landing fee, set at \$1,000 for each new application for permanent residency, was reminiscent of the 1885 Chinese Immigration Act, which included a "head tax" to prevent Chinese immigration into Canada after the national railway system was completed. Opposition parties and refugee advocacy groups,

particularly the CCR, expressed outrage at Chrétien's move, citing its negative impact on poor and desperate people, who often must flee with nothing but the clothes they were wearing. After five years of contestation led by the CCR, the Chrétien government exempted refugees from paying the fee – an outcome indicating that citizen activists working on behalf of the refugee cause could still exercise some leverage.

Another significant move under Chrétien signaled a shift toward framing refugees as criminals. Bill C-44 (the “Just Desserts” Bill, discussed in Chapter 4) made it easier to deport any landed immigrant or refugee claimant who was convicted of (or even alleged to have committed) a serious criminal offence. Further, under Bill C-44, any permanent resident could be stripped of the right to appeal a deportation order if the Minister of Immigration was of the opinion that the person constituted a danger to the public. Thus, Bill C-44 made explicit links between asylum claims and criminality, providing the Minister of Immigration with discretionary power to issue security certificates that would enable speedy adjudication and deportation of suspected criminals.

By 1998, the backlog of unheard refugee status claims was over 30,000. More than 15 per cent of these claims were abandoned by federal agencies because Canadian border officials simply lost track of individuals (Kelley and Trebilcock 2000). Under pressure from the US to tighten up border controls, the Chrétien government in 1999 portrayed the seaborne arrival of about 600 people from China as a crisis for the country requiring new restrictions. This characterization affected the early stages of development of a new immigration act. The government's framing of the crisis was criticized by advocacy groups and others, including three of the other national parties (Liberal Party, Bloc Québécois, and the New Democratic Party) who united in their opposition to it, by

accusing the Liberals of catering to right-wing sentiments while “reinforcing prejudice against refugees and immigrants.”¹⁸⁸ The New Democratic Party took the position that the Liberal government’s focus on crime in the context of proposed new immigration policy was inconsistent with Canadian values and in contravention of the Convention.¹⁸⁹ The Bloc Québécois argued that the Liberal government was catering to US concerns that Canada had become a “Club Med for terrorists.”¹⁹⁰ Not surprisingly, the Official Opposition party, the right-wing Canadian Alliance, supported the premises of the proposed new legislation yet eventually voted against it for not being restrictive enough.¹⁹¹

As the most prominent Canadian advocacy organization, the CCR argued that the proposed Immigration and Refugee Protection Act (IRPA – discussed in Chapter 5), which included a broad and vague notion of “terrorism” while highlighting security concerns, retained a strong enforcement emphasis promoting negative stereotypes about refugees and immigrants that appealed “to xenophobia and racism within Canadian society” (CCR 2001a, 2). In the period following the attacks of September 11, 2001, there was a great deal of criticism by opposition parties and non-governmental organizations; however, the legislation was eventually passed and came into force in 2002. This period of Canadian asylum politics under the Liberal Chrétien government demonstrated how securitization displaced what Kelley and Trebilcock characterize as “expansive humanitarian values” (2000, 438). Between 2002 and 2008, the Safe-Third

¹⁸⁸ Bernard Bigras in *Hansard*, May 1, 2000, 1335.

¹⁸⁹ Madeline Dalphone-Guiral, *Hansard*, February 26, 2001, 1615.

¹⁹⁰ Judy Wasylcia-Leis, *Hansard*, February 26, 2001, 1650-1.

¹⁹¹ Stockwell Day, *Hansard*, June 13, 2001, 1540-1600.

Country agreement was implemented between Canada and the US, effectively blocking the movements of most refugees attempting to enter Canada from the US side of the border.

Later, at the height of the 2008 world economic crisis, which set in motion millions of migrant workers, the minority Conservative government of Stephen Harper implemented new border controls. The economic downturn hardened attitudes against refugees, and in an inhospitable and highly securitized climate, the Harper government took the unexpected step of imposing new visa requirements on the Czech Republic and Mexico and of turning back refugees from Afghanistan, the Democratic Republic of the Congo, Haiti, and Zimbabwe.

The Canadian Council for Refugees (CCR) argued that this turning back of refugees, contributed to unwarranted public anxiety in a way that worked against the interests of refugees. According to the CCR, many refugees turned back as a result of the 2008 policies were legitimate claimants who should have been recognized as refugees in Canada. In an open letter to Prime Minister Harper,¹⁹² the CCR criticized government statements on refugees that originated not only from the Prime Minister's Office and from cabinet ministers responsible for immigration and refugees, but also from ministers responsible for such other areas as public safety and economic development. The CCR's letter tackled head-on the detrimental core presuppositions of the government's pronouncements:

Refugees have . . . been hurt by the highly negative language used to discuss them publicly. References by representatives of your government to "bogus" claimants

¹⁹² See CCR (2009), "Open Letter: Principles of Refugee Protection." The letter was signed by approximately 50 refugee advocacy organizations and individuals representing many different elements of civil society.

and similar misleading and disparaging terms have been widely repeated in the media and in countless conversations across the country. Government discourse has fostered hostility towards refugees, making them feel less welcome in Canada and undermining public support for refugee protection. The negative rhetoric has also fed into more general xenophobia and racism, affecting not only refugees, but also immigrants and racialized minorities.

The CCR's comments demonstrated that the organization was concerned not only about a shift in policy toward more punitive and exclusionary measures, but also about the rhetorical strategies being deployed by the government. In the CCR's view, such rhetoric was not conducive to Canada's meeting its human rights and humanitarian responsibilities under the Convention. The presuppositions are, indeed, emblematic of the securitization meta-frame.

In moves that were reminiscent of earlier government policies both during the period when the neo-humanitarian meta-frame was dominant and during the advent of securitization, the Harper government repeatedly invoked the language of a crisis in order to formulate and implement a series of exclusionary policy responses. The striking difference is that these policy responses were made under the aegis of the public safety ministry, with the immigration ministry in a supporting role.

Public discourses circulating in the national print media and on refugee advocacy Web sites illustrate how the shift to securitization was perceived by those opposing Harper's framings. Hardy and Phillips have argued that there are "links between the broader discourse of immigration – as represented in the form of cartoons – and the discursive activities of members of this particular institutional field" (1999, 1). The cartoon illustrates the role played by presuppositions that underpin the framing of refugees as unwelcome foreigners. The following cartoon also suggests the discrepancy

in current border control practices between assumptions of Canadian hospitality (understood as a myth about Canadian identity) and the actual practices of border control in the interests of national security.

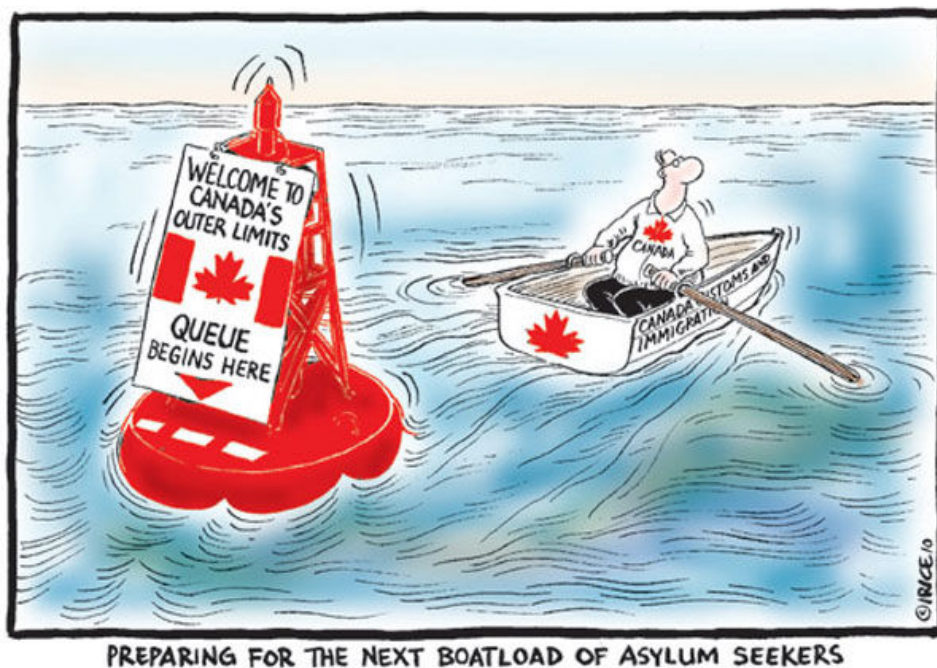


Figure 6.3.1 Cartoon by Ingrid Rice, originally published in *The Tyee*, January 5, 2011 (Reprinted with permission from the artist)

Deployed by refugee advocates, as it was by the CCR and others, mainly in British Columbia, this cartoon represents a cruel practice of interdiction, together with the futility of attempting to take advantage of Canadian “hospitality” with other than legitimate modes of transport and without documentation. The “welcome sign” requires refugees to wait in a “queue” far from the actual territorial waters in which they would become the responsibility of the state under international treaties, while the immigration official rows back to shore, with no apparent way to monitor the queue after he leaves. Once again, the country’s border has been moved farther outward. The cartoon, indeed,

merely exaggerates the actual practices of the Canadian refugee determination system – in particular under the Harper Conservative government – with respect to seaborne refugees. The goal is to prevent seaborne arrivals altogether, thereby avoiding difficulty for a state concerned about bogus refugees and their potential as criminals and terrorists.

6.4 Securitization and the Case of the Tamil Refugees

Securitization, as we have seen, began long before Stephen Harper first became Prime Minister in 2006 – and, indeed, well before September 11, 2001. Under Harper, nonetheless, securitization has markedly intensified to the extent that it makes sense to suggest that ambivalence between the interests of humanitarian benevolence and state conceptions of the national interest has, in effect, ended. This intensification has primarily proceeded in the context of legislation designed to deal with the issue of “human smuggling.” This particular issue arose in July 2010 when national media outlets broke the story that the *MV Sun Sea*, carrying Sri Lankan Tamil refugees, was about three weeks away from the coast of British Columbia.¹⁹³ This case was crucial in leading up to the initiation, under the majority Harper government, of newly restrictive legislation.

Defence Minister Peter MacKay said that the vessel was being tracked. This event was, therefore, not a contingency in the sense of the ship’s arrival being unexpected; it was, however, a contingency understood as an impending emergency situation, requiring special responses from an array of government agencies. To set the scene for the comprehensive crisis-management response, MacKay said “We’ll have ships in Canadian waters as they approach and then an assessment will be done at this time with information we currently hold and anything we’ll be able to garner from direct contact

¹⁹³ See, for example, Youssef (2010), “Boatload of Tamil migrants approaching B.C. waters.”

with the vessel.”¹⁹⁴ The US Coast Guard confirmed that the *MV Sun Sea* was headed for BC.¹⁹⁵ The government rhetoric shifted into crisis-management mode when the ship made landfall. The public safety ministry, not the immigration ministry, was given the lead for dealing with passengers who were being framed as dangerous foreign nationals bearing great risk.

Federal Minister of Public Safety Vic Toews¹⁹⁶ pointed out that the RCMP and the Canadian Border Service Agency (CBSA) were the only two law enforcement agencies that had the authority to board vessels and that this could be done only within the 12-mile limit of territorial waters (or else the ship would have been turned back far sooner). The mainstream media continued to cast the story in terms of a looming emergency and this portrayal was reinforced regularly by Toews, for example when he reiterated his view that this was a developing security problem, saying that “our security officials are very aware of that particular situation and [are taking] whatever action they possibly can.”¹⁹⁷

On August 13, 2010, the RCMP released a “tech briefing statement” confirming that the *MV Sun Sea* – “carrying unknown individuals” – had entered Canadian waters the day before. An RCMP Emergency Response Team trained in maritime intervention had already boarded and taken control of the vessel. A Canadian Forces navigational and safety crew also boarded the vessel, after it was secured by the maritime intervention team, in order to pilot the ship into port (RCMP 2010). On August 16, 2010, after a

¹⁹⁴ Ibid July 30, 2010.

¹⁹⁵ Ibid July 30, 2010.

¹⁹⁶ Toews was a Manitoba MP raised Mennonite, whose ancestors had themselves been refugees.

¹⁹⁷ Ibid July 30, 2010.

grueling 90-day voyage from Sri Lanka, the *MV Sun Sea* finally reached the port at Esquimalt, BC. The RCMP was officially designated as the lead investigative agency but confirmed that “significant roles are being played by all of the [law enforcement] partner agencies” (RCMP 2010). Once in port, the CBSA assumed responsibility for processing the individuals on board. It was later confirmed that the *MV Sun Sea* carried 492 refugees, including 55 children.

On disembarking, the refugees were sent by the CBSA to detention centres: mothers and their children were sent to the Burnaby Youth Detention Centre; the others were sent to a detention facility in Esquimalt. All 492 refugees made claims for protection under the UN Convention. Under provisions of Canadian law, the Immigration and Refugee Board (IRB) began conducting *in camera* detention reviews three days after their arrival. The purpose of these reviews was to determine whether the refugee claimants could be released from detention while their claims were being adjudicated. One concern was that some of the refugees could be members of the Liberation of Tamil Eelam Tigers (Tamil Tigers), an outlawed terrorist organization, according to several western countries.¹⁹⁸

The IRB’s decision was that, until identification documents could be verified, the refugee claimants were to remain in detention.¹⁹⁹ Toews continued the naming and framing of the Sri Lankan Tamil refugees as potential threats by making several public statements during the first two days of this event, linking the refugees to organized crime

¹⁹⁸ In 2006, Canada had joined the US, Britain and the European Union in designating the Tamil Tigers as a terrorist group.

¹⁹⁹ See, for example, Fong (2010), “PM vows to toughen human smuggling laws: Refugee claimants held while their identity documents are verified.”

and terrorism. No official statements by the federal government or its law enforcement agencies mentioned the 26-year civil war engulfing Sri Lanka that was displacing thousands of Tamils and leaving thousands of others in dangerous refugee camps faced with persecution by the Sri Lankan government. No mention was made by state officials in their threat assessments surrounding the *Sun Sea* refugees that more 85 per cent of earlier groups of Tamil refugees coming to Canada had been granted protection under the Convention in the years prior to the arrival of the *MV Sun Sea*. Indeed, the Immigration Review Board had determined on several other occasions prior to 2010 that the vast majority of refugees from Sri Lanka were actually qualified for protection as Convention refugees because they could clearly demonstrate a verifiable and “well-founded fear” of persecution.²⁰⁰

6.5 The Legislative Agenda: Securitization

Securitization was already on the legislative agenda when the case of the Tamil refugees came onto the scene. Just before the *MV Sun Sea* made landfall, coincidentally, a new piece of legislation, on which there was multi-party agreement, was passed by

²⁰⁰ See Goar (2010), “Canada shows the world a forbidding new face.” It is interesting to note here that, before the *MV Sun Sea* incident, Canadian immigration authorities approved 76 per cent of the 672 refugee claims filed from Sri Lanka in 2010. After the arrival of the 492 Sri Lankan refugees, the acceptance rate for Sri Lankan claims dropped to 47 per cent, but by the end of the year, the rate had risen to 68 per cent. Over the longer term, the acceptance rate of Sri Lankan refugees (not including the 492 *Sun Sea* passengers) averaged 90 per cent. By November 2011, all but six of the *MV Sun Sea* refugee claimants had been released on bonds, many of them to Ontario, to work and be with their families. Among those held at the detention center for almost a year were 25 women and 44 children. See also Quan (2011), “Sri Lankan refugee claims had highest approval rate in 2010”; and, Lilley (2010) “Canada accepts the most Sri Lankan refugees.” In this latter article, Lilley points out that Canada has been more likely than any other country to grant refugee status to Sri Lankan nationals, and had accepted more refugees from Sri Lanka than from anywhere else (in 2010). In 2009, Canada accepted 90.7 per cent of all Sri Lankan refugee applicants who arrived in the country, usually through sponsorship programs. Further, Canada’s high acceptance rate for Sri Lankan refugee claimants, relative to other nations, may have also been a reflection of the political strength of the domestic Tamil-Canadian community of approximately a quarter of a million residents in 2010 (Lilley, 2010).

Parliament. It was called The Balanced Reform Refugee Act, received Royal Assent on June 29, 2010, and came into force in June 2012. This act provided increased discretionary powers for the Minister of Public Safety, or the minister's delegate, to make decisions about individual situations, including whether to grant permanent residence status. The Act also set up a range of processes to ensure that all eligible asylum claimants would continue to receive a fair hearing and would have avenues for appeal. New measures included streamlining various administrative and appeal processes, establishing the authority to designate "safe countries of origin" and providing for the timely removal of failed refugees (CIC 2010). Moreover, when the *MV Sun Sea* finally made landfall, the government already had a comprehensive program of additional new proposals to address what it portrayed as another national security crisis. The government knew that most of the provisions of the Balanced Reform Refugee Act would not come into force for another two years, and the government wanted to implement new policies in the meantime in order to impose special and more exclusionary restrictions specifically targeted on the Sun Sea refugees.

In September 2010, Canadian embassy analysts located in the region reported that up to 150,000 prisoners were being released by the Sri Lankan government, and that as many as 250,000 other civilians displaced by the war were being held in government-run camps. The embassy specialists suggested that Sri Lanka would therefore continue to be a source of thousands of "genuine" refugees, many of whom would attempt to enter Canada by land or sea. As the embassy analysts said, "Canada will be a target destination."²⁰¹ This revelation, coupled with the speed with which the government

²⁰¹ Greenaway (2010), "Ottawa had warning of refugee influx; January report predicted imminent rise in people fleeing war-battered Sri Lanka."

presented fully-developed policy positions a few days after the arrival of the Sun Sea, demonstrated the government's preparation and determination to prevent further arrivals of Sri Lankan refugees. Indeed, federal agencies including the RCMP were involved in late 2010 in the arrest of 155 Sri Lankan migrants within the sovereign territory of Thailand, in cooperation with the Thai government. These activities were significant because they represented the further extension of the reach of Canadian law enforcement agencies in the interests of preventing unwelcome arrivals.

Immigration Minister Jason Kenney, giving the reason for the government's response to the Sun Sea arrivals, claimed that "smuggling syndicates are very active in the transit countries ... this is why we have to act."²⁰² Kenney thus shifted focus to bring to attention the criminal act of human smuggling, while in effect targeting the hundreds of thousands of potential refugees who, in his view, threatened to undermine the Canadian immigration system if they were not interdicted before reaching Canadian territorial waters. Subsequent policy initiatives were couched in terms of public safety and crime prevention, despite the negative impact that many of the new measures would have on the refugees themselves.

The slow and highly anticipated arrival of this unwelcome boatload of refugees allowed Harper to frame them long before they made landfall, as potential terrorists and as a threat to national sovereignty. Linking refugees with security concerns, Harper recalled that Canada was a "land of refuge," but warned that "when hundreds of people come to the country outside proper channels, it leads to *significant security concerns*"

²⁰² Sri Lanka Internet Newspaper (2010), "Canada to toughen laws against people smuggling as Thai authorities arrest 61 Canada-bound Sri Lankan migrants."

[emphasis added].²⁰³ The Prime Minister stated that the federal government would not hesitate to strengthen Canada's human smuggling laws in order to prevent future arrivals of ships carrying migrants: "ultimately as a government we're responsible ... it's a fundamental exercise of sovereignty. We are responsible for the security of our borders and the ability to welcome people or not welcome people when they come."²⁰⁴

Despite the fact that there were already provisions in the Immigration and Refugee Protection Act to deal severely with human smuggling (including the requirement of a life sentence for anyone convicted of the offense) the Harper government moved to introduce new legislation, this time under the aegis of the Ministry of Public Safety. In doing so, his government shifted the issue squarely back into the national security arena (echoing the then extremely unpopular move made many years earlier by Kim Campbell, as discussed). This time, unlike during the Campbell government, advocates were unable to oppose this restructuring of policy portfolios in such a way as to reverse the move. Challenges to the core presuppositions of securitization were readily dismissed as being counter to national security interests.

6.6 Securitization Intensified: "Preventing Human Smugglers from Abusing Canada's Immigration System"

In mid-October 2010, the government introduced Bill C-49, the Preventing Human Smugglers from Abusing Canada's Immigration System Act, sponsored by the Minister of Public Safety in close cooperation with the Minister of Immigration and Citizenship. This new legislation was designed to enable the government to – as a senior

²⁰³ Ibid, August 18, 2010.

²⁰⁴ Ibid August 18, 2010.

official would later put it – “crack down”²⁰⁵ on human smuggling, notwithstanding the fact that the government already had such powers under the Immigration and Refugee Protection Act of 2002. The focus in the new legislation, however, was public safety. The new legislative language was on including the refugees in a range of sanctions – to punish them, in effect – for finding the means to purchase passage on ships leaving conflict zones in countries such as Sri Lanka.

Under Bill C-49, smuggled migrants would be detained automatically, without appeal, for up to twelve months on arrival, or until the IRB decided on their claims. Unlike provisions under existing refugee legislation, Bill C-49 removed the right of appeal if asylum was denied. Assuming that asylum was granted, and Convention refugee status attained, such persons could not apply for permanent residence for five years. They would, therefore, be unable to obtain travel documents or to sponsor overseas family members to come to Canada.

Coinciding with the October 2010 announcement of the proposed legislation, Harper appointed Ward Elcock to be Special Advisor on Human Smuggling and Illegal Migration – a new enforcement and administrative function housed in the Ministry of Public Safety.²⁰⁶ Elcock’s job was to advise cabinet ministers and the national security advisor on ways to advance the government’s anti-smuggling agenda. Harper directed Elcock to work also with key international partners to promote cooperation on “this

²⁰⁵ Public Safety Canada, News Release, Ottawa, June 1, 2011.

²⁰⁶ This appointment was significant in light of Elcock’s background. As discussed in Chapter 4, Elcock is a former director of CSIS who spoke publicly on several occasions in the years leading up to the attacks of September 2001 about the deficiencies in Canada’s immigration system, describing Canada as a “safe haven” for terrorists. More recently, Elcock coordinated the security for the 2010 Vancouver winter Olympics, and for the G8 and G20 summits in Ontario later that year. Clearly, his orientation is one of national security and is not focused on refugee protection or the provisions of the UN Convention with respect to refugees.

serious issue – putting a particular focus on human smuggling operations that occur by sea.”²⁰⁷

The 2010 version of the proposed anti-human smuggling act died on the order paper when the May 2011 federal election was called. One month after the election, Harper’s majority Conservative government re-introduced the substance of the Preventing Human Smugglers from Abusing Canada’s Immigration System Act, now labeled Bill C-4 as an amendment to the IRPA 2002.²⁰⁸ The Bill contained the same highly controversial, exclusionary and restrictive provisions as the earlier version. In the official summary of the bill, two key features illustrate its continuing emphasis on criminalization rather than on refugee protection:

This enactment amends the Immigration and Refugee Protection Act to, among other things,

- (a) Authorize the Minister [of Public Safety] in certain circumstances, to designate as an irregular arrival the arrival in Canada of a group of persons, the result of which is that some of the foreign nationals in the group become designated foreign nationals; ...
- (d) add, as grounds for the detention of a permanent resident or foreign national, the existence of reasonable grounds to suspect that the person concerned is inadmissible on grounds of serious criminality, criminality, or organized criminality (Public Safety 2011).

Here, not only does the Minister of Public Safety acquire the sole discretionary power to determine which refugees are allowed across the border, but the Minister has the power

²⁰⁷ Public Safety Canada (June 16, 2011), “Special Advisor on Human Smuggling and Illegal Migration.” (Although it had been made some time earlier, this appointment was showcased again in June 2011 as part of the reintroduction of the legislation immediately after the spring election.)

²⁰⁸ Bill C-4, An Act to Amend the Immigration and Refugee Protection Act, The Balanced Reform Act and the Marine Transportation Security Act. 41st Parliament, 1st Session, June 2, 2011, also known as the *Preventing Human Smugglers from Abusing Canada’s Immigration System Act*.

to designate such arrivals as “irregular” (e.g., groups of three or more arriving together could be deemed irregular). The point was to empower the Minister of Public Safety to invoke a wide new range of measures designed to increase the difficulty faced by an “irregular” either to enter the country or to achieve Convention refugee status.

Continuing the law-and-order focus, Bill C-4 included components such as:

implementing “better tools” to successfully prosecute and imprison human smugglers; halting the erosion of “Canada’s generous program for refugee resettlement” by human smugglers who abuse the system; deterring individuals from coming to Canada as part of a human smuggling operation; and “protecting our streets and communities” from criminal and national security threats.²⁰⁹

Far from exhibiting ambivalent tendencies about providing refuge versus protecting the Canadian public from potential terrorists, the latest legislation placed the entire issue squarely within the national security regime that was joined to a crime-fighting, law-and-order agenda.²¹⁰ In June 2011, Vic Toews, Minister of Public Safety and Jason Kenney, Minister of Citizenship, Immigration and Multiculturalism, together reiterated their commitment to preventing “abuse of Canada’s immigration system” by tackling human smuggling:

The government continues to be absolutely clear. Human smuggling is a despicable crime and any attempts to abuse Canada’s generosity for financial gain will not be tolerated ... we are sending a clear message that our doors are open to those who play by the rules – including all legitimate refugees. However, we will crack down on those who

²⁰⁹ *LegisInfo*, Bill Details, June 2, 2011.

²¹⁰ Bill C-4, *Preventing Human Smugglers from Abusing Canada’s Immigration System Act* (introduced in early 2010; died on order paper when election was called; reintroduced by majority Conservative government in June 2010); and *Balanced Refugee Reform Act* came into force June, 2012.

endanger human lives and threaten the integrity of our borders (Public Safety Canada Media Release, June 16, 2011).

Advocacy groups, particularly the Canadian Council for Refugees, did not regard this new policy regime as opening doors to legitimate refugees but as declaring a “war on refugees” (quoted in Brennan and Keung 2010).²¹¹

In keeping with the Conservative government’s strong law-and-order agenda, the lead minister on the new legislation continued to be Vic Toews, Minister of Public Safety, and the measure was supported by the Minister of Citizenship, Immigration and Multiculturalism, Jason Kenney, who made this statement:

Canadians gave us a strong mandate to prevent the abuse of our generous immigration system. Canadians have told us this abuse of our generosity is a real problem that must be stopped. Canada is a compassionate nation of immigrants with a proud history and tradition of welcoming refugees. At the same time, every sovereign country has a responsibility to protect its borders, and no Canadian thinks it’s acceptable for criminals to abuse Canada’s immigration system for financial gain.²¹²

In these remarks in support of Toews’ initiative, Kenney invoked the by now common framing of refugees as criminals, and made no clear distinction between the criminal act of human smuggling and the acts of those who found themselves compelled to rely upon

²¹¹ Migration and national security remain strongly linked in the framing of refugee policy. For example, in December 2012, the Public Safety Ministry convened the latest meeting of the Cross-Cultural Roundtable on Security (established in 2008, comprised of 12 ministerial appointees from different ethno-cultural and professional groups) and reported that “this open and honest dialogue between members of the Roundtable and departments and agencies responsible for national security is vital to our ongoing work to improve immigration legislation and programs, and to enhance the safety and security of Canadians.” Clearly continuing the link between migration, immigration and national security, the Minister’s Parliamentary Secretary Candice Bergen said, “Canada continues to have one of the most generous immigration and refugee programs in the world ... the CCRS continues to play an important role in advising our Government on the impact of national security matters on Canada’s diverse society” (Public Safety Canada, News Release, December 3, 2012).

²¹² See Public Safety Canada News Release (June 12, 2011), “Government of Canada takes action to prevent human smugglers from abusing Canada’s immigration system.”

smugglers to find refuge in Canada. The new Act was positioned as anti-crime legislation designed to give border control agencies and police forces additional tools with which to prevent seaborne carriers from depositing refugees on Canadian shores, or even entering Canadian waters. As Minister Toews stated, "... we are sending a clear message that our doors are open to those who play by the rules – including all legitimate refugees. However, we will crack down on those who endanger human lives and threaten the integrity of our borders."²¹³

Even though only two "human smuggling vessels", both carrying Sri Lankan Tamil refugees, had reached Canada in the previous two-year period, the government suggested that these incursions showed the dangers posed to Canadian safety and security, and to the immigration system, by those attempting to gain asylum in this manner. No mention was made of the conditions of persecution faced by hundreds of thousands of Tamils or the fact that the majority of them had in early practice usually been granted Convention refugee status. Indeed, many of the Tamil refugees arriving in the two prior years had been released on bonds because they were found by the Immigration and Refugee Board – consistent with Convention requirements – to be eligible to apply for protection.

Citing the Canadian refugee resettlement program's overseas backlog of approximately 35,000 individuals waiting "patiently" around the world "for the chance to immigrate to Canada legally," the Ministry of Public Safety reinforced nonetheless the framing of the refugees who arrived by boat as *illegals* and therefore as inauthentic refugees not deserving of Convention protection. Thus, such arrivals were configured as

²¹³ Public Safety Canada, News Release (Ottawa, June 16, 2011), "Government of Canada takes action to prevent human smugglers from abusing Canada's immigration system."

dangerous queue-jumpers and criminals who threatened the “balance” of the refugee program while undermining the rights of authentic refugees, who were processed in a “fair and orderly fashion, consistent with our laws and values.”²¹⁴

Other official statements and background documents asserted that human smuggling was “dangerous” and “poses risks to Canada on the basis of either criminality or national security.”²¹⁵ Suspected human smuggling operations were framed as “national security threats” and the Harper government moved to cement that framing in various official statements associated with the announcement of the proposed act. For example, while the smugglers purportedly were the target of the initiative, the dominant portrayal of refugees was as persons whose identities could not be confirmed and who were, therefore, potential “security and criminal threats.”²¹⁶ Yet persons with a “well-founded fear of being persecuted” (part of the Convention definition of a refugee) who fled the dangers often had little or no opportunity to acquire identity papers. Contrary to the focus of the Convention, the presupposition underpinning this new approach was that such people were potential criminal threats and thus not eligible for obligatory protections, including the protection of *non-refoulement* – that is, protection against the risk of torture.

Bill C-4 was intended also to persuade both Canadians and Americans that Canadian borders were secure.²¹⁷ Indeed, there were indications that the Sun Sea

²¹⁴ Public Safety Canada, News Release (Ottawa, June 16, 2011), “Canada’s Generous Program for Refugee Resettlement is Undermined by Human Smugglers Who Abuse Canada’s Immigration System.”

²¹⁵ Public Safety Canada Backgrounder (June 16, 2011).

²¹⁶ Public Safety Canada, News Release (Ottawa June 16, 2011), “Protecting our Streets and Communities from Criminal and National Security Threats.”

²¹⁷ Ibbitson (2011), “On human smuggling, Tories plan to make Canada less desirable.”

incident provided a timely opportunity to demonstrate Canada's new, more extreme approach at a point when the two governments were negotiating new economic and security agreements:²¹⁸ In this context, Minister Kenney introduced a reframing of refugees who arrive by boat, connecting the sanctions under Bill C-4 to the maintenance of "continental security," or what Sedef Arat-Koc has called, "Fortress North America" (Arat-Koc 2006, 217).²¹⁹ Kenney said that the purpose of the legislation was to make Canada less desirable as a destination for migrants, clearly indicating a connection with US interests:

We're doing this for our own reasons to maintain the integrity of our immigration and refugee systems, but there is no doubt it has the added advantage of building confidence with our American friends with respect to continental security.²²⁰

On June 21, 2011, less than two weeks after first reading, Public Security Minister Toews rose in the House, with the backing of a majority Conservative government, and moved second reading of Bill C-4. In rising to sponsor the bill, Toews declared that he had "... heard from ordinary Canadians that they want our borders to

²¹⁸ On December 7, 2011, Canadian Prime Minister Stephen Harper and US President Barack Obama signed their "Beyond the Border" deal. For the US government, the priority was to ensure that Canada improved its border security. For the Canadian government, the hope was to win more concessions on measures to speed up the movement of goods and services across the border. With respect to refugee policy, the most significant provision was that the US would now be able to check whether foreign air passengers en route to the US were ever denied entry to Canada, or had sought asylum here, and to have access to biometric identification data from Canadian border security officials. See Clark (2011), "Border agreement is all about building trust."

²¹⁹ See, for example, Sedef Arat-Koc's analysis of how transnationalism of the Arab and Muslim Canadian communities since September 11, 2001 has come under great pressure in the context of deepening racialization of these groups. She argues that Fortress North America arises from the intensification of discourses on security, which she characterizes as the new racist discourse, echoing the "enemy within" discourses of World War II and the internment of Japanese Canadians, and others (Arat-Koc 2006, 218-223). In this sense, her portrayal echoes earlier portrayals of what came to be called "Fortress Europe" (see footnote 128).

²²⁰ Ibid, Ibbitson, June 16, 2011.

stay open to newcomers who play by the rules ... but firmly shut against those who would abuse our generosity, threaten the integrity of our immigration system, and pose a risk to our safety and security.”²²¹ Once again, the implicit framing of seaborne refugees was that of criminal queue-jumpers threatening to undermine Canadian sovereignty. Toews referred to the arrival of two vessels in the previous two years (the *MV Ocean Lady* and the *MV Sun Sea* – both carrying Sri Lankan Tamil refugees), linking these groups of refugees to crime by emphasizing the dangers posed by the “ringleaders of this worldwide criminal operation” in human smuggling.

Toews continued the strategy of effacing the refugees by calling them “cargo” – a term reminiscent of slave vessels. He situated the anti-smuggling initiative within the Conservative government’s law-and-order agenda, associating refugees with the threat of criminality:

Most of all, Canadians gave our government a strong mandate to continue building on our track record of making our streets and communities safer for everyone by cracking down on criminals and organized crime groups however they may operate and from wherever they may operate ... One way or another, our government would continue to stand on guard for Canada and protect the safety and security of Canadians ... [we will] keep our streets, communities, and borders safe. [...] We know that threats exist and that we must remain vigilant. We are approaching an adjournment, and, as you know, Madam Speaker, during the adjournment, we could be faced with another crisis like we faced with the *MV Sun Sea*.²²²

No one, however, was actually arrested or charged by Canadian officials with human smuggling in relation to the *Sun Sea*. Nonetheless, the government’s policy responses

²²¹ Vic Toews, Minister of Public Safety, 41st Parliament, 1st Session, Edited Hansard, No. 012, Tuesday, June 21, 2011. “Preventing Human Smugglers from Abusing Canada’s Immigration System Act.”

²²² Vic Toews, 41st Parliament, 1st Session, Edited Hansard, No. 012, Monday September 19, 2011.

served to intensify an already deeply entrenched securitization meta-frame that trumped more hospitable or humanitarian considerations, in the face of a threat that had not yet materialized.²²³

6.7 Frame Contestations: The Role of the Critics

Against the dominant securitization meta-frame, critics who opposed the new legislation attempted to frame the problem in terms of the principles of humanitarianism. Frame contestations illustrating the ineffectiveness of the old humanitarianism played out at the level of public and government debates beginning in the summer of 2010, but by that time securitization had indeed muted the resonance of dissenting voices.²²⁴ The Conservative government's promotion of more restrictive changes to legislation, nonetheless, elicited considerable public criticism, with hundreds of petitions presented to the government in opposition to the proposed legislation. Indeed, some 80 organizations nationwide registered their opposition to Bill C-4 by November 2001, including such groups as Amnesty International Canada, Canadian Muslim Civil Liberties Association, Canadian Union of Postal Workers, Centre for Race and Culture (Edmonton), *Centre justice et foi* (Montreal), Ignatius Jesuit Centre (Guelph), Manitoba Interfaith Immigration Council, Ontario Council of Agencies Serving Immigrants (OCASI), Quaker Committee for Refugees, Refugee Lawyers Association of Ontario, the Council of Canadians, and the United Church of Canada.²²⁵ Canada's leading refugee advocacy

²²³ By late 2011, more than 150 of the 492 Tamil refugees had moved to Toronto to find work and rejoin families. Most of the 492 cases were not resolved. The government asked the IRB to conduct special admissibility hearings for about 40 of the passengers who were alleged to have links to the Tamil Tigers.

²²⁴ See Nicholas Keung, 2012, "Changes to refugee system: Immigration Minister Jason Kenney lays out criteria for 'safe' countries."

²²⁵ See Canadian Council for Refugees (2011), "Organizations opposed to Bill C-4."

organization, the Canadian Council for Refugees, expressed its “profound disappointment” at the reintroduction of what they characterized as an “anti-refugee bill” (Sanders 2010).

The key government assertion that the Sun Sea passengers represented “significant security concerns” was rejected outright by a large number of non-governmental organizations and refugee advocates. For example, Ed Wiebe, a refugee assistance coordinator of Mennonite Central Committee Canada,²²⁶ said that Toews’ views were puzzling, not least because

... it is not a crime to seek asylum and no one is ineligible until their refugee claim has been assessed and denied ... whether they get here by boat, plane, or on foot makes no difference under Canadian and international refugee laws.²²⁷

Wiebe added that the government’s response was disheartening, particularly statements from the minister responsible for multiculturalism and immigration, Jason Kenney (who had initially remained silent during the furor over the landing of the *MV Sun Sea*). As Wiebe pointed out,

It is unusual for refugees to make claims in Canada ... most refugees arrive after being processed by embassies abroad [so that] Canadians don’t see the line-ups, delays, and what happens when people are rejected ... Canada prefers the “nice” refugees who wait overseas for a visa over the

²²⁶ The Mennonite Central Committee (MCC) is a widely respected humanitarian and advocacy organization that has a history of reaching out to refugees and providing settlement supports and services. For example, they responded to the 1979 arrivals of “boat people” from Vietnam by negotiating a private refugee sponsorship agreement with the federal government. Within weeks, many other faith groups had signed identical agreements with the government. Canada is still the only country with such an agreement. See MCC Canada <http://www.mcc.org>

²²⁷ Sanders (2010), “Toews’ message earns rebuke.”

“refugees at the bottom of a boat” who manage to get to Canada to claim protection.²²⁸

The interdiction operations undertaken offshore raised serious questions among advocacy groups about whether Canada was conflating the movements of legitimate refugees and human smuggling. In her earlier critique of anti-trafficking campaigns, Nandita Sharma had in fact already identified the implicit significance of the kind of goals stated by the government. She argued that the “ideological frame of anti-trafficking works to reinforce restrictive immigration practices, shore up a nationalized consciousness of space and home, and criminalize those rendered illegal within national territories” (Sharma 2003, 53). Sharma held that anti-trafficking and anti-smuggling campaigns and policy regimes actually “exacerbate the conditions that cause harm to migrants” and shore up “deeply embedded” ideas that migrants are “almost (if not) always better off at ‘home’” (Sharma 2003, 54).

During the early debates on the proposed changes to immigration legislation, the opposition parties were unanimous in their view that the government had overreacted to the arrival of fewer than 600 refugee claimants on the BC coast in a two-year period. Opposition parties shared a common view that this was an overly exclusionary measure. Minister Kenney’s response was to make it clear that he would not “water down or dilute” the bill’s goal of deterring smuggling networks. Kenney cited an Angus Reid public opinion poll in which 50 per cent of respondents supported deporting the 492 Tamil passengers on the *MV Sun Sea*. He claimed on this basis that the public is “clearly on [the government’s] side and realizes action is needed to maintain the integrity of the

²²⁸ Ibid August 28, 2010.

immigration and refugee protection system.”²²⁹ In response to critics in the House debates who asserted that the Conservative Party of Canada was implicated in generating highly racialized and contestable characterizations of the Sun Sea passengers as threats, Kenney asserted somewhat surprisingly that, “... we have this phenomenal situation where Canada is the only western liberal democracy with virtually no xenophobic or anti-immigrant voices in our public discourse.”²³⁰ Peter Showler, the former chair of the Immigration and Refugee Board, replied to Kenney’s assertion, stating in a later interview that the legislation would, in effect, create a new racialized class of refugee claimants – those arriving in groups from particular locales – who would be subject to “draconian treatment.”²³¹

The main concern expressed by many critics of Bill C-4 was that the language of the bill was broad enough to capture any group of two or more refugees who arrived together, by any means. Lorne Waldman (a Toronto lawyer specializing in immigration and refugee law) argued that any such group could be designated by the minister as an “irregular arrival” and subjected to the new provisions, including up to twelve months of detention and possible deportation. Further, according to Waldman, such lengthy detention would be unprecedented in Canadian law and could be considered arbitrary detention in breach of the 1982 Charter of Rights and Freedoms. The effect of the new

²²⁹ Norma Greenaway, October 30, 2011.

²³⁰ Quoted in Ibbitson (2011), “On human smuggling, Tories plan to make Canada less desirable.” Kenney was responding to accusations made by various refugee and human rights advocacy groups, particularly by the CCR, that the Harper government’s response to the Sri Lankan refugees was pandering to a particularly egregious, xenophobic minority public opinion that refugees were security risks and must be interdicted or deported.

²³¹ Brennan, and Keung (2010), “Tough new measures target smuggled migrants: Tories’ bill would deny permanent residency, but critics say legislation flouts Charter of Rights.”

legislation, Waldman argued, would be not to punish the smugglers (who are offshore and out of reach in any case) but to punish the refugees.²³² These views were echoed by a number of other national organizations and advocacy groups, including the Canadian Council for Refugees.

During the House debates in late 2011, the government's securitizing moves and the resulting frame contestations with refugee advocates continued as various MPs within the majority Conservative Party of Canada (CPC) framed refugees, particularly those who arrive by boat, as potential threats. For example, Mike Wallace (Conservative MP, Burlington) said that

Canadians have received a wake-up call that Canada is being increasingly targeted ... Canadians are aware now of the direct impact this criminal activity is having on our nation. Why would we bend the rules of our legal system for those who come here illegally and turn a blind eye to it?²³³

Implicit in many of the statements by the government members was the recurring distinction between "us" and "them." And by extension, anyone not one of "us," who arrived uninvited, was dangerous.

As they had before the election, opposition parties reiterated their concerns about the nature and thrust of the new legislation. For example, Francis Scarpaleggia, a Liberal member from Quebec, challenged Toews' characterization of refugees as "queue-jumpers." All opposition parties expressed their agreement with Scarpaleggia's point that, by definition and according to the government's own refugee protection policies,

²³² Waldman (2010), "New refugee legislation misses the mark: Instead of focusing on problem of human smugglers, it directs reprisals at refugees."

²³³ 41st Parliament, 1st Session, Chamber Sitting 16, Edited Hansard, No. 016, September 20, 2011.

refugees were not queue-jumpers. Jinny Jogindera Sims, an NDP member, pointed out that “the Canadian Council for Refugees is opposed to this legislation, as are Amnesty International, the Canadian Civil Liberties Association, the Canadian Bar Association, and the Centre for Refugee Studies at York University.”²³⁴ Further, many opposition members (for example, Elizabeth May, Green Party; Don Davies, NDP) argued that the focus on ships, when most refugee claimants came to Canada by air, was illogical.

Countering opposition critics, Toews responded to the humanitarian sentiments by deploying the rhetoric of security. Indeed, Toews saw as the solution the use of his new discretionary power to declare an unusual entry by plane, bus, car or any means, a “smuggling event” and thereby detain individuals for up to twelve months. The response from opposition members was one of outrage in the face of the potential for abusing such discretionary powers, which could put *any* refugee claimant at risk of up to twelve months of detention, thereby contravening the Convention and possibly Charter provisions as well.²³⁵

Judy Foote, a Liberal member, citing a number of legal scholars engaged in refugee law cases, said that the consensus was that Bill C-4 would “flagrantly violate” the Canadian Charter of Rights and Canada’s legal obligations. Asking how the government could expect refugees suffering persecution to actually “get to Canada,” Foote pressed the objection that the legislation did not meet Canada’s international obligations because

²³⁴ Ibid Sims, September 20, 2011.

²³⁵ 41st Parliament, 1st Session, Edited Hansard, No. 015, Monday, September 19, 2011.

it did not respect “the right to assimilation and naturalization, rights that are given to refugees under the UN Convention.”²³⁶

Don Davies, an NDP member, similarly spoke at length about his party’s objections to Bill C-4. He echoed the concerns of many advocacy organizations and law societies by asserting that the bill actually targeted refugee claimants who arrived by irregular means at Canadian borders, not the smugglers themselves (who were rarely identified or prosecuted). Davies particularly objected to what Toews saw as a solution: increasing the discretionary powers of the public safety minister. In the NDP member’s view, the bill was “deeply unfair to refugees” in failing “to honour obligations under Canadian and international law.”²³⁷ Davies drew attention to the provisions of already existing legislation to address human smuggling, which was punishable by life in prison, pointing out that such provisions had not deterred any smugglers. As Davies argued, under Bill C-4, “refugees would be victimized three times: first, by their persecutors; second, by their smugglers; and finally, by Canada.”²³⁸ As advocacy groups and organizations mobilized in opposition to Bill C-4, more than 100 refugee lawyers across Canada came together to form and incorporate a new group in order to intervene before the courts on national refugee issues, make submissions to parliamentary committees, carry out other public outreach and education initiatives, and generally promote challenges to the government’s treatment of refugees in Bill C-4.²³⁹

²³⁶ Ibid Foote, September 20, 2011.

²³⁷ Ibid Davies, September 19, 2011.

²³⁸ Ibid Davies, September 19, 2011.

²³⁹ Shane (2011), “Refugee lawyers form group to fight laws they say violate Charter.”

Critics of the Conservative government were clearly aware that they were engaged not simply in a debate over policy, but were also part of a rhetorical struggle in which they found themselves at a distinct disadvantage. They were at such a disadvantage because securitization meta-frame was so deeply entrenched and intensified that it offered few, if any, ambivalent moments that could become openings for serious dialogue about alternative ways to view and treat refugees. Nonetheless, the advocates persisted in their efforts. The CCR in particular objected to the undermining of “Canadian public support for refugees ... by ... damaging and misleading rhetoric.”²⁴⁰ Judy Foote explicitly countered key terms of the dominant discourse, arguing that “refugees are not ‘queue jumpers,’” “not economic immigrants” and “not criminals” – quoting, with respect to the latter point, the United Nations High Commissioner for Refugees: “it is ‘important to recognize that ... refugees are a distinct group with critical protection needs ... it is not a crime to seek asylum.’”²⁴¹

In his intervention, Francis Scarpaleggia also drew attention to a powerful “image” at the core of misleading presuppositions in the dominant discourse that underpinned the new legislation:

The bill is responding to sensationalistic images in the media of large numbers of people falling off the sides of a boat off the coast of British Columbia. That is what the bill is responding to. The bill is trying to respond to an image that has been communicated through the media. The image itself is not reflective of what is going on. It is not reflective of the complexity of the situation.²⁴²

²⁴⁰ Ibid CCR June 16, 2011.

²⁴¹ Ibid Foote, September 20, 2011.

²⁴² Ibid Scarpaleggia, September 19, 2011.

To suggest the actual complexity of the situation, Scarpaleggia had recourse to an old common sense image of refugees as people in need:

... despite the fact that these are dangerous journeys, people are so desperate that they are willing to risk everything and risk their lives to make that journey ... the question is, why are they treated like criminals when they get here ? ... [T]he wrong people are being targeted.²⁴³

However, the weakness of his image as a counter to the powerful imagery advanced by the government is a token of the entrenchment and intensification of the securitization meta-frame, which routinely serves to target those he would consider the “wrong people.” The ineffectiveness of refugee advocates in criticizing government policy under an intensified securitization meta-frame stands in marked contrast to the achievement of citizen activism under the humanitarian meta-frame in attaining the 1979-1980 admission and resettlement of 60,000 Southeast Asian refugees. It was primarily due to this achievement, as we saw in Chapter 3, that the Canadian people were awarded the Nansen Medal to recognize their contributions on behalf of the “cause of refugees.”

6.8 Conclusion

The framing of refugees as potential terrorists and national security problems is indicative of the shift to securitization and the intensification of this meta-frame in the current period of refugee politics, to the point of arresting ambivalence. Here the state has continued to frame refugees as dangerous others and to assert through elected officials and policy bureaucrats that sovereignty and national security are threatened by unwelcome and unwanted foreigners. At the same time, however, the Conservative

²⁴³ Scarpaleggia, September 19, 2011.

government did not fail to use words appealing to what can be considered a core myth of contemporary Canadian identity – that the country is welcoming and tolerant.²⁴⁴ Yet the response of critics stressed the point that, as deployed by the government, these words amounted, in effect, to lip service. The fact that the government would pay lip service to humanitarianism does not by itself undercut the entrenched securitization meta-frame or indicate ambivalence. Rather, the words thus used in a perfunctory manner served to reinforce that meta-frame. Nonetheless, even such perfunctory use suggests that vestiges of humanitarianism remain and could, in a changed context, be deployed to create ambivalence and, even, a shift to a more hospitable register.

The critics of the state's move to securitize immigration and refugee legislation recognized that they faced powerful rhetoric in attempting to counter the approach taken by the Conservative government. Critics worked hard to draw attention to specifically troubling features of the dominant discourse. However, these specific elements were themselves part of the now-dominant securitization meta-frame, within which, aided by a majority government, Harper had virtually a free hand to institute increasingly exclusionary and punitive measures. In this context, lingering elements of humanitarianism were increasingly on the way out, leaving critics little in the way of effective rhetorical resources. None of the approaches taken by critics, who framed their interventions in humanitarian terms, could penetrate the rhetorical fortress of securitization. With opponents in a weakened position, it became possible for the Harper government effectively, at least for that time, to put an end to ambivalence.

²⁴⁴ On the concept of Canadian “core myths” see, for example, Daniel Francis’ *National Dreams: Myth, Memory, and Canadian History*, 10-12.

CHAPTER 7

EPILOGUE

7.1 An End to Ambivalence?

The political history of refugee policy in Canada has unfolded, in the way I have presented it, as a contextual mapping of three distinct, though mutually constitutive, interrelated and shifting discursive frames – or, more precisely, meta-frames: humanitarianism, neo-humanitarianism, and securitization. Because of the interrelated character of the meta-frames, there are difficulties in mapping the periods associated with them in precise chronological terms. Nonetheless, I have associated them with three periods, quite broadly, beginning with humanitarianism in the inter-War years and the post-World War II period; shifting to neo-humanitarianism by the mid-1980s in connection with the rise of neoliberalism; then shifting again, beginning in the 1990s, to securitization. The securitization meta-frame, further entrenched and intensified, now dominates Canadian refugee policy.

My approach has involved a deliberate shifting of perspectives – from broad, contextual characterizations to the specificities of a situation or event, and back again. In effect, this is part of what it means to do contextual mapping in policy studies (Torgerson 2006, 20). Stressing the historical character of contextual mapping, what I have presented has its focus on the past. Even though it makes no predictive claims, the

mapping does, in the end, suggest two possible futures. The first is a future in which securitization remains permanently entrenched²⁴⁵; the second is one in which events destabilize its basic presuppositions and open up the possibility for a more hospitable approach to refugee policy. A further consideration of contextual mapping is needed to clarify the significance of these two possibilities.

Ideally, contextual mapping aims to be comprehensive, to fully map the complete context (Torgerson 2006, 20). However, as I have indicated,²⁴⁶ this goal is clearly impossible due to the complexity and scope of the context. The problem is compounded by the fact that the context is, as well, always undergoing change. As the context is thus historical, so contextual mapping involves historical models – or developmental constructs (Eulau 1958; Torgerson 2013). The creation of a developmental construct must look to “historical trends” of the past, but points beyond that, “formulating the image of a future that can be anticipated, but not predicted . . .” (Torgerson 2006, 20). Imagination, then, is part of the creation of a developmental construct, which thereby remains necessarily speculative. However, since “imagination is not to run counter to the evidence,” it is important to distinguish between two types of development constructs: those “that are deemed probable and ones that are thought preferable” (Torgerson 2006, 20). With respect to the two particular possibilities I suggested above, the permanent entrenchment of securitization would appear “probable” while the prospect of destabilizing securitization to allow for greater hospitality in refugee policy would (in my view) be “preferable.” The possibility of this preferable future depends on the return of ambivalence.

²⁴⁵ The image of a securitized future recalls Lasswell’s famous image of a “garrison state” dominated by “specialists on violence” (1941), his first formulation of a developmental construct.

²⁴⁶ See Prologue, §III.

Ambivalence played a key role throughout the development of Canadian refugee policy, as indicated in my contextual mapping. At the national level, ambivalence was important in refugee policy making because the state, while primarily concerned with a certain understanding of the national interest, found itself faced with internationally-recognized humanitarian goals that call for the country to extend benevolent hospitality or, at least, to share the burden of refugees. Ambivalence was evident under the humanitarian meta-frame and to a lesser extent under neo-humanitarianism. With the entrenchment and intensification of the securitization meta-frame, however, has ambivalence permanently ended?

In a particular sense, it may well be that ambivalence, as we have seen earlier (Chapter 1), is ultimately inescapable because it is something that is inherently unsettling to modern administration, especially when officials are focused on border control: the figure of the “alien” being “neither friend nor enemy” – though possibly “both” – can be seen to constitute “the embodiment of ambivalence” (Schiel 2005, 79). The concept of a meta-frame that I have proposed is one that, in any case, involves tendency, rather than fixed identities. Conceptually, then, the very idea of a meta-frame here would seem to rule out an end to ambivalence. That said, tendencies can be very strong and enduring, as we have seen. To address the question of an end to ambivalence in more practical terms, we need to return to frame contestations and the historical context.

7.2 Ambivalence and the Politics of the Frame

While a definition of refugee is set out in international law in the 1951 UN Convention and, formally as of 1978, in Canadian law, the image of refugee as it has circulated in official and discourses has exhibited many contradictory meanings. State

and public framings of the refugee are mutually constitutive formations that both shape and are shaped by the tensions across a spectrum of framings. There is no clear and generally accepted answer to the question, *what counts as a refugee?* The category of refugee remained highly contested and was framed in a multiplicity of ways throughout the twentieth and into the twenty-first centuries, in different political contexts and through both state institutions and political parties holding power. Frame contestations have typically arisen in the politics of Canadian refugee policy when refugee advocates have challenged state practices and dominant framings in attempts to promote a more hospitable policy orientation. Ambivalent tendencies can open up the possibility for such contestations in the politics of the frame.

Framings become entrenched partly through the political demands of the government in power, and partly through the entrenchment of accepted practices within administrative structures that support these approaches and framings. Policy bureaucrats have a stake in maintaining these formations; thus, the dominant framings can and do outlive the tenure of political parties. It is possible for elected governments to change frequently while the state continues to function – bureaucrats typically serve to maintain the *status quo* in terms of policy and administrative functions. It can thus prove difficult for advocacy groups to influence the direction of ambivalent tendencies, even during periods of relative uncertainty arising from a change in governing party, in order to contest the prevailing direction and to promote a more hospitable approach.

Throughout the twentieth century, pragmatic approaches tended to dominate the state's response to unwanted arrivals, and these approaches generally operated in ambivalent tension with the stated humanitarian benevolence of official policy. The

recurring deployment of discretionary powers by cabinet ministers and senior officials characteristically appeared, together with ambivalent framings of the refugee, in a crisis management mode, as *ad hoc* solutions to emergent problems, or contingencies. Indeed, a common pattern in Canadian refugee policy has been the deployment of informal as well as formal, discretionary powers, along with the portrayal of unwelcome arrivals as national crises – thereby enhancing the legitimacy of *ad hoc* approaches and discretionary measures as means of dealing with the burden of the refugee. Ambivalent tendencies were evident in the periods dominated by the humanitarianism and neo-humanitarianism meta-frames, and these tendencies offered opportunities for refugee advocates to attempt to shift exclusionary practices to a more hospitable register. However, as neo-humanitarianism was shifting to securitization in the 1990s, and ambivalence waned significantly, opportunities to effect change were rare for refugee advocates.

7.3 Beyond Securitization?

The contextual mapping of Canadian refugee policy that I have presented is situated within a larger historical perspective beginning in the early years of Confederation, long before the concept of refugee became enshrined in Canadian law. This perspective shows that official policy framings have persistently portrayed foreign others as problematic. During the period of the Holocaust, the Canadian state struggled to balance the forces of humanitarian benevolence with the political exigencies of an interest in ensuring national unity. Mackenzie King, in particular, can be seen as the embodiment of this ambivalence as he confronted calls to admit European Jewish refugees fleeing the Nazi regime. In the post-World War II period, a new international refugee protection regime was established under the 1951 Convention. Canada, however,

did not formally accede to the Convention until 1969, and was not moved to formalize guarantees of safety and sanctuary for refugees fleeing persecution and violence until 1978, when a new immigration act was proclaimed.

From 1978 onward, the humanitarianism underpinning the Convention found voice but not necessarily substance in Canadian juridical and policy frameworks respecting refugee protection. The kind of ambivalent and *ad hoc* approaches to refugees during the Holocaust era were institutionalized during the Cold War period in refugee policy regimes that worked both to meet international refugee protection standards and, at the same time, to keep refugees from actually reaching Canadian borders. This ambivalence contributed to shifts in meta-frames, beginning in the late 1970s.

Broadly speaking, questions of border control and state sovereignty came to dominate refugee policy discourses, but the highly contestable concept of the refugee remained the focus of a two-track policy mandate that was both inclusive and exclusionary. With neoliberalism, refugee policy ambivalence began to fade and the Convention definition of a refugee was interpreted in increasingly narrow terms. Neo-humanitarianism became dominant – with its criminalization of the figure of the refugee and its growing emphasis on interdiction and deportation as ways of preventing altogether the arrival of refugees.

The periods of the Holocaust and of the attacks on the US of September 11, 2001 can be noted as key events in the development of Canadian refugee policy. Foreign others were framed during both periods of crisis as threats – first to national cohesion, then to national and international security. The effect in both periods was to legitimize exclusionary and discretionary policy responses that frequently put at risk already

vulnerable refugees. In both cases, a conception of the national interest prevailed over the cause of refugees.

In the 1990s, long before the attacks of September 11, 2001, new manifold and interrelated bureaucratic structures were established in the Canadian state, combining security, immigration, and foreign relations (particularly with the United States) to consolidate and coordinate policy responses to the dangerous refugee. Despite the efforts to deal with the burden of the refugee, late twentieth century immigration and refugee policy was unable to provide effective, consistent systems of sufficient control or predictability from the perspective of state officials. By the end of twentieth century, securitization in Canadian immigration and refugee policy had unfolded through recurring periods of informal, then institutionalized, discretionary powers and incremental policy changes.

The shift to securitization in the decade before September 11, 2001 thus represented a new and more comprehensive approach by state security policy-makers. Securitization not only linked security threats to the arrival of refugees, but also established new, specific links of immigration and refugee policy with national security, crime prevention, intelligence-gathering, and anti-terrorism. Although the seeds of post-September 11, 2001 securitization were sown in Canada long before the 1990s, that crisis intensified the particular focus on refugees as potential criminals and terrorists.

As ambivalence waned with the advent and entrenchment of the securitization meta-frame, so too did the influence of refugee protection advocates. In the post-September 11, 2001 period, as during the Holocaust years, the Canadian state denied access to particular groups of refugees. The reasons were similar. In both periods,

particular classes of refugees were constituted as significant threats to the sovereignty, safety, and security of Canadian society. Ambivalent tendencies had influenced the Prime Minister's thinking during the Holocaust. After the election of the Conservative majority government in the spring of 2011, policy ambivalence appeared to come to an end. More generally, in other words, as the refugee policy regime became increasingly securitized, ambivalence waned, and there was little opportunity for refugee advocates to destabilize the dominant meta-frame.

The seeds of securitization, as we have seen, were planted long before the current period. This can be observed not only in the tendencies of the earlier neo-humanitarian meta-frame and in the emergence, entrenchment, and intensification of the securitization meta-frame since the 1990s, but also in how the ambivalence of the humanitarian meta-frame often played out much earlier – particularly, as we have seen, in the way Jewish refugees during the Holocaust were characterized and denied refuge. The President of the Canadian Civil Liberties Association, Wanda Yamamoto, referring in 2011 to legislation designed to forestall unwelcome events like the seaborne arrival of the Tamil refugees, in fact drew attention to a key reason for establishment of the 1951 UN Convention: “We are celebrating this year the 60th anniversary of the refugee Convention, but instead of honouring this treaty, the government is proposing to violate it.” She continued, “Let us not forget that the Convention was adopted because many countries, including Canada, had closed their doors on Jewish refugees fleeing the Nazis, and we said, ‘Never again!’” (quoted in statement by the Canadian Jewish Political Affairs Committee, September 30, 2011). The Canadian Jewish Political Affairs Committee, indeed, released a statement in 2011 that drew parallels drawn between the treatment of refugees in the proposed

legislation and the response by the Canadian government to the Jewish refugees on board the *SS St. Louis* in 1939. This connection was also drawn by the Canadian Civil Liberties Association in its plea to the government not to repeat the mistakes of the Holocaust era.

The way the state responded to the seaborne Tamil refugees was not unlike the way the state had responded to the attempts by seaborne Jewish Holocaust refugees to land in Canada. In each case, albeit for different reasons and in different contexts, the refugees were framed as dangerous foreign others. A key difference, though, is that during the Holocaust, under the humanitarian meta-frame, policy ambivalence troubled decisions to deny entry to refugees in order to meet perceived demands of the national interest. In 2011, under the securitization meta-frame, ambivalence gave way to official certainty in the perceptions of the refugee as a potential criminal, or even a terrorist.

Contextual mapping, as I mentioned earlier, aims to be comprehensive, but is always and necessarily incomplete. For example, I have noted an increased emphasis on exclusionary refugee policies and practices during times of economic downturn.²⁴⁷ The scope and intensity of exclusionary practices appear to increase during such times, along with the legitimate deployment of *ad hoc* discretionary powers. At the same time, policy changes toward increased exclusionary practices seem to be accompanied by a shift from greater to lesser influence by advocacy groups. A fuller elaboration of developmental constructs focused on future prospects, whether in terms of probability or preference, would call for contextually mapping the economic dimensions of the question. Focusing on future prospects would also require greater attention to mapping other patterns affecting refugee movements, such as those of racially-based exclusion that, as I have

²⁴⁷ See for example, Avery, 1979, 1995; Abu-Laban and Gabriel 2002; Baaba 2004; Bohmer and Shuman 2008; Folsom 2004; Henry and Tator 2010; Hier and Greenberg 2002; Kelley and Trebilcock 2002; Roy 1989; Simmons 1998; Struthers 1983; Thobani 2000; Whitaker 1987, 1991, 1998, 2002).

indicated earlier, have been traced by others in the development of Canadian policy, but are not addressed in detail by this analysis.

Because of its reflexive character, there is a “twist” in the practice of contextual mapping that serves to complicate the sharp difference posed between models of probability and preference in formulating developmental constructs (Torgerson 2006, 20). Contextual mapping is meant to orient practice in an historically developing context. In that regard, the very formulation of future possibilities is an act that has at least the potential to influence practice and future developments. This point underscores my earlier contention that writing this dissertation is a political act. The continued entrenchment of the securitization meta-frame appears probable, but this does rule out the possibility of a more preferable alternative. In fact, merely posing this prospect and identifying problems facing it has the potential to inform efforts to achieve a different future.

As we saw, refugee advocacy groups were ineffective in their efforts to obstruct the intensification of securitization in response to the 2011 case of the Tamil refugees. In a sense, this ineffectiveness repeats an old story, in which considerations of national interest have checked tendencies toward humanitarian benevolence. Yet, under intensified securitization, even such ambivalence seems to be arrested as the discourse of securitization presupposes a narrowly conceived national interest. It is worth recalling that this was not always the case. Vestiges of an image of Canada as a caring and welcoming country persist and are still invoked by refugee advocates – indeed, are even given lip service by proponents of intensified securitization. The most dramatic episode in which we saw this image come to the fore was in 1979-1980 when citizen activism

prompted the government to accept and resettle in Canada 60,000 refugees. It was primarily because of this achievement that the people of Canada were awarded the Nansen Medal for their contribution to the cause of refugees. At that juncture, the national interest came to be understood, at least in part, as calling for benevolent practices toward refugees.

Under an entrenched and intensified securitization meta-frame, refugee advocates act within a context where the understanding of the national interest has narrowed and where national security prevails over humanitarian benevolence in the politics of the frame. Nonetheless, a contextual mapping that draws attention to the politics of the frame highlights the importance for refugee advocacy of being aware of its rhetorical resources as part of engagements that challenge the dominant meta-frame. Indeed, persistent struggles by refugee advocacy groups, alert to the problems posed by government rhetoric and at least implicitly aware of the significance of frame contestations, suggest that the framing might still at some point – perhaps in connection with contingent events – shift into a more hospitable register.

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APPENDIX

HIGHLIGHTS OF IMMIGRATION AND REFUGEE POLICY DEVELOPMENT IN CANADA²⁴⁸

Early Years

- 1885 *Chinese Exclusion Act* – set “head tax” and grounds for subsequent increases in this tax on Chinese immigrants
- 1906 *Immigration Act* proposed – “to enable the Department of Immigration to deal with undesirable immigrants” (Frank Oliver, Minister of the Interior, 1906); established categories of “prohibited immigrants, established legal authority to deport immigrants on grounds of, for example, becoming a public charge, insanity, infirmity, disease, or “moral turpitude”
- 1908 Order in Council – imposed “continuous journey” rule
- 1908 *Chinese Exclusion Act* amended to narrow exceptions
- 1910 *Immigration Act*, S.C. 1910, c.27 – increased discretionary powers to regulate immigration through Orders in Council; to extend grounds for deportation

World War I Years

- 1914 *War Measures Act* – conferred wide powers to arrest detain and deport “enemy aliens”
- 1917 *Wartime Elections Act* – disenfranchised all persons from “enemy alien” countries who had been naturalized since 1902
- 1919 *Immigration Act* Amended – added new grounds for denying entry and ensuring deportation (e.g., constitutional psychopathic inferiority, chronic alcoholism, illiteracy); Cabinet powers increased in order to exclude classes of immigrants because of their “peculiar habits, modes of life and methods of holding property”
- 1922 Order in Council issued to exclude “any immigrant of Asiatic race” except agriculturalists, farm labourers, female domestic servants, and wives/children of persons legally in Canada (“Asia” included Turkey and Syria)
- 1923 “Preferred countries” policy to encourage immigration from Britain, the US and selected European countries (except the Baltic States and Southern European countries)
- 1923 *Chinese Immigration Act* – increased prohibitions on Chinese immigration, but established an “investor class” of desirable Chinese immigrants

Great Depression Years

- 1930 Order in Council prohibiting the landing of “any immigrant of any Asiatic race”
- 1936 Immigration became part of Department of Mines and Resources

²⁴⁸ Source: Canadian Council for Refugees, “Chronology Focusing on Refugees and Discrimination.” <http://ccrweb.ca/history.html> [4 February 2011]

- 1938 Response to refugee crisis in Europe – applied general admissibility policies under the Immigration Act; all others denied entry to Canada (including Jewish refugees fleeing the Holocaust)

World War II Years

- 1940-
1945 Focus on interning “enemy aliens”; prohibiting arrivals from outside Canada, family sponsorship of immediate family members, Canadian Citizenship Act (1946)
- Post-
War Displaced Person movement
- 1947 Mackenzie King: “the people of Canada do not wish, as a result of mass immigration, to make a fundamental alternation in the character of our population. Large-scale immigration from the orient would change the fundamental composition of the Canadian population.” (1 May 1947, Statement in the House of Commons)
- 1947 Chinese Immigration Act repealed

Post-War/Cold War Years

- 1950 Department of Citizenship and Immigration established
- 1950 Order in Council revised immigration selection categories; gave wide discretion for refusing various categories; decisions remained highly racialized
- 1951 *Geneva Convention Relating to the Status of Refugees* adopted – Canada did not sign; RCMP (charged with national security issues) argued that it would restrict Canada’s ability to deport refugees on security grounds
- 1952 *Immigration Act*, R.S.C., c. 325 – Proclaimed one month after being introduced – gave additional, substantial discretionary powers to Minister and officials over selection, admission, and deportation; refugees and immigrants could be refused admission on a range of grounds including geographical area of origin, “peculiar customs, habits and modes of life,” “unsuitability with regard to the climate, probable inability to assimilate, and so on; Act provided for immigration appeal boards
- 1956 Supreme Court ruled that arbitrary exercise of discretionary powers exceeded the provisions of the Immigration Act
- 1956 Order in Council issued to divide immigrant producing countries into categories of preferred status
- 1956 Public pressures resulted in admission of more than 37,000 Hungarian refugees fleeing the Soviet Union’s crushing of the Hungarian uprising
- 1956-
1959 Various initiatives proposed to overhaul immigration act; none succeeded
- 1959 World Refugee Year (Canada admitted 325 refugees with tuberculosis – first time health prohibitions were waived)

- 1960 Chinese Adjustment Statement Program – to curtail illegal entry of Chinese refugees and immigrants; implemented amnesty and naturalized nearly 12,000 Chinese immigrants by 1970
- 1962 Immigration Regulations (Minister of Citizenship and Immigration Ellen Fairclough) – removed most racial discrimination from selection criteria
- 1966 White Paper – argued need for national consensus on immigration; none was found
- 1967 Inauguration of the points system; visitors given right to apply for landed immigrant status while in Canada
- 1967 Immigration Appeal Board established
- 1967 Some provinces agreed to admit 50 refugees with disabilities
- 1968 Czech refugees admitted, fleeing invasion by Warsaw Pact troops
- 1968 Biafran refugees were allowed to extend their stay
- 1969 Canada acceded to the Convention
- 1970 Refugee selection became major issue: in the Immigration Department’s annual report, “under our resettlement program, refugees considered capable of successful establishment may be selected regardless of their inability to meet immigration assessment norms.”
- 1970-
- 1972 Thousands of US war resisters (“draft dodgers” and deserters) found refuge in Canada
- 1972 Ugandan Asians refugees admitted to Canada under special arrangements
- 1972 Right to apply for immigrant status while in Canada was revoked
- 1973 Chilean refugees denied and delayed access to refuge in Canada (compared to the Hungarians, Czechs, and Ugandan Asians)
- 1976 special measures to admit Lebanese refugees (introduced again in 1982)
- 1976 *Immigration Act*, S.C. 1977-77, c. 52 – created Refugee Status Advisory Committee, removed variety of prohibitions based on age, gender, ethnicity, etc.; revised the points system, and created the Private Sponsorship of Refugees Program
- 1979 Three categories of refugees designated by regulation to facilitate resettlement, provided people met the criteria: Indochinese, Latin American Political Prisoners and Oppressed Persons, and the East European Self-Exiled Persons
- 1979-
- 1980 Refugees from Vietnam, Laos, and Cambodia were resettled – popular humanitarian response to the “boat people” – forced government to adjust upward its initial commitment to settling these refugees
- 1982 *Canadian Charter of Rights and Freedoms, Part I of the Constitution Act*, 1982, c. 11.
- 1984 Key reports on immigration practices and refugee status determination were issued (between 1981-1984) that connected immigration and refugee policy with national security (the “Robinson Report”, the “Ratushny Report”, and the “Plaut Report”)
- 1984 *Canadian Security Intelligence Service Act, R.S.C., c. C-23* – created CSIS, transferred responsibility for security aspects of immigration from RCMP to new agency

- 1985 Singh Decision – recognized rights of refugee claimants to fundamental justice
- 1986 Nansen Medal awarded to people of Canada by UNHCR
- 1986 Administrative review of backlog of refugee claimants
- 1987 Refugees turned back if they arrived from the US
- 1987 Bill C-55 tabled – revised refugee determination system, created Immigration and Refugee Board; instituted “credible basis test” and “safe third country rule”
- 1987 Arrival of boat load of Sikh refugees by boat in Nova Scotia triggered emergency recall of Parliament; tabled Bill C-84, Refugee Deterrents and Detention Bill
- 1988 Safe third countries provision not enacted; special programs launched to clear refugee claimant backlog
- 1989 *Two Acts to Amend the Immigration Act, 1976* – Bill C-55 (Refugee Deterrents and Detention Bill), S.C., c. 35 and Bill C-84 (Refugee Reform Bill) S.C., c. 36 came into effect on 1 January 1989
- 1989 After Tiananmen Square massacre, regulations relaxed somewhat for a few Chinese immigrants and refugees

Post-Cold War Years

- 1990 East European Self-Exiled Class was eliminated
- 1992 *An Act to Amend the Immigration Act 1976, and to Amend Other Acts in Consequence Thereof*, S.C., c. 49 (Bill C-86) – proposed revisions to refugee determination system – eligibility determinations transferred to immigration officers; introduced fingerprinting, harsher detention provisions, new grounds for inadmissibility; requirement for Convention refugees applying for landing in Canada to have passport, valid travel document, or “other satisfactory identity document”
- 1993 Bill C-86 proclaimed
- 1993 Canada’s Immigration and Refugee Board issued Guidelines on Women Refugee Claimants fearing Gender-Related Persecution (Canada was first country to issue such guidelines)
- 1993 Conservative Government transferred Immigration Department to Department of Public Security
- 1993 Newly elected Liberal Government transferred immigration department to Citizenship and Immigration Canada
- 1994 Deferred Removal Orders Class announced allowing applications for landing from refused refugee claimants who had not been removed after three years – aimed at resolving situation involving 4,500 Chinese claimants waiting in limbo
- 1995 Right of Landing Fee (a new form of Head Tax) introduced (\$975 per person)
- 1995 *An Act to Amend the Immigration Act and the Citizenship Act and to Make a Consequential Amendment to the Customs Act*, S.C., c. 15 (Bill C-44) (the “Just Desserts” bill) – restricted access to appeal for permanent residents facing deportation (an anti-crime measure)
- 1997 Undocumented Convention Refugees in Canada Class introduced – allowed some refugees with “unsatisfactory” ID to become residents but imposed five-year wait from refugee determination

- 1997 Humanitarian Designated Class enacted to enable selection of refugees from countries not previously on published list of admissible refugees
- 1998 Consultations on new Immigration Act began
- 1998 Efforts to establish a Memorandum of Understanding with the US and to designate the US as a “safe third country” were abandoned in face of strong public and advocacy pressures
- 1999 White Paper, “Building a Strong Foundation for the 21st Century” was released – proposed significant changes to immigration and refugee legislation
- 1999 Canada accepts Kosovar refugees from Macedonia
- 1999 Chinese refugees arrive by boat (first of four arrivals that summer) sparking intense public hostility to admission of “boat people” – most refugees were kept in long-term detention and some were prevented from making refugee claims
- 2000 Right of Landing fee rescinded for refugees, but maintained for immigrants

Post-September 11, 2001

- 2001 Bill C-11, *An Act respecting Immigration to Canada and the Granting of Refugee Protection to Persons who are Displaced, Persecuted, or in Danger* (Immigration and Refugee Protection Act) 1st Sess., 37th Parl., S.C., c. 27
- 2001 *Anti-Terrorism Act*, c.41
- 2001 Immigration and Refugee Protection Regulations, S.O.R/2002-227
- 2001 *Bill C-36, An Act to amend the Criminal Code, the Official Secrets Act, the Canada Evidence Act, the Proceeds of Crime (Money Laundering) Act and other Acts*, and to enact measures respecting the registration of charities, in order to combat terrorism, 1st. Sess., 37th Parl., (*Anti-Terrorism Act*), c. 41
- 2002 Bill C-17, *Public Safety Act*, S.C., c. 17
- 2005 Bill C-49, *An Act to amend the Criminal Code* (trafficking in persons) came into force on November 25, 2005
- 2010 Regulations Amending the *Immigration and Refugee Protection Regulations under Section 25 of the Immigration and Refugee Protection Act*
- 2010 Bill C-11, *Balanced Refugee Reform Act* receives Royal Assent June 29, 2010 – provisions related to asylum system, humanitarian and compassionate and temporary resident provisions enacted immediately
- 2010 Bill C-4, *Preventing Human Smugglers from Abusing Canada’s Immigration System Act* (introduced in early 2010; died on order paper when election was called; reintroduced by majority Conservative government in June 2010)
- 2012 *Balanced Refugee Reform Act* to come into force June, 2012.
- 2012 *Immigration and Refugee Protection Act* (IRPA), S.C. 2001, c. 27. Department of Justice Consolidation Current to November 25, 2012; last amended on August 15, 2012.