Examining the “Illegitimate” Refugee Label: A case study
of Roma Refugee Claimants in Canada, 2008-2009

by

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A thesis submitted to the Faculty of Graduate and Postdoctoral
Affairs in partial fulfillment of the requirements for the degree of

Master of Arts

in

Anthropology

Carleton University
Ottawa, Ontario

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Your file *Votre référence*
ISBN: 978-0-494-83169-4
Our file *Notre référence*
ISBN: 978-0-494-83169-4

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Abstract

This thesis examines the 2008-2009 influx of Czech Roma refugee claimants to Canada and the subsequent visa imposition onto the Czech Republic by the Canadian government in 2009. It illustrates the increasing dichotomization of the refugee label into “genuine” and “illegitimate” refugees, with Roma being designated primarily as “illegitimate” by the Canadian government. This project explores relationship between governments and refugee claimants by using the Czech Roma refugee claimants as a case study. It uses literature on the cultural politics of refugees, negotiated citizenships, represented communities and border politics to analyze the portrayal of Roma by the Canadian government and advocates in the media, the refugee producing situations developing in the Czech Republic and Hungary and a 2009 Immigration and Refugee Board fact-finding mission to the Czech Republic.

Acknowledgements

First I would like to thank my committee for supporting this project and for providing such wonderful guidance throughout the entire process. Dr. Blair Rutherford and Dr. Daiva Stasiulis, you have both shown me immense patience, guidance and faith that this project was worth perusing and that I truly had something unique and interesting to contribute. This thesis was enhanced greatly through long discussions and insightful observations on behalf of the both of you and I really enjoyed hearing your ideas and incorporating them into this thesis. I would also like to thank my external examiner, Dr. James Milner, for contributing your own expertise and providing insightful feedback on this thesis. Special thanks to Dr. Pauline Aucoin for listening and for providing guidance through all the rough patches.

This thesis was guided in the right direction due to my interviews with Paul St. Clair from the Roma Community Centre in Toronto and Ronald Lee. Ron, my interview and discussion with you in Hamilton was one of the highlights of my academic career. Thank you for sharing your cultural heritage, life stories and wonderful work with me. You provided the spark which ignited my passion for this topic. I would also like to thank the hundreds of Roma refugee claimants who inspired the work of this thesis.

I am very much appreciative to Caryl Patrick, Jenny McKenzie, Kelly Karpala and Leanne Davis from my cohort who helped me with lodgings during field work, working through multiple ideas and phases of this project, editing and for being such great friends throughout the entire process. Special thanks goes to Stacey Loyer for providing an open ear, editing and proof reading numerous drafts and for letting me talk out my problems over many a coffee. Thanks to Heather Igloliorte for providing an amazing work space during the last phase of thesis writing and for being a great support and friend throughout the entire process. In particular, I would like to thank one of my oldest and dearest friends Diana Anton, without you I would have given up long ago. Thank you for motivating and encouraging me to continue on and for picking me up off the ground when I needed it most.

I would like to thank my parents, Susan Henney and Stanton and Celia Conway for their support throughout this stage of my life. It was a long journey and without the three of you I would never have made it this far. I would also like to extend my gratitude to Lorne Holyoak, Lisa Hansen and Nelle Holyoak for providing me with a second family to whom I can always look for reassurance and support.

And last but not least I would like to thank the love of my life, Murray Leeder. Words cannot express how much you mean to me. I never would have completed this thesis without the unwavering support and love you have provided me over the past three and a half years. You have always believed in me and encouraged me to push forward throughout all the hardships and for that I am forever grateful.

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List of Acronyms

AI – Amnesty International
BRRA – Balanced Refugee Reform Act
CBC – Canadian Broadcasting Corporation
CCR – Canadian Council for Refugees
CERD – Committee on the Elimination of Racial Discrimination
CIC – Citizenship and Immigration Canada
DSSS - Dělnická strana sociální spravedlnosti (Worker’s Social Justice Party)
ECHR – European Court of Human Rights
ECRI – European Commission against Racism and Intolerance
ERRC – European Roma Rights Centre
EU – European Union
FIGO – International Federation of Gynecologists and Obstetrics
HCLU – Hungarian Civil Liberties Union
IAB – Immigration Appeal Board
ICRR – Inter-Church Committee for Refugees
IRB – Immigration and Refugee Board
IRO – International Refugee Organization
IRPA – Immigration and Refugee Protection Act
MCC- Mennonite Central Committee
MSG – Minority Self-Government
NDP – National Documentation Package
RCC – Roma Community Centre
RCO – Refugee Claims Officer
RDD – Refugee Determination Division
RSAC - Refugee Status Advisory Committee
SEL – Socially Excluded Localities
SHAEF – Supreme Headquarters Allied Expeditionary Force
SPD – Security Police Department
UCRCC – Undocumented Convention Refugees in Canada Class
UN – United Nations
UNHCR – United Nations High Commissioner for Refugees
UNRRA – United Nations Relief and Rehabilitation Agency

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CHAPTER ONE: INTRODUCTION

This thesis contributes to and draws upon the growing literature on the cultural politics of refugees (for prominent examples see Malkki 1992, 1995a, 1996; Macklin 2005; Ong 1996; Zetter 2007). Through an analysis of government and advocate perspectives related to the representation of Roma refugee claimants in Canada, I examine the different representations of this refugee category. In so doing, I highlight the way in which the label “refugee” can become a moral category aimed at placing blame on potential claimants. This thesis uses the example of the public debate in 2009 over Roma refugee claimants as a case study to show that Canada’s immigration system is moving toward a more conservative and restrictive immigration policy through the de-legitimation of refugee claimants and the use of interdiction methods (imposing visas) on countries with suspect refugee claimants (such as the Czech Republic).

Since the creation of the label “refugee” after World War II, humanitarian organizations have been the moving force behind the early refugee movement, such as the United Nations High Commissioner for Refugees (UNHCR). In the past ten to fifteen years, however, a bureaucratization of the refugee label has taken place. Governments and states have become the prime movers behind defining the refugee. As such, a dichotomy of the refugee label has erupted between “real” or “genuine” refugees and a set of labels that connote illegitimacy, including “bogus refugees,” “queue jumpers,” and “economic migrants.” This fractioning is inherently political. As Zetter argues:

In *transforming* the refugee label, governments in the global ‘north’, rather than NGOs as in the past, are now the pre-eminent agency; and the refugee label has become *politicized*, on the one hand, by the process of bureaucratic fractioning which reproduced itself in populist and largely pejorative labels whilst, on the other, by legitimizing and presenting a wider political discourse of resistance to

refugees and migrants as merely an apolitical set of bureaucratic categories.
[Zetter 2007:174; emphasis in original]

Zetter argues that the label is being fractioned to create copious refugee sub-labels, and that this breakdown creates easier ways for state officials and media commentators to dismiss refugee claimants on grounds that they fit into one of these refugee sub-labels but are not, in fact, “legitimate.” The fracturing of the refugee label is a product of the bureaucratization of the system.

Alternatives to the “Refugee” Label

The official legal definition of who is and is not a refugee has not changed much in the past sixty years. It is still based on the 1951 Convention and 1967 Protocol, which states that a refugee is:

A person who 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. [Article 1A. UNHCR]

However, much has changed regarding how this definition is applied and to whom it is applied, with new categories of individuals being added to the mandate of the global refugee regime since the 1970s. Despite the international legal definition of a refugee new labels have been developed, mostly by governments and states that aim to exclude people from this category. The list of “refugee labels” is a strikingly dichotomized one: the “genuine,” “real” or “true” refugee versus the “economic migrant,” “economic refugee,” “scam artist,” “bogus refugee,” “real victim of persecution,” “queue jumper,” “legitimate refugee,” “asylum seeker,” “illegal refugee,” “illegal migrant” or simply the “illegal.” This non-exhaustive list illustrates the division of the refugee label that exists

today. All of these euphemisms connote a lack of legitimacy or legality when used to describe refugees. As Zetter has noted, “we now have ‘genuine refugees,’ implicitly different from refugees without this prefix, although the Convention is silent on this distinction” (Zetter 2007:181). Though the laws regarding who is and who is not a refugee have not changed, the state bureaucracy surrounding the refugee label has become much more complex and exclusionary.

Many of the discussions about alternatives to the term “refugee” pivot around assessing the legitimacy of claimants’ right to asylum. Qualifiers such as “genuine” and “real” work to question the authenticity or even morality of the asylum seeker, as Michael Clyne (2005) has noted in his article about asylum seekers in Australia. Clyne argues that governments are gravitating towards narrowing the meaning of “refugee” by questioning the morality of the refugees in question, even before it has been determined if the asylum seeker is facing persecution (Clyne 2005:183). Questioning the character of a group of refugees based on their national, ethnic or religious origin has become a way to delegitimize the group as a whole and to question their moral and ethical background. This is a means to exclude refugee claimants from the asylum granting country, all without establishing whether or not they face persecution.

The dichotomization of the refugee label in the case of the Roma asylum seekers is following a common path in Western countries where “refugee” is often used to refer to past asylum seekers whereas “economic migrants” and other euphemisms are used to discuss today’s asylum seekers, who are understood as lacking the legitimacy granted to earlier generations. For example, in Canadian history, the Vietnamese “Boat People” are now seen as being legitimate refugees, though their legitimacy was very much in question

at the time of their arrival (Beiser 1991; Kelley and Trebilcock 1998:407 – 406). In contrast, the Roma asylum seekers and recent boats of Tamil asylum seekers are seen as illegitimate and “bogus,” more as “economic migrants” than “real” refugees. Much of the public perception of refugees has to do with how the media interprets asylum seekers and informs the public. A major change in compassion occurred regarding the Vietnamese refugees when, after initial public opposition to accepting large numbers of asylum seekers, “a deluge of media reports about their plight prompted increasing public support for their admission” (Kelley and Trebilcock 1998: 407). The fact that this has not happened with the Roma asylum seekers illustrates the stronghold the media possesses over the public image of asylum seekers and refugees.

Roma refugee claimants are unconventional refugees as they do not necessarily fit the international legal definition of the term nor do they fit with the public image of what constitutes “refugeeness.” Conventional refugees include people fleeing from unpredictable war zones, living in refugee camps, poor and destitute, and fleeing from extreme life-threatening situations. None of this applies to Roma, despite the fact that they often face systemic, culturally ingrained discrimination throughout Europe. In this thesis, I will show that this systemic discrimination is tantamount to persecution, whereas states tend to see it as “mere” discrimination. In addition to the fact that the nature of their discrimination does not fit with the public image of “refugeeness,” Roma are a challenge to the term “refugee” as they are located spatially within the global North, rather than the global South from which conventional refugees are mainly seen as coming. They are surrounded by the “developed,” yet often live in the extremely impoverished conditions more often ascribed to the “developing world.”

Examination of the presentation of Roma refugee claimants in the media often reveals the use of strict, almost Manichean, moral categories on the part of government and advocates: right and wrong, good and bad, black and white. Public statements made by government officials suggest that the Canadian government regards inland refugee claims as suspect and often illegal.¹ Activists often advocate for more open refugee laws and broader acceptance criteria while portraying refugee claimants as legitimate or victims of the restrictive system. These two images compete in the media, which becomes the platform for which governments and activists wage their moral war over the refugee label.

Understandably, questions around immigration policy emerge when a group which identifies itself as refugees seek asylum in a country whose criteria for “refugeeness” excludes them. As Malkki (1996) has stated, the idea of the “refugee” can be understood as a moral category, and the idea of being a refugee is often preceded by the idea of being moral. Few argue against the existence of “real” or “true” refugees in the abstract, but what defines that category is debatable. Refugees are often under pressure by the international aid community to perform their refugee-ness, to live up to a set of existing conventions (Malkki 1996:384): real and proper refugees should be grateful for outside assistance, and should definitely not be, or perceived to be, “well off” or engaged or associated with monetary gain. Often, the moral character of an individual refugee and his or her group is scrutinized throughout the refugee process. If they do not

¹ This is especially true regarding inland refugee claimants who arrive via boat as illustrated in a statement made by Prime Minister Harper regarding the arrival of Sir Lankan’s on the MV Sun Sea in 2010. Harper noted: “We are a land of refugees, but Canadians are pretty concerned when a whole boat comes not through normal channels. ... It’s a matter of sovereignty and security ... We won’t hesitate to change laws so we can have more power in the future, if necessary, because this can’t continue like this” (Robertson 2010).

present themselves “properly,” especially at refugee hearings, doubt is cast on whether they truly are refugees. Several different perspectives on the moral category of Roma asylum seekers will be examined throughout this thesis.

It is extremely important to examine perspectives articulated through the media regarding the categorization of Roma refugees because it is often through the media that the Roma refugee claimant is legitimized or delegitimized. The ways in which Roma have been excluded from the category of “refugee” must be problematized. Part of that process, and the focus of this thesis, is to examine different stakeholders’ representations of the refugee label, particularly the refugee label regarding Roma asylum seekers.

I will draw out the relationship between nationalism and the refugee label by examining the construction of the category of “refugee” by the Canadian government. Rather than Benedict Anderson’s *Imagined Communities* (1990) and his Marxist historical approach to nationalism, I have found the work of Kelly and Kaplan’s *Represented Communities* (2001) to be more suitable to my study. Kelly and Kaplan oppose “Anderson’s depiction of a modular cultural idea of the nation as a kind of ‘imagined community’ connected to ‘print capitalism.’” Instead they

stress the history of colonial reliance on conceptions of “communities” among the colonized as both an alibi for difference of rights and powers in law and as a vehicle for limiting and channeling political aspirations. At issue then is not imagined communities but represented communities, “communities” renewed in their existence not only by representations in the semiotic sense, but also by representation in the political, institutional sense. [Kelly and Kaplan 2001:22]

This thesis is concerned with this latter sense of communities and how the refugee has been constituted as a community through various modes of representation. Institutional stakeholders such as aid agencies, governments, advocates and media all have long standing interests in the promotion of particular kinds of narratives about the refugee. The

“refugee” is a mid-20th century creation yet it is treated as a timeless category. The specific experiences of individuals are often subsumed beneath broader categories of refugeeness that often appear ahistorical. The idea of represented communities is also useful to discuss Canada’s imposition of the visa onto the Czech Republic. The act worked to reinforce the strength of the Canadian government in the eyes of the global world. More specifically, however, it signified the *kind* of refugees Canada was prepared to admit and accept as legitimate, which clashed with the Immigration and Refugee Board as well as Roma activists, locally and abroad. The implementation of the visa is a particular kind of performance, whose intended audience was the international community as well as the international refugee regime. By imposing that visa, the Canadian government reinforced long-standing ideas grounded in moral convictions that refugees originate from the developing world, not Western nations.

This thesis draws out the issues discussed above and applies them to the specific case of Roma refugees in Canada by situating them into the broader historical context of refugee relations in Canada. It also shows how this particular case is indicative of a new conservatism in the asylum determination process in Canada.

Project History

While conducting research for this thesis I undertook a number of activities which are not represented in the final project but helped to develop the thesis into its final form. I had initially planned on interviewing a number of Roma and non-Roma who were engaged in Romani activism within Canada and to examine what form Roma activism takes within Canada. I had planned on looking specifically at how the Roma Community Centre (RCC) in Toronto functioned and what other activities Roma were engaged in to

help promote their ethnic and cultural identity within Canada. Thus, I started out by conducting two interviews, one with Paul St. Clair of the RCC and the other with Ronald Lee, a prominent Canadian Roma who was and is actively involved in academia and the Roma community in Canada. However, the RCC was undergoing a number of challenges at the time I had planned my research and I was unable to interview any other of the board members. I had also planned to contact the family of Adolf Horvath, as they were involved with activism efforts in regards to lobbying the government not to extradite Mr. Horvath back to Hungary. However, after consultation with Mr. St. Clair and Mr. Lee it was decided that it was unlikely that I would be able to pursue that route.

I had also planned on attending a number of festivals to conduct participant observation and network within the community. The first festival I attended was the Hederlazi Festival in Toronto on May 8, 2009 with a colleague from the University of Windsor, Julianna Calder Butler. I planned to introduce myself to a number of people at the festival and see if they were willing and available to talk with me in the upcoming weeks. Although the celebration was open to the public, almost no non-Roma attended the festival. Many people were unwilling to speak with me as I was an outsider in the community and only connected to other academics, Calder Butler and Mr. Lee. It also became quite clear that speaking with certain people would be out of the question as many in the community did not have a good grasp of the English language, having only very recently arrived in Canada. Interviews would require a translator which I was unable to fund at this time. Thus, much of the planned fieldwork fell through at this stage.

The other festival I had planned on attending was the Romani Yag festival in Montreal. Romani Yag was intended to be a festival held every two years to promote

Roma identity and Romani-Canadian relationships by educating the public about Roma culture through dance, shows, conferences, documentaries and workshops. The festival was first held in May 2005 and again in October 2007. Though I hoped the festival would be back in 2009, it has not been held since October 2007. My attempts to contact with the organization on a number of different dates were fruitless. Thus, this became another dead end for interviews with Roma advocates.

Around this time I was also seeking out other organizations to interview about their relationship with Roma and activism and I came across the Gypsy Lore Society. I was interested in speaking with people from the society about how they view their relationship with Roma and was interested in whether or not they undertook any kind of activism and what their views on that were. Unfortunately I received a very negative response from the society and one member in particular who did not approve of the way in which I was discussing Gypsies (his preferred label) and recommended that I abandon my project altogether and change topics. Thus, this became another path which was closed to me.

I had originally planned on investigating IRB decisions involving Roma refugees to analyze their cases as part of this project. Some of these cases were available online through the IRB website under the *decisions* section. However, only a fraction of these cases were publicly available. I also searched the databases RefLex and Quick Law and again, only a small selection was available and it mostly overlapped with what was available on the IRB webpage. I then contacted the Immigration and Refugee Board directly to ask if it was possible to examine decisions from claimants from the Czech Republic and was denied access. As a last resort I could have filed an access to

information request, but I was advised that the request could take months if not years and decided that this was not a route I should pursue. My original project at this point became unfeasible and I needed to reexamine how I was going to approach this thesis.

I attended a celebration of International Romani Day on April 8, 2010 with a colleague, Radka Zitkova, who was working on a documentary about the relationship between Czech Roma and Canada. The celebration was hosted by the Roma community in Hamilton Ontario and mainly organized by a Roma family, headed by Anna Polakova, who just arrived in Canada seeking asylum. Polakova was a well-known Roma journalist in the Czech Republic and is discussed briefly in Chapter Four. Most of the attendees were Roma but there were also a number of teachers from the local school system who were invited to participate and observe the festivities in response to difficulties between integrating the Roma children into the school system. The Roma community in Hamilton consisted mostly of Czech and Hungarian refugees and asylum seekers and many had only recently entered the country, did not have a good grasp of the English language and were not suitable on a project related to Roma advocacy.

However, it was here that the idea for a project on Roma asylum seekers and their relationship with the Canadian asylum system began to take shape. It was after this trip that I officially changed the focus to the representation of Roma by the government and advocates and how this was presented in the media. Even my dead ends and wrong turns proved valuable in influencing the eventual course of this dissertation, as well as impacting my broader thinking regarding my thesis. I thus extend my thanks to all those whom I interviewed and who otherwise participated in the earlier stages of my project.

Significance of Research

The timing of this thesis is important considering the rapid changes occurring in the Canadian refugee determination system over the past three years. Few Canadian studies have focused on the refugee regime, refugee determination systems and the politicization of the refugee as applied in Canada (see Nyers 2006, Showler 2006 and Crpeau and Nakache 2005, 2006 and 2008). Studies which examine the moral category of refugees (Malkki 1996) or the ethics of asylum system (Gibney 2004; Bohmer and Shuman 2008) tend to focus on the United States, United Kingdom and Australia or “refugee camps” in the global South and their respective refugee determination systems. Anthropologists have given little attention to the changes in the Canadian asylum system despite its significant involvement in the international refugee regime and the determination of refugee status. This thesis contributes to the growing literature on this topic, but adds a specific focus on Canada. I also connect and add new perspectives to newly emerging refugee categories, such as the Roma. Problematizing the language and labels used in the media when discussing Roma refugees is central to this thesis and needs to be expanded upon in academic literature so that future situations involving Roma and other asylum seekers are documented, historicized and analyzed rigorously to come to a better understanding of how the refugee label is changing in the 21st century.

Theoretical Considerations

This thesis is concerned with the dichotomized refugee label and the legitimizing/de-legitimizing processes involving the immigration and refugee system within Canada. Recently, refugee claimants have come under fire for undermining the “traditional” immigration process and coming to Canada and other desirable countries on

their own accord and applying for refugee status once they arrive. Many immigration critics see this as an inappropriate use of the refugee system. Thus, there is a considerable move to implement stricter policy regarding the immigration and refugee system, both abroad and within Canada. Differentiating between so-called legitimate and illegitimate refugees has become a major issue for governments accepting refugees and a hot topic in the news. In order to examine the legitimization of refugees, I will favour three theoretical perspectives.

I apply the approach used in Zetter's (2007) examination of labels and how labels have transformed the world refugee system to the case of Roma refugees in Canada, in order to show how the government has transformed refugees into bogus asylum seekers. Zetter argues that the term "label" (as opposed to "category," "designation" or "case") "recognizes both a process of identification and a mark of identity; implies something independently applied, but also something which can be chosen and amended; has a tangible and real world meaning, but is also metaphorical and symbolic" (2007:173). Zetter outlines three axioms to understand how the label of "refugee" has changed since its inception by (1) formation, (2) transformation and (3) politicization. I analyze the label, "Roma refugee" by applying Zetter's three axioms to particular media articles, thus showing how the labels used to describe the Roma refugees were originally formed, transformed and lastly politicized in the media. By using Zetter, I examine how Roma have chosen the label "refugee" while the government has chosen the label "economic migrant." Both labels have the power to transform the same group into either a group with a legitimate claim for assistance or the perpetrators of an illegitimate scam.

Ong's (1996) cultural citizenship approach to Asian American stereotypes underlines my thinking on how Roma refugees have been portrayed in the media, both by advocates and the government, in comparison to other asylum seekers. Ong's "cultural citizenship" refers to:

The cultural practices and beliefs produced out of negotiating the often ambivalent and contested relations with the state and its hegemonic forms that establish the criteria of belonging within a national population and territory . . . [It] is a dual process of self-making and being-made within webs of power linked to the nation-state and civil society (1996:738).

Ong's "dual process" applies to the Roma refugees in Canada as they are involved in a dual process of defining themselves as a cultural and refugee group. Meanwhile other powers, such the government, are imposing their own definitions of Roma-ness and refugee-ness onto them. Ong's study compares two different Asian American groups, Chinese cosmopolitans and Cambodian refugees, to assess how each of these groups explores the possibilities and limitations that their citizenships allows them. She argues that "the ideological formation of whiteness as the symbol of ideal legal and moral citizenship today continues to depend upon the 'blackening' of less desirable immigrants" (1996:742). Thus, Chinese immigrants and Cambodian refugees negotiate their citizenship, through economic practices or the distribution of social services respectively, where the first group is seen as more "white" and the second as more "black" in relation to how they function culturally and economically within American society. Rather than using a scale of white/black as Ong does, I argue that in the Canadian context the contrast is between legitimate and illegitimate refugees. Thus, I apply Ong's approach of "cultural citizenship as subject-making" to show how Roma have been "blackened" or "illegitimized" and have acquired an undesirable refugee status

based on government blacklisting, as opposed to “legitimate” refugee status which would grant them acceptance within the larger Canadian society.

In addition to Ong’s “cultural citizenship” and Zetter’s examination of labels, my analysis also draws on the definition of citizenship outlined in Stasiulis and Bakan’s *Negotiating Citizenship*. This work defines contemporary citizenship as “a set of rights, obligations and forms of agency that reveal tensions between the universalistic discourses of modern citizenship and the discriminatory impact of border policies of modern democratic states” (Stasiulis and Bakan 2005:5). The benefit of this definition is that it emphasizes the positive and negative features of citizenship, and it is the negative dimensions of citizenship (the discriminatory practices which help define the standard of what constitutes contemporary citizenship) which has the most significance to this study. Just as refugee labels are continually being negotiated, so should citizenship be understood as a relationship, often an unequal one. In *Negotiating Citizenship*, Stasiulis and Bakan explore the migration of Third World women of colour working as domestic workers as they acquire First World citizenship rights within Canada. They show that Canada is following an increasing neoliberal trend of imposing more regulations and restrictions on immigration, refugee and border policies (Stasiulis and Bakan 2005:30). Furthermore, they argue that these policies are becoming dominated by a desire for security, with manifestations including “measures to reduce the proportion of immigrants being accepted on grounds of family unification, an increase in the proportion of migrants entering Canada with temporary visas, and restrictions on sponsorship of overseas relatives for low income families” (Stasiulis and Bakan 2005:32). I apply Stasiulis and Bakan’s definition of contemporary citizenship to the Roma refugees to analyze the

border politics of the Canadian government to show how they have discriminated against the Roma refugees as “undesirable” and “unworthy” asylum seekers and how these negotiations construct the Roma as illegitimate citizens. This further illustrates Stasiulis and Bakan’s argument that “[r]estrictive policy reforms by the Canadian immigration authorities have been accompanied by official discourses which link immigrants and refugees to crime, welfare fraud and threats to national security (Stasiulis and Bakan 2005:33).

The theoretical perspectives in this thesis allow me to investigate the changes occurring in Canada’s immigration system, Canadian immigration policy and refugee rights. By examining media articles, government releases and IRB files, I show how Roma refugees are being labeled, constructed as illegitimate and discriminated against in the Canadian immigration system. Armed with Zetter’s understanding of the “refugee” label, as well as Ong’s conception of “cultural citizenship” and Stasiulis and Bakan’s “negotiated citizenship,” I am able to provide a nuanced and fresh treatment of the issue of Roma refugees and their identity and legal issues in Canada. These theories allow for a critical examination of the Canadian media’s reporting as well as the Canadian government’s reactions, responses and perception of refugee issues.

Methodology

Ethics Approval

This project received ethics approval from Carleton University Research Ethics Committee on Friday April 3, 2009 and was renewed the following year on Wednesday May 19, 2010. Although I was not conducting interviews during the second year of my ethics clearance, I renewed the application in case interviews became feasible for this

project. My ethics clearance was obtained in accordance with the initial project which entailed interviews with activists/experts, family and friends of Adolf Horvath and a parent or legal guardian consent form. Since most of the people I intended to interview were active in the public and were considered to be experts, anonymity was not sought after nor granted. I was only able to conduct two interviews, both under the expert/activist category, with Paul St. Clair and Ronald Lee. I closed my ethics process on Thursday May 5, 2011.

Media

This thesis does not pursue a media or content analysis *per se* but rather, I examine the broad trends the media has been focusing on and how the government and advocates each presented their perspectives on Roma asylum seekers in the media. All of the articles I looked at were published in the Canadian press, so any information about Roma overseas also came from stories published in the Canadian press. The article selection took place in Ottawa and included newspaper articles between September 2007 and November 2010. I chose to start my search in September 2007 as a colleague in sociology, Julie Pearson, had recently finished her major research paper, “Mainstream Media Representation of Roma in the Canadian Context: The Discourse on Invisible Canadians,” where she performed a ten year media analysis (ending in 2007) consisting of both content and discourse analysis. My research was to pick up where she left off. I used the Canadian Newsstand database to locate articles for all of my searches. I had originally planned on using articles from the Canadian Broadcasting Corporation (CBC), but its website was not set up to effectively conduct proper searches, as it did not have a proper database for all of its news stories accessible to the public. In the end I decided to

leave out CBC articles with the exception of one article which I use to illustrate a point made by an activist and was located after the media searches were completed.

Five different searches were undertaken each with slightly different search criteria to ensure that I was not missing any important articles. The first search occurred on February 17, 2010 and was adjusted on November 21, 2010. The search criteria was “Roma and Visa” with a timeframe between September 1, 2007 and February 15, 2010. The search resulted in one hundred eight total articles, one hundred of which were newspaper only. Of those articles I printed and examined seventy-seven, eliminating stories that were duplicates. The second search was conducted on November 9, 2010. The search criteria was “Roma and Gypsy” with a timeframe between February 16, 2010 to November 1, 2010. The search resulted in one hundred twenty-three total articles, seventy-eight of which were printed. The third search was conducted between November 11 and 21, 2010. The search criteria was “Roma and Refugee” with a timeframe of September 1, 2007 to November 1, 2010. The search resulted in one hundred ninety-seven total articles, one hundred eighty-three of which were newspaper articles and of those I printed forty-five to be examined. There were ninety-five articles which overlapped with previous searches which were not printed. The fourth search was conducted on November 23, 2010 with the search criteria of “Roma and Visa” and a timeframe of February 16, 2010 to November 11, 2010. The search resulted in twenty-one articles, eight of which were repeats, thus only one article was printed to be examined. The fifth and final search occurred on November 23, 2010. The search criteria was “Roma and Gypsy” with a timeframe between September 1, 2007 and February 15, 2010 and resulted in a total of two-hundred ten articles, one hundred eight-five of which

were newspaper. Many of these articles I already had, however thirty-four were new and thus printed to be examined. In total I had two hundred thirty-five unique articles for my study.

The articles were coded using a colour system with the aid of post-it notes to help me navigate through the articles and discover similarities. Pink was used to highlight all quotes and statements. Purple was used to code anything which related to legitimate/illegitimate, “real/fake” refugees, “queue jumpers,” “bogus,” “criminals” or “genuine” refugees. Yellow was used to designate all government information and information related to visas. Green was used to designate advocates and advocate perspectives. Lastly, I used the blue to designated persecution, discrimination, Roma and racism. Once each of the articles was coded I went through them and wrote up the important quotes into a single document, organizing them according to themes. The labeling and stereotypes section consisted of the information coded with purple. Information denoted by yellow was placed into the government, Immigration and Refugee Board (IRB) and visa section. The advocate section consisted of information coded with green and lastly, information designated with blue became the section on discrimination and persecution against Roma.

Immigration and Refugee Board documents

I was able to access the IRB’s fact-finding mission reports as they became public information when they were released. I examined and read the June 2009 report “Fact-finding Mission Report on State Protection” and the July 2009 report “Fact-finding Mission Report on the Situation and Treatment of Roma and Potential for Internal Relocation.” I accessed them online at the IRB website. Furthermore, other IRB

documents, such as National Documentation Packages and Country Fact Sheets were examined for background information. I was able to access the text of the *Balanced Refugee Reform Act* (BRRA) online through the Department of Justice and much of the supporting information and clarification came from the Citizenship and Immigration (CIC) webpages.

Limitations of Research

All researchers face the potential of bias in their research, and this is especially true for anthropologists working in the field. Thus, I would like to address some of the limitations of my research and my own potential for bias. I have chosen to focus primarily on media articles in this study and for a number of practical reasons, mainly that much of my intended field work fell through and I felt that there was plenty of material to support my argument in the media articles I had gathered. There is potential for bias in using only media articles as different publications and reporters can lean toward the sensational and be more liberal or conservative (among many other things) in their reporting style. However, I felt that the media, as used to inform the public, is a reliable source for understanding what information the government and activists want the public to know. Thus, there may be certain predispositions in the media articles but these two stakeholders were using the media to reach the larger Canadian public to inform them of the major issues revolving around Roma refugee claimants and policy changes involving them. If I had more time, I would have liked to include interviews from some of the activists who have commented in the media, interviews with representatives from the Immigration and Refugee Board, the government spokespeople and perhaps documentation from the House of Commons debates. All of these areas would have

added new perspectives which may not be readily available through media articles and thus defray the potential for overall bias.

There is also a potential risk of bias given my agency as a researcher in this thesis. I have tried to remain unbiased in this case by not assuming all Roma refugee claimants are suitable to be refugees. To address this concern, I made sure to address Czech and Hungarian Roma as refugee claimants and not as refugees. I am aware of the tendency for academics to lean too much toward one side of a particular issue, in this case the legitimacy of refugee claimants, and acknowledge that it is difficult to keep personal feeling towards an issue separate from academic research. Furthermore, I do see the case of the Czech Roma as a relatively “unique” case in refugee studies so far, but this is not to say that it will remain to be unique as more interdiction methods are used to curb the flow of in-land refugee claimants in Canada and more discrimination, persecution and human rights violations occur throughout Europe. Although I see this case as unique in certain aspects, I also see it as an indication of the general restrictive trend Canada, as in many other states, is taking towards refugee resettlement and refugee policy more broadly speaking.

Outline of Thesis

This thesis is divided into six chapters. This chapter has provided an introduction to the thesis while also outlining the project’s history, theoretical perspectives and methodological approach. Chapter Two examines the historical context of refugee relations in Canada beginning with World War Two. The chapter highlights events of historical importance to the establishment of the refugee regime such as the signing of the 1951 UN Convention on the Rights of Refugees, the 1967 Protocol, the 1976

Immigration Act, the 1985 *Singh Decision*, the 1989 *Immigration Act* and the *Immigration and Refugee Protection Act (IRPA)* of 2001. Chapter Three examines the systemic discrimination against Roma in Hungary and the Czech Republic to establish that the movement of people from these countries is a legitimate movement and that often these two countries fail to adequately uphold their own laws and protect Roma from discrimination and violence. Chapter Four outlines the main media and political events surrounding the 2009 visa reimposition on the Czech Republic. Integrated throughout the chronology of events is an analysis of the “illegitimate” refugee label as it was applied to the Roma refugee claimants in Canada and a discussion about “the numbers game,” or how different stakeholders were manipulating IRB acceptance numbers to support their claims. The chapter establishes the context in which Roma refugee claimants were presented in the Canadian media prior, during and after the visa implementation in 2009 and also illustrates one half of Ong’s dual process, the “being-made” portion. Chapter Five discusses and analyzes the two IRB Issue Papers which were a result of the 2009 IRB fact-finding mission to the Czech Republic. I illustrate how the government’s usage of the report to back the visa implementation on the Czech Republic was misguided and furthermore, that the report was not intended to be used by the government to support imposing a visa on the country. Chapter Six provides a conclusion to this thesis.

CHAPTER TWO: CANADA'S "OPEN DOOR" POLICY

This chapter examines the history of refugee relations in Canada beginning with the establishment of the international refugee regime. By looking at the development of the label "refugee" throughout the 1950s and 1960s, followed by the creation and implementation of the 1976 *Immigration Act* and the amendments made to it during the 1980s, I illustrate Stasiulis and Bakan's argument that Canadian immigration, refugee and border policies have become increasingly restrictive. I examine the plight of the South-East Asian refugees to establish the background to the 1985 *Singh* decision, a key moment in the development of Canadian immigration policy which affected the *Canadian Immigration Act* and inevitably resulted in the creation of the Immigration and Refugee Board of Canada (IRB). I then touch upon immigration and refugee relations throughout the 1990s to contextualize my discussion of the next immigration act, the *Immigration and Refugee Protection Act* (IRPA) of 2001 and the *Canada – United States Safe Third Country Agreement* of 2004. This chapter ends with a brief discussion of the *Balanced Refugee Reform Act* (BRRA) implemented in 2010. Throughout, I focus on the political motivations behind changes in definitions of refugee status, both internationally and in Canada, and explore the implications of shifts in the refugee label. As the qualifications for refugee status became more stringent or standardized, so too did the number of people and communities who were delegitimized through labeling increase. We can relate Ong's process of being-made to the creation of particular types of "refugees." This chapter will illustrate this process with respect to the history of Canada's refugee system.

Although Canada is often thought of as having exceptional immigration and refugee policies which complement and balance each other, some argue that this has neither been the case historically nor presently. There has always been room for improvement in how Canada treats potential immigrants and refugees (see Isajiw 1999). Much of Canadian immigration policy during the first half of the 20th century was steeped in racial, national and classist ideologies, and no event exemplifies this fact more than the “Voyage of the Damned.” The *M.S. St. Louis* was a ship bearing 907 German Jews fleeing Nazi-occupied Germany bound for Cuba in 1939. However, upon arrival in Cuba they were informed their visas would not be recognized and were not allowed to disembark, even after threatening to commit mass suicide, and were denied entry into Cuba (Abella and Troper 1983:63). They were then unanimously “refused embarkation anywhere in South and North America” (Whitaker 1991:13). As one Canadian immigration official stated, “the line must be drawn somewhere” (Whitaker 1991:13; Abella and Troper 1983:64). The ship was turned away and as a result, many of the Jews aboard were sent to the concentration camps of Nazi Germany, where they died. Even prior to the plea of the passengers of the *St. Louis*, there had been much debate within Canada about whether or not to help the Jews of Europe before the war broke out. In the end the official policy regarding Jewish immigration was encapsulated by the famous phrase “None is Too Many.”²

Once the Second World War began, immigration to Canada came to an abrupt standstill, and immigration policy became intertwined with so-called security measures. Anti-Asian racism soared with the involvement of the Japanese in the war and the

² For more detailed information regarding Jewish refugees during the 1930s and the Second World War see, Abella and Trooper (1983).

Canadian government responded with the “confiscation of property and forcible relocation of the Japanese Canadian population of the west coast to concentration camps in the interior” (Whitaker 1991:13). This act contributed to the de-legitimation of Japanese-Canadian citizens. After the war, the federal government had planned on deporting these Japanese Canadians, including people of Japanese descent who were born in Canada. Public opinion eventually demanded the project be abandoned but not before the “voluntary” repatriation of some of these persons (Whitaker 1991:14).³

The Establishment of the International Refugee Regime

Refugees have in a sense existed throughout history, but it was not until the seventeenth century and the formation of the modern state system that they became an important international issue (Loescher, Betts and Milner 2008:6). The international refugee regime emerged on a large scale in the aftermath of the First World War and was officially underway following the Second World War. During this time, millions of people were displaced throughout Europe and borders were constantly being reshaped. The Supreme Headquarters Allied Expeditionary Force (SHAEF) was formed in 1943 to deal with the political fallout due to the large number of displaced people caused by the war. SHAEF was one of the first organizations to attempt to relocate refugees and displaced people on a large scale, but being primarily a military organization, it was unequipped to deal with concerns and needs of refugees. SHAEF’s major fault was its aim to send displaced people and refugees back to their original homelands, overlooking or dismissing the potential persecution such peoples faced upon their return.

³ Such “voluntary” repatriation programs exist today, specifically under the *Balanced Refugee Reform Act* and the introduction of the Assisted Voluntary Returns pilot program which offers some financial assistance towards repatriation of failed refugee claimants (CIC 2010c).

On November 9, 1943, forty four nations established the United Nations Relief and Rehabilitation Agency (UNRRA), which essentially took over the repatriation of displaced people within Europe from SHAEF (Loescher, Betts and Milner 2008:9). UNRRA was always intended to be a short-term mandated program but “[w]ithin less than five years UNRRA brought relief to sixteen invaded or occupied nations, preventing epidemics and famine, rehabilitating transportation, industry and agriculture, restoring confidence and morale, and enabling the victims of aggression to begin to help themselves” (Fox 1950:561). Though UNRRA was a step forward in the treatment of internationally displaced peoples, its policies fell short of successfully advocating for the settling of refugees in third countries, and supported their participation “in the controversial forcible repatriation of large numbers of people in Europe” (Loescher, Betts and Milner 2008:10). Despite being better equipped for this role than SHAEF, the organization was not strictly speaking a “refugee organization” as it had major direct ties to the governments of the countries from which refugees were fleeing. This limitation was highlighted in its repatriation of refugees back to communist countries where many of them faced persecution which illustrates that UNRRA was more concerned with settlement than human rights.

The UNRRA was ultimately abolished in Europe in 1947 and replaced by the International Refugee Organization (IRO), founded on April 20, 1946. The IRO’s main goal was to focus “on resettling the remaining refugees and displaced persons created by the war and its aftermath” (Loescher, Betts and Milner 2008:11). It was during this stage that the notion of the refugee was tied to a fear of persecution and in 1948, article 14 of the Universal Declaration of Human Rights declared: “Everyone has the right to seek and

enjoy in other countries asylum from persecution.” In stark contrast to the previous organizations, which both repatriated displaced people and refugees given the political pressure on it to do so, with the creation of the IRO, the international community declared that it would not repatriate refugees against their will. This declaration laid the groundwork for an internationally-recognized definition of a refugee as well as the infrastructure to deal with the displacement of an enormous number of people.

In the aftermath of the Second World War and the establishment of different organizations to deal with the influx of displaced people and refugees, the United Nations (UN) replaced the League of Nations. The UN became a massive umbrella organization for addressing multiple international issues. On December 14, 1950, the United Nations High Commission for Refugees (UNHCR) was established, taking over from the IRO’s refugee resettlement programs in Europe. UNHCR oversaw the establishment of the 1951 Convention Relating to the Status of Refugees, often called the Geneva Convention. This created the category of “Convention Refugee,” the criteria for which is still used today as the major guideline in determining refugee rights. The Convention (UNHCR 2011) defines a refugee as someone who:

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

Before the 1951 Convention, only specific groups of refugees were recognized by international organizations, meaning that an individual facing persecution particular to his or her circumstances was not normally considered for refugee status. However a fundamental shift in international refugee protection occurred with the 1951 Convention,

which granted refugee status based on individual experience, rather than group membership (Loescher, Betts and Milner 2008:11). The 1951 Convention laid the groundwork for the beginning of refugee relations internationally and was initially only meant to deal with European refugees who had been displaced during the Second World War. The UNHCR mandate was originally set to last until 1953 and was not intended to deal with displaced peoples outside of Europe.

Arguably the most significant right granted to refugees in the 1951 Convention is *non-refoulement*: the right of refugees not to be returned to a country where they risk persecution (Loescher, Betts and Milner 2008:14). This clause was a direct reaction to the forced repatriations which occurred under SHAEF and UNRRA, and with it came the beginnings of an international refugee regime upholding *non-refoulement* as a universal right for refugees. The clause has become an issue for many refugee-accepting countries who agreed to the Convention, including Canada, since it prevents them from refusing any refugees whom they know to face persecution in their home countries once they have arrived on foreign soil and seek asylum. From the recognition that refugees should not be forced to return to a country where they face persecution, interdiction policies, or policies which keep asylum seekers and migrants out of Canadian territory and away from Canadian borders, have evolved. These policies have become increasingly controversial as they often allow refugee accepting countries to avoid their international obligations regarding the 1951 Convention.

Generally speaking, interdiction policies are divided into two categories: those that apply before arrival in Canada and are used as preventative measures, and those which apply after arrival. Preventative interdiction policies include such things as visas,

the boarding and inspection of boats on the high seas, carrier sanctions, the criminalization of migrant smuggling and border control agreements such as the Schengen Agreement in Europe. Interdiction policies applied after arrival include acts such as “country of first asylum”, “safe third country” and “safe country of origin” agreements, asylum sharing agreements, readmission agreements and rationalization and speeding up of refugee status determination procedures (CCR 2003:2). Interdiction policies are allowed under international law as each territory conducts itself according to their own sovereignty laws. Thus, “[w]hile there are laws and norms relating to refugees, there is next to nothing to protect the rights of those in the process of migrating” (CCR 2003: 3). Many governments take advantage of this fact in their interdiction policies. For example, if the Canadian government discovers a ship suspected to carry asylum seekers, it may choose to intercept the ship in international waters and not allow its passengers into Canadian waters. This prevents the asylum seekers from applying for asylum in Canada. Often, ships must return to their countries of origin, as once an attempt has been made in one refugee-accepting country, other refugee-accepting countries will be notified of the craft and will likely enact their own interdiction tactics to avoid responsibility for the asylum seekers.

The UNHCR was originally formed to deal with the perceived temporary European refugee problem after the Second World War, and it was given a mandate and time restriction reflecting this. To address the issue of the UNHCR’s geographical and time restrictions originally established in the 1951 Convention, a protocol was added to the Convention in 1967 which expanded the mandate of UNHCR to include countries outside of Europe and events occurring before January 1, 1951. This had the effect of

creating a universal definition of “refugee” while illuminating the plight of refugees around the world and also recognizing the legitimacy of their situations. The important 1967 Protocol led to additional signatories of both the Convention and the Protocol.⁴ Today approximately three-quarters of the world’s states have signed both the 1951 Convention and its 1967 Protocol (UNHCR 2007).

Immigration and Refugee Developments: The 1950s and 1960s

Canada played a significant role in the establishment of the Convention Relating to the Status of Refugees, since the chair of the committee, Leslie Chance, was Canadian. However, despite this foundational role, Canada was one of many countries which decided against signing the 1951 Convention due to concerns about Canadian autonomy. The main issue was the ability of Canadian authorities to oversee the deportation of security risks, specifically relating to those claiming refugee status who were regarded as suspected communists. It was thought that the Convention would impose certain rights which would be difficult to circumvent, specifically “the right to be represented in the hearing of his appeal against deportation” (CCR 2010a). Despite not having adopted the Convention, Canada still accepted refugees. However, many of the government’s criteria for both immigrants and refugees were still guided by racial prejudice, political concerns and economic policy rather than humanitarianism. For example, most of these refugees came from people fleeing communist regimes in Eastern Europe, many of whom were able to come due to sponsorship from the Canadian government, church groups, or as contract laborers (CCR:2010a).

⁴ The 1967 Protocol was added to the 1951 Convention to broaden the refugee category to include situations which occurred outside of Europe and situations which occurred after January 1, 1951. Thus the Protocol lifted both temporal and geographical restrictions in the 1951 Convention. The text of the Protocol can be found here: <http://www2.ohchr.org/english/law/pdf/protocolrefugees.pdf>.

In 1952, a new *Immigration Act* became law. This law, however, simply cemented the previously unofficial powers of the minister and his staff officials.⁵ There was “heavy emphasis placed upon the enumeration of classes of applicants prohibited from entry and the powers of exclusion, arrest, detention and deportation” (Whitaker 1991:17). No appeals were allowed under the new act, a decision justified by “the principle that immigration was a privilege, not a right” (Whitaker 1991:17). New regulations were enacted in 1956 outlining new criteria for immigration which made it clear that “landing in Canada of any person is prohibited,” except for the four hierarchical categories outlined under the new regulations (Whitaker 1991:17). At the top were unsponsored British subjects from the United Kingdom, white Commonwealth subjects, Americans and the French. Then there were unsponsored immigrants from specific Western European countries, followed by a broad range of sponsored relatives from Europe, America and even a few Middle Eastern countries. The bottom of the hierarchy was left for the sponsorship of relatives of Asian-Canadians (Whitaker 1991:18). Thus, the selection of immigrants was heavily racialized. There was a major concern over the level of power given to the minister and to other Members of Parliament at the time. Under the 1952 Act, there was no form of judicial decision-making or appeals. As a result, lobbying from families, ethnic groups and even cabinet members was frequent. During this time, refugees were not considered a distinct group of immigrants. Throughout the 1950s, Canada did accept a number of Displaced People (DP’s): 37 000 Hungarians fleeing their country after the failed Hungarian Revolt in 1956, as well as 12 000 Czechoslovakians in 1968 following the Soviet invasion and the “Prague Spring” (Whitaker 1991:18).

⁵ I use minister to indicate the cabinet minister who was currently responsible for immigration policy at that time in history. The immigration and refugee policy has belonged to a number of different departments throughout Canadian history.

However, none of these refugees conformed to an agreed-upon category and were only made possible due to ministerial permits.

In 1962 the government enacted new legislation aimed to end the overt racial discrimination within Canada's immigration system. Skills and means of support superseded national origin as desired criteria for new immigrants. Throughout the 1960s, skilled labour, technical and professional categories were in high demand for potential immigrants (Whitaker 1991: 8-19). A point-based system was established in 1967, still under the *Immigration Act* of 1952, to address both the need for immigration, and the need for a tool through which skill sets and education of potential immigrants could be assessed. This system was "designed to ensure maximum employability in an economy in which skilled labor was an emerging priority" (Reitz 2004:101). The "points system" ranked individual applicants according to "objective criteria concerning education, skills and resources" (Whitaker 1991:19). Although the points system was not completely free of racial biases, it produced a sense of objectivity that was the basis upon which the perception of a Canadian immigration system became so called "colour blind" (Whitaker 1991:19). Under the new regulations a shift occurred away from encouraging immigrants from Europe to enter Canada, and towards Asia and other Third World areas (Whitaker 1991:19). It was during the late 1960s, on June 4, 1969, that Canada finally acceded to the 1951 Convention and its 1967 Protocol by signing them.

The 1976 Immigration Act

In 1976, Parliament revised the *Immigration Act*.⁶ This revision officially came into effect in April of 1978. The Act was significant for its departure from previous policy in creating a more open and transparent immigration system. The new Act led to

generous family-reunification policies, transparent admission criteria for independent immigrants embodying a revised form of the point system adopted in the previous period, deportation procedures that provided some significant measure of due-process protection to immigrants, and a reasonably generous refugee policy. [Kelley and Trebilcock:385]

The new Act also recognized refugees as a special group of immigrants for the first time in Canadian history, and provided new mechanisms for dealing with newly-arriving refugees. The new Act cemented the Convention Refugee category into law, created a determination system (governed by the Refugee Status Advisory Committee – RSAC), granted admission based on humanitarian grounds and allowed for the private sponsorship of refugees (CCR 2010a). This led to a dramatic increase in refugee claims and which contributed to the backlog in the refugee determination system (Kelley and Trebilcock 1998:385).

The new Act provided three ways through which refugees would be selected: Overseas Selection, Special Programs and the In-land Refugee Determination system. Overseas selection of refugees was popular during the early refugee regime years as refugees were clearly from countries recovering or suffering from war and other prolonged civil upheavals. Third party countries, also known as refugee receiving countries, would have a pre-determined number of refugees which they accept from refugee camps around the world. These refugees would be selected from camps and then

⁶ I will use 1976 as the date for this Immigration Act as this was when it was passed in Parliament; however, it was not implemented until 1978 thus some sources will list it as the 1978 Immigration Act.

brought to Canada to re-start their lives. This system fell into decline during this period as the UNHCR preferred to repatriate or resettle refugees in neighbouring countries rather than settle them in a third-country (Kelley and Trebilcock 1998:406). Long delays have proven to be another issue with Overseas Selection, with refugee wait times increasing from nine to seventeen years between the mid 1990s and 2000s (NGO Statement 2006:2). This has also contributed to the decline in the overall functionality of the system. One of the major effects of Overseas Selection is the disproportional distribution of refugees found in “developing countries,” a trend which continues today. As of 2009 the top ten refugee hosting countries are: Pakistan (1 740 700 Refugees), Islamic Republic of Iran (1 070 500), Syrian Arab Republic (1 054 500), Germany (593 800), Jordan (450 800), Kenya (358 900), Chad (338 500), United States (275 500) and the United Kingdom (268 400) (UNHCR 2010:7). Although the United States and Canada tend to be high on the refugee resettlement lists, accepting 79 000 and 12 500 refugees in 2009 respectively, the majority of the costs associated with refugee resettlement lay with the countries that host refugee camps (UNHCR 2010:12).

Other methods, however, have become the norm for immigration and especially refugee selection. Since the late 1980s, the Canadian government has shifted away from the government-assisted refugee programs (although the system is still very prominent in resettling large numbers of refugees), mainly for fiscal reasons, and has looked instead towards private sponsorship and NGOs to take on more responsibility (Kelley and Trebilcock 1998:406). The shift would lessen the burden of refugee responsibilities on the government, shifting such tasks as finding work and housing for newly arrived refugees onto the NGO community and private citizens. These shifts were consistent with

the increasing neoliberalization of immigration policy as outlined in Chapter One. In exchange for the workload, the government planned on broadening eligibility criteria for refugees and sponsors while also making promises to improve the process of private sponsorship (Kelley and Trebilcock 1998:406).

Under the Special Programs, new classes of refugees were created under subsection 6(2) of the 1976 *Immigration Act*. Since 1978, these classes have consisted of the Indochinese, the Latin American Political Prisoners and Oppressed Persons, and lastly the Eastern European Self-Exiled. Persons who fell into one of these classes could be admitted, even if they did not meet the definition of “refugee” agreed upon in the 1951 Convention (Kelley and Trebilcock 1998:406). As Whitaker (1987) has noted, much of the eligibility criteria was heavily influenced by Cold War politics, as evidenced with a special category for Eastern Europeans, who were allocated broader definitions to allow them into Canada. With the collapse of the Communist regimes, this class was eliminated in 1990 (Kelley and Trebilcock 1998:406).

Refugee movements gained momentum throughout the 1980s and were helped along by the more liberal *Immigration Act* of 1976. Cold War mentality still dominated the refugee discourse of the time and had an indisputable effect on the classification of who belongs in the refugee category: many refugees coming from Communist states were judged “legitimate,” in contrast to those fleeing right-wing regimes allied with Western powers, who were often considered “illegitimate.” In 1973, after an American-backed coup overthrew the democratically elected Socialist-Communist government of Salvador Allende in Chile, many left-wing Chileans faced danger, but Canada did not initially see fit to accept political refugees from Chile, as they had done for Hungary (1950s) and

Czechoslovakia (1960s) (Whitaker 1991:21). After the coup, Canada was among the first governments to show support for Pinochet's new regime, which was friendly towards Canadian investments in the country (Troper 1993:272). Pinochet's regime was decidedly unfriendly towards supporters of Allende and political leftists in the country. It was not until the Canadian Council of Churches and other academic groups pressured the government to accept a significant number of Chileans, who faced torture and political imprisonment for their views, that Canada began the process of accepting Chileans fleeing Pinochet's regime (Troper 1993:273). The Canadian government moved slowly in providing refuge for the Chilean refugees; the political situation was volatile due to American support of Pinochet and Canada's discomfort over accepting large numbers of left-leaning immigrants (Troper 1993:273). Canada's treatment of Chilean refugees illustrates how the country has not always been compassionate towards asylum seekers, often privileging its economic and foreign policy interests over humanitarian considerations.

In contrast, Canada's response to the refugees from Southeast Asia in the late 1970s and 1980s was extremely generous. The Vietnamese "boat people" fit into the Cold War image of what a refugee was supposed to embody: a person fleeing communist persecution.⁷ This was a result of the fall of South Vietnam and the retreat of the United States during the Vietnam War. The resettlement of the "boat people" was "the largest single refugee movement in Canadian history, and 54 per cent of the Indochinese refugees were privately sponsored" (Whitaker 1991:21). Private sponsorship was the

⁷ For more information and a detailed look into the Canadian experience of the South East Asian 'Boat People' see Beiser (1991).

predominant way these refugees were settled in Canada, with the government only involved as a supportive presence. Private sponsorship occurs when:

Canadians, working through organizations or in informal groups, make a commitment to sponsor refugees outside Canada who are in need of a durable solution. The sponsorship undertaking is a guarantee to provide financial and personal settlement support. The refugees are processed by Canadian visa officers and on arrival in Canada are welcomed by their Canadian sponsoring groups who provide them with the funds, goods, personal and community support they need to start their lives. [CCR 2006]

In total, Canada took in approximately 100 000 Indochinese refugees between the 1970s and 1980s (Whitaker 1991:21). In response to the Canadian dedication to the refugee cause, the United Nation's *Nansen Medal* was awarded to the Canadian people for outstanding generosity towards refugees in 1986. The granting of this medal reinforced the public perception of Canada as a welcoming home for refugees and contributed to the Canadian narrative of tolerance towards outsiders. The medal also came at a time when migrant issues became prominent in the media and political spheres; thus it also contributed to a sense of Canadian authority on immigration and refugee issues. Despite the good press received with the medal, Canadian refugee policy became stricter and more exclusive throughout the late 1980s.

Probably the most complex of all the initiatives developed out of the 1976 *Immigration Act* was the *Inland Refugee Determination* system. Refugees who went through this route had to work with the newly created *Refugee Status Advisory Committee* (RSAC) before being allocated refugee status. The system was difficult to navigate and extremely time-consuming for both the government and the asylum seekers. The system was initially designed to deal with a relatively small number of people and functioned as follows:

If an applicant was found inadmissible at a port of entry or overstayed the allowable time in Canada, an inquiry was scheduled to determine whether the person should be removed from Canada. At the inquiry, the applicant could claim refugee status, in which case the inquiry was adjourned, pending refugee determination. The refugee claimant would then be examined under oath by a senior immigration officer, and the transcript of the interview would be forwarded to the RSAC in Ottawa for a consideration of the claim of Convention refugee status. The RSAC would then advise the minister. If the claimant did not qualify, his or her application was considered on humanitarian and compassionate grounds by the Special Review Committee, which acted in an advisory capacity to the minister. If the minister rejected the claim, the claimant could apply to the Immigration Appeal Board (IAB) for redetermination of his or her refugee status on the basis of the documentary record. If, after a paper review, the IAB was of the opinion that there were reasonable grounds to believe that a claimant could succeed, the IAB would grant an oral hearing to the claimant. [Kelley and Trebilcock 1998:412]

Throughout the 1970s, two hundred to four hundred refugee claimants were arriving annually and were processed through the *Inland Refugee Determination* system.

However, starting in the early 1980s numbers began to rise from 3 400 in 1982 up to 5 200 by 1984. By 1992 there were more than 37 000 refugee claimants (Kelley and Trebilcock 1998:413). Because of the detailed determination process for claims, a backlog developed as the system proved to be too cumbersome to deal with such large numbers of people, which exceeded the number it was created to handle.

The refugee backlog that developed throughout the 1980s was due in part to migrants learning that claiming refugee status greatly increased the likelihood of their acceptance in desirable countries. Asylum seekers and migrants became aware of this mostly through word of mouth and what Freda Hawkins identified as “the migration grapevine”: the process by which this news spread between communities. This process was not limited to asylum seekers and migrants, but also included a more extensive regime of immigration and travel agents (Hawkins 1994:1). Hawkins attributes much of the increase in refugee claimants throughout the 1980s and early 1990s to the issues the

post-Cold War had left many countries facing, such as “the growing disparity between rich and poor nations; swifter and cheaper communications; population growth; ethnic conflicts of many kinds leading to political instability, civil wars, and famine; ecological problems bringing desertification and unending poverty” (Hawkins 1994:2).

By the 1980s, the academic and NGO communities were starting to take note of refugees as an area of concern and became involved in critiquing the backlogs and cumbersome refugee determination system as laid out in the *Immigration Act*. A number of reports were released, such as the *Robinson Report* (1981) and the *Ratushny Report* (1984), which recommended a number of amendments. However, the government did not take either report into consideration at the time. It was the *Plaut Report* (1985) which garnered a lot of public and academic attention and support. The report outlined a number of different models for ways the refugee determination system could be changed and improved, as increasing asylum seekers were becoming more common. Plaut’s recommendations included “oral hearings, an independent decision-making body, regional decision making in the first instance, and a full appeal process,” while also rejecting “the concept of a preliminary screen for ‘manifestly unfounded claims’” (Kelley and Trebilcock 1998:413). Many of these recommendations were adopted in the 1989 *Immigration Act*. Plaut also argued that a full determination process was “paramount” and that “all claims to refugee status must be considered as substantive” (Kelley and Trebilcock 1998:413). Plaut’s report created the foundation for the ensuing immigration and refugee debates which occurred throughout the 1980s.

The 1985 Singh Decision

In 1985 the Supreme Court of Canada passed the “*Singh* Decision,” which recognized that refugee claimants (as a class of non-citizens) are entitled to some of the rights and freedoms granted to Canadian citizens under the *Canadian Charter of Rights and Freedoms*. Where the previous system denied claimants the ability to present new evidence during the refugee determination process, refugees now had the right to an oral hearing where they could present both new and old evidence related to their asylum claims. In granting claimants such rights, the *Singh* decision fundamentally changed the Canadian refugee system and became the most important refugee decision made up until this point in Canadian law. In the case of *Singh vs Minister of Employment and Immigration*, the procedural fairness of the inland refugee-determination process was the central concern put forth to the Supreme Court of Canada. The key findings of the *Singh* Decision are as follows:

Two concurring judgments, by Mr. Justice Beetz (Estey and McIntyre concurring) and Madame Justice Wilson (Dickson and Lamer concurring), held that denying claimants access to an oral hearing did not meet the standard of procedural fairness required by section 7 of the Charter. Wilson J. found that the word ‘everyone’ in section 7 protected all human beings ‘physically present’ in Canada, and that security of the person encompassed ‘freedom from the threat of physical punishment or suffering, as well as freedom from such punishment itself.’ Wilson J. also rejected the government’s argument that administrative considerations, such as the costs and delays of a more elaborate process, are relevant to the constitutional calculus: ‘Certainly, the guarantees of the Charter would be illusory if they could be ignored because it was administratively convenient to do so.’ [Kelley and Trebilcock 1998: 413-414]

The *Singh* decision prompted Parliament to pass *Bill C-55* in 1985, “which provided for oral hearings on appeals to the Immigration Appeal Board (IAB) and expanded the maximum number of IAB members ... and vice-chairs” (Kelley and Trebilcock 1998:414). *Bill C-55* was meant to be a quick fix until an overhaul of the

immigration system was introduced later in the year as the 1985 *Immigration Act*.

However, many opposition members criticized this legislation as being too hasty. Liberal MP Lucie Pepin described the bill as a “band-aid solution” and the Inter-Church Committee for Refugees (ICRR) agreed, arguing that the short sightedness of the legislation may prove to be detrimental towards more fundamental reform (Kelley and Trebilcock 1998:414). The debates surrounding *Bill C-55* delayed the revamping of the *Immigration Act* in the mid-1980s.

Despite the appointment of new members to deal with an anticipated increase in processing time, the implementation of the oral hearings created a significant backlog in the refugee determination process, resulting in delays of upwards of forty months (Kelley and Trebilcock 1998:414). To deal with the backlog, a partial amnesty was granted on May 21, 1986 which “gave landed status to those refugee claimants who were likely to establish themselves successfully in Canada” (Kelley and Trebilcock 1998:414). However, because of the large numbers of immigrants who were granted status quickly, the amnesty created yet another immigration crisis; thousands of potential immigrants began to arrive in Canada as visitors and claim refugee status hoping for a future amnesty (Kelley and Trebilcock 1998:414).

In addition to the backlog created by the *Singh* decision and the amnesty, further setbacks to the refugee determination reform came about when two groups of immigrants/refugees arrived from Portugal and Turkey in large numbers. In less than six months, 1 000 people claimed refugee status from Portugal in 1986 and by 1987 more than 2 000 Turkish citizens (but predominantly ethnically Kurdish) had sought refugee status in Canada (Kelley and Trebilcock 1998:414-415). Most of the asylum seekers from

Portugal claimed to be Jehovah's Witnesses (although many wore crucifixes, which Jehovah's witnesses never do) citing religious persecution from Catholic Portugal. The media and immigration critics presented them as some of the most notorious abusers of the system (Whitaker 1987:295). Portugal was seen as a safe and stable democratic state, exactly the kind of place from which people should not be fleeing persecution. News of refugees from this part of the world thus created a media frenzy and became a central discussion point in the media and amongst immigration critics. The government dealt with these refugees by implementing visas to both countries, Portugal in July 1986 and Turkey in January 1987, effectively ceasing the influx of refugees from both countries. By implementing visa restrictions, the government absolved itself from facing tough questions about refugees from democratic countries and human rights violations.

Although the implementation of visas as an interdiction policy has existed for quite some time in Canadian immigration tactics, it is a crude approach to immigration problems. Canada also avoids its responsibility to create new legislation to deal with reoccurring issues when using such interdiction tactics. By relying on the implementation of visas, and other interdiction methods, the government signals that it is incapable of making well-informed and researched decisions on refugee law. Portugal and Turkey were not the only challenges the system faced. The late 1980s became an intense time of debate amongst Canadian's in respect to immigration and refugee policy, a fact also illustrated by two other significant cases.

The late 1980s: The Tamils, Sikhs and the Formation of the Immigration and Refugee Board of Canada

In August 1986 a group of one hundred fifty-five Sri Lankan Tamils arrived in Nova Scotia via boat, causing uproar in the Canadian media. Although the Tamils were found to be genuine refugees, granted asylum and allowed to stay, critics “complained that they had jumped the queue, and that such tolerance would fuel a backlash against the immigration programme” (Smith 1994:66). Overall, the Tamils were treated fairly well, but the same cannot be said for a group of one hundred seventy-three Sikhs who arrived in Nova Scotia on July 1987 via boat from India, seeking asylum from state persecution at home. This case became the tipping point for politicians, the media and other critics, as it began to appear that Canada’s immigration system was an easy target for human trafficking and that the refugee determination system needed addressing since Canada seemed to be accepting large numbers of what the media was referring to as “queue jumpers” and “illegals.” The main cause for concern was the way these refugees were arriving in Canada, through the “illicit” means of boats operated by well-organized smugglers, rather than through “official” channels.

The arrival of the Sikhs caused Prime Minister Brian Mulroney to issue an emergency recall of Parliament, declaring: “A serious problem – the growing number of migrants who are entering Canada by posing as refugees – has reached critical proportions.” He further argued that the public concern was well founded as “organized attempts to evade the immigration laws of this country are absolutely unacceptable” (cited in Smith 1994:66). During the recall, two new immigration bills were proposed. One was *Bill C-84, the Refugee Deterrence and Detention Bill* which proposed to establish “tough deterrents to stop the increasing number of illegal aliens posing as

refugees from entering Canada” (cited in Smith 1994:66). Additionally, there were proposed changes to *Bill C-55*, aiming to “tighten controls on access to Canadian territory” (Smith 1994:66). The new bill and changes to the old one were proposed in direct reaction to the arrival of Sikh refugees and to a lesser extent the Tamil, Portuguese and Turkish refugees, all highly publicized events in the media during the 1980s. The presence of these refugees claimants in the Canadian immigration system was seen by critics of the refugee determination system, the media and the current government as a threat and furthermore, as an indication of a lax and broken system.

Throughout 1987 and 1988, heavy political and public debate surrounded the restructuring of *Bill C-55* and the introduction of its companion legislation in *Bill C-84*. These controversial bills were held up in Parliament for over a year due to the heavy debates. *Bill C-55* proposed a complete overhaul of the refugee-determination process within Canada by replacing the *Immigration Appeals Board* (IAB) with the *Immigration and Refugee Board* (IRB), while *Bill C-84* introduced some new and somewhat controversial security measures in regards to “illegal” immigrants.

Bill C-84 provided for the detention and removal of arrivals who posed a criminal or security threat to the nation; detention of unidentified arrivals and security risks; and significant penalties for smugglers of refugees, expanded search-and-seizure powers, and increases in the fines and penalties for transportation companies bringing into Canada individuals lacking proper identification documents. [Kelley and Trebilcock 1998:386]

Both bills were passed by Parliament in 1988 and came into force on January 1, 1989, forming the basis of the new *Immigration Act*.

The new Act changed the refugee determination process and created the *Immigration and Refugee Board* of Canada by amending the 1985 *Immigration Act*, in which the oral hearings were implemented due to the *Singh* decision. The *Immigration*

and *Refugee Board* (IRB) was the most significant development to come out of the act, implementing a system where decision-makers had a duty to act in a quasi-judicial manner (Rousseau et al 2002:44). Claimants would now be entitled to a full hearing by the *Refugee Determination Division* (RDD), which now encompassed the oral hearings implemented in the previous *Immigration Act*. Under the 1989 *Immigration Act*, claimants must prove that they are eligible to claim refugee status where the standard of proof “need not be more than a 50 per cent chance (i.e., a probability), and on the other hand that there must be more than a minimal possibility of persecution” (Rousseau et al 2002:44). The procedures and process of the IRB can be summed up as follows:

Claimants present their case orally in front of the Refugee Division, which has sole and exclusive jurisdiction to hear and determine all questions of law and fact, including questions of jurisdiction (1985 Immigration Act, art 67(1)). Two Board Members of the RDD assisted by a Refugee Claim Officer (RCO) hear the claimants. The RCO is not a representative of the Minister, and the latter is not normally represented unless the case involves an exclusion of a cessation of refugee status, or is of particular interest. The proceedings of the RDD are meant to be non-adversarial, another reason why the Minister is not generally represented and a “contrary case” is not argued. More often than not, the main task of Board Members at the end of the process revolves around assessing the credibility of oral testimonies and of documentary evidence. [Rousseau et al 2002:44]

Despite the many restrictions included in *Bills C-55* and *C-84*, the implementation of the IRB was an improvement over the previous system as it limited the power of the Minister, allowed refugee claimants to plead their cases *before* a decision was made as well as having a decision held in a quasi-judicial setting in a non-adversarial manner. It is also worth noting that the initial restrictive and controversial proposals of *Bill C-55* and *Bill C-84* became less restrictive due to the heavy involvement of the NGO sector in opposition to the bills. The NGO sector had lengthy criticisms and provided alternative proposals which were quoted and appropriated by the Opposition in Parliament (Kelley

and Trebilcock 1998:422). Some of the concerns of the NGO community were evident as the final version of the act had “uncontested credible basis hearings; an expedited refugee-determination process in uncontentionous cases; the Backlog Clearance Program; and the non-implementation of the safe-third-country provisions of the new legislation” (Kelley and Trebilcock 1998:422). All of these implementations helped to reduce and eliminate many of the controversial tendencies of the new Act.

The 1980s were both a high and a low point for the immigration system. The 1976 *Immigration Act* opened up the system from the clearly biased, racist and classist policies of the previous Act, creating a system which allowed for many immigration and refugee applicants. It was throughout the 1980s that the labeling of the “fake,” “illegitimate” and “bogus” refugee emerged, both from the media and the government. Asylum seekers who came to Canada, thus bypassing traditional refugee camps, were contrasted with the “genuine refugees” who, as the narrative goes, theoretically exist but were nowhere near Canadian soil. When the 1976 Act was initially drafted, refugees were generally only recognized in limited situations because the notion of “refugee” was intricately tied into Cold War mentalities. “Refugees” were thus only assumed to flee from Communist countries. But the number of refugees grew throughout the 1980s, creating a backlash towards immigrants and refugees when the real issue was a failure with the immigration system in dealing with large numbers of asylum seekers. As the 1980s moved forward, the system became heavily burdened with applicants and eventually public outcry at the seemingly broken system, combined with political stimulus, contributed to a re-imagining of the refugee system in Canada.

Immigration and Refugee Relations throughout the 1990s

In the 1990s, Immigration law continued down a path of increased restriction, culminating in an overhaul of the Immigration Act in 2001. A significant part of the increased restriction came through *Bill C-86* in 1992, which extended the criminalization of refugees by associating them with criminal activity.⁸ The bill attempted to ban individuals with backgrounds in criminal and terrorist organizations or people suspected of criminal activity (Kelley and Trebilcock 1998:386). Furthermore, the bill expanded Canada's search-and-seizure provisions (which now allowed for fingerprinting and photographing all refugee claimants) and increased penalties for human trafficking (Kelley and Trebilcock 1998:386).

The introduction of *Bill C-86* mostly affected Somali and Afghan refugees because it targeted refugees from countries where it was difficult to obtain official supporting documents, such as birth certificates, to prove one's identity. Indeed, Somalia is traditionally nomadic, and so documents such as birth certificates are rare to begin with. One of the tenets of the bill required that, "refugees provide 'satisfactory' (government issued) identity documents in order to be granted landed status (permanent residency)" (Pratt 2005:130). Without these official documents a refugee could still be granted asylum and understood to be "genuine," but would be unable to apply for permanent residency status. Without permanent residency status, refugees are unable to integrate smoothly into Canadian society, notably lacking the ability to, "travel outside Canada, sponsor relatives, or attend university. They are ineligible for many jobs and training programs and cannot obtain a bank loan" (Pratt 2005:130). Furthermore, the bill

⁸ Bill C-86 also extended the rules towards medical inadmissibility bringing back notions of the 'diseased' immigrant (Pratt 2005: 243).

also allowed for the detention of refugee claimants who lacked these official documents, severely restricting the movements of refugees who were found to be “genuine” despite lacking official documentation. The system greatly restricted the ability of a portion of the refugee-claimant population to better themselves financially, mentally and academically.⁹

In 1997, due to much of the uproar about *Bill C-86*, the government introduced the *Undocumented Convention Refugees in Canada Class* (UCRCC). UCRCC allowed Convention refugees from specific countries, Somalia and Afghanistan, to become permanent residents after a five year waiting period from their positive refugee board decision (Pratt 2005:131). The waiting period was often seen as too long and constraining, considering that decisions could take up to three years to pass. The five year waiting period would not start until a positive decision was made in the refugee hearing, resulting in wait periods between eight and ten years before refugees could apply for permanent residency. However, in 1999 the new Immigration Minister, Elinor Caplan, reduced the waiting period from five years to three years for undocumented Convention refugees. UCRCC was eliminated under the *Immigration and Refugee Protection Act* of 2001, which now allows for Convention refugees to use sworn declarations to declare their identity.

Immigration and Refugee Protection Act (IRPA)

In 2000, Minister of Citizenship and Immigration, Elinor Caplan, proposed new legislation (*Bill C-31*) to replace the 1976 *Immigration Act*. The final legislation was *Bill*

⁹ After *Bill C-86* became law, the federal government accepted 26 000 refugees from the former Yugoslavia. Racial tensions emerged as the Balkan case presented arguably similar circumstance with Somalia yet the government never proposed a government backed refugee program for Somalia.

C-11 and revamped the previous Immigration Act into the *Immigration and Refugee Protection Act* (IRPA), which received royal assent in November 2001 and came into effect in June 2002 (Pratt 2005:3). Although the new legislation was introduced to streamline and improve the refugee determination process, many in the academic and NGO communities had concerns. First, there were objections to the “negative stereotyping of new immigrants and refugees and its heavy enforcement emphasis, which for example, expanded inadmissibility and exclusion provisions as well as powers of detention” (Pratt 2005:4). Second, more power was given to bureaucrats by allowing them more discretion to frontline officers:

While the legislation does include more prominent reference to Canada’s human rights obligations than the former legislation, it also expands the categories of people who are to be denied these protections. By excluding those deemed to be “serious criminals, terrorists, traffickers and security risks,” a real danger of sending some of them back to face serious human rights violations such as torture. [Pratt 2005:4]

This passage illustrates how the image of the refugee plays out in practical terms, as people engaged in the activities described above are perceived to be less deserving of asylum than other asylum seekers. They are not participating in the performance of being a refugee. The image of a refugee does not include “serious criminals, terrorists, traffickers and security risks,” and such people are excluded from the refugee determination process almost immediately, regardless of whether or not they are in need of humanitarian aid. By using criteria such as this and excluding claimants based on these categories alone indicates that these particular asylum seekers do not live up to the moral standards associated with refugees.

Lastly, the name of the legislation, the *Immigration and Refugee Protection Act*, implies that the act is primarily aimed at the protection of immigrants and refugee rights;

however, Pratt argues that is not their primary goal with the Act and that the heart of the new legislation lies in the “protection of the Canadian public, nation, borders, and integrity of Canada’s administrative systems” (Pratt 2005:5). The ones who need protecting are Canadians and they need protection from “foreign nationals,” a term used in the legislation in reference towards immigrants and refugees (Pratt 2005:5). Pratt also notes that since the main focus on the new legislation is on the protection of Canadians, Canada’s humanitarian responsibilities are pushed aside. It is assumed that Canada’s humanitarian goals “will be addressed more or less automatically by more extensive enforcement-oriented provisions to deal with those who are truly in need of protection” (Pratt 2005: 5). Thus, the legislation actively focuses on closing the so-called “back door” of immigration but does very little to improve the ability of refugees to gain entry the legal way, or through the front door.

The Canada – United States Safe Third Country Agreement

It was throughout the 1990s that the NGO community established itself as advocates for refugee rights, having a heavy involvement in the debates surrounding the Canadian immigration system for the first time. Although the NGO community had existed since the 1970s, it was throughout the 1990s that it took on more of an advocacy role in refugee policy. *Bill C-86* created an atmosphere of debate around immigration and suggested the use of a Safe Third Country agreement with partner countries to stop so called “asylum shopping” (Pratt 2005:123). The argument was that people who “shop for asylum” could/would have been granted asylum, if they were really in need, in one of

these other countries they passed through before arriving in Canada.¹⁰ The implementation of legislation was eventually dropped from *Bill C-86* and it was not until the mid-1990s that the topic was broached again. However, the United States was reluctant to enter into such an agreement with Canada and the implementation of such an agreement took years.

The *Safe Third Country Agreement* with the United States came into effect in December of 2004. Audrey Macklin (2003) analyzes the preamble of the *Canada-United States Safe Third Country Agreement* to evaluate whether or not the agreement itself lives up to its weighty introduction. She highlights a number of contradictions between the Canadian system and the US system of refugee determination which make it difficult for the Agreement to live up to both countries' legal standards. For example, the treatment of children under the immigration laws of Canada and the United States are in stark contrast with the United States "routinely detain[ing] unaccompanied minors who lack legal status in the US [who] may be asylum seekers," whereas in Canada the rights of the child are protected under s. 60 of the IRPA which states that "a minor child shall be detained only as a measure of last resort, taking into account the other applicable grounds and criteria including the best interests of the child" (Macklin 2003:8). Macklin also notes that the system is actively undermining the "orderly processing of refugees claims" (Macklin 2003:19). Under the agreement Canada will lower its intake of refugees via the Canadian-US border by about 15 000 refugees (Macklin 2003:19). One year after the implementation of the Canada-US Agreement the *Canadian Council of Refugees* (CCR) released a report on the effects of the Agreement titled, "Closing the Front Door on

¹⁰ See Friesen (2004) for more information on the passage of the Safe Third Country Agreement between Canada and the United States of America.

Refugees: Report on the First Year of the Safe Third Country Agreement” (CCR 2005).

In this report, the CCR found that the Agreement had been extremely successful, reducing the number of refugee claimants at the border by approximately half:

Based on the first eleven months of the year, Canada is set to receive in 2005 the lowest number of claims since the mid-1980s, with a projected year end total of just 19, 562. This figure is significantly below the average of 29, 680 claims annually since the current refugee determination system came into effect in 1989. While there has been a modest decline in numbers of claims made at other places, the drop at the land border has been far greater, with numbers at only 51% of what they were in 2004. [CCR 2005: ii]

Often, the Canadian government implies that Canada is taking on more than its fair share of refugees. However, international numbers prove this claim to be inaccurate time and time again. During the early 2000s, the Canadian government maintained that the majority of refugee claimants in Canada were arriving through the United States (Rekai 2002:13). It is because of this assertion by the Canadian government that it had been pushing for the Canada-US Safe Third Country agreement throughout the 1990s. It was not until after the September 11th attacks that the United States government seriously considered signing onto this agreement, under the claim of Canada’s lack of security. This agreement was also drafted under the guise of “responsibility sharing” of refugees between Canada and the US, despite the fact that the numbers of refugees accepted by both countries pale in comparison to the number of refugees accepted by so called developing countries, which was outlined earlier in this chapter.

The concept of a “safe third country” was not new to Canadian immigration, as legislation passed during previous Immigration Acts that allowed for countries to be designated as “safe.” The United States was the first country given this “safe” designation. As Macklin notes, “[d]esignating a third country as ‘safe’ signified a

judgment that the country will provide refugee protection in accordance with the 1951 *Convention Relating to the Status of Refugees* and the 1967 *Protocol*, and will adjudicate refugee applications in a fair manner” (Macklin 2003:1). This means that any country Canada wants to designate as “safe” or to create another similar agreement with must be signatories to the Convention and its Protocol. There is a push to implement more countries as being “safe,” which would limit people fleeing from persecution to apply in Canada for refugee status. I will discuss the implications of this move later on in relation to the Roma in the Czech Republic and Hungary.

The Agreement only applies to refugee claims which were made at a land port of entry and does not apply to asylum seekers who make inland refugee claims, as it is impossible to ascertain whether or not the asylum seeker came via the United States or elsewhere (Macklin 2003: 2-3). The Agreement works as follows: when an asylum seeker (refugee claimant) arrives at a port of entry along the Canadian – American land border, they must seek protection in the first country of arrival. Thus, anyone attempting entry into the other country to seek asylum will be sent back to the original country they landed in (Macklin 2003:1). The core of the agreement is in Article 4(1) which states that:

[t]he Party of the country of last presence shall examine, in accordance with its refugee status determination system, the refugee status claim of any person who arrives at the land border port of entry ... and makes a refugee status claim
[Macklin 2:2003]

There are four exceptions to this. They are on the conditions that a claimant:

1. Has at least one family member in the territory of the receiving Party who has been accepted as a refugee or has lawful status, other than a visitor;
2. Has at least one family member in the territory of the receiving Party who is over 18, and has an eligible refugee claim pending;

3. Is an unaccompanied minor, meaning that she/he is unmarried, under 18, and has no parent or legal guardian in either Canada or the US;

and 4. Arrived in the territory of the receiving Party with a validly issued visa (other than a transit visa), or without a visa because none is required to enter only the receiving Party (Macklin 2:2003).

However, overall the bill is meant to, “crack down” on presumed “asylum shopping.”

The Canada-US Safe Third Country agreement was not welcomed by everyone, and some opponents have dubbed it the “None is Too Many” Agreement, harkening back to Canada’s response to Jewish refugees after the Second World War (Macklin 2003:1). This Agreement is an interdiction tactic meant to impede asylum seekers from arriving here and allowing Canada to avoid living up to its legal obligations (Macklin 2003:5). As discussed above, Canada has employed other interdiction policies, of which the most notable and relevant to this thesis are the tendency to enact visa requirements on “refugee-producing” countries. This will be discussed in relation to Roma refugee claimants in Chapter Four.

The Canadian immigration system, and specifically the refugee determination system and border control policies, has become more conservative and restrictive in the past twenty years. Despite all the issues regarding immigration throughout the 1970s and 1980s, this period is often looked upon as a golden age of immigration, in the sense that immigration became an important political tool and large numbers of immigrants were accepted into Canada throughout this period. However, throughout the 1990s and into the twenty-first century, it has become more difficult to gain access to the system, as often immigrants and refugees become criminalized through political and media campaigns. It

is in the past two decades that words such as “asylum shopper,” “genuine refugee” and “bogus refugee” have entered common vocabulary. After the process towards the Safe-Third Country Agreement was underway, then Deputy Prime Minister John Manley declared: “It’s not a matter of shopping for the country that you want, it’s a matter of escaping the oppression that you face” (cited in Macklin 6: 2003). The implication here is that asylum seekers who “choose” which country to seek aid from are somehow suspect and “not genuine.” Macklin rightly argues that the refugee/migrant and the legal/illegal binaries are completely inappropriate when it comes to discussing persecution: “*why* someone crosses a border bears no necessary relation to *how* they cross it” (Macklin 2005: 367; emphasis in original). Despite the strict nature of its refugee determination system, long delays in overseas selection, as well as the small number of people selected in this manner, many people seeking asylum continue to come to Canada on their own accord.

Conclusion

I have outlined how Canadian refugee policy developed alongside its immigration system and, following Stasiulis and Bakan’s (2005) argument, highlighted the restrictive nature which evolved alongside these policies. I examined the emergence of the international refugee regime, the development of immigration and refugee systems throughout the 1950s and 1960s, outlined the development of the 1976 Immigration Act and 1985 Singh Decision and the impact these developments had on the establishment of the Immigration and Refugee Board of Canada. Furthermore, I looked at how refugee relations developed throughout the 1990s, leading to the Immigration and Refugee Protection Act (IRPA) and the Canada United States Safe Third Country Agreement. Ong

writes that “hegemonic ideas about belonging and not belonging in racial and cultural terms often converge in state and nonstate institutional practices through which subjects are shaped in ways that are at once specific and diffused” (Ong 1996:738), a dynamic we have seen playing out in the history of Canada’s refugee system. Be it in the case of refugees from communist countries automatically granted legitimacy for Cold War ideological reasons or the Sikh and Tamil refugee claimants, treated with grave suspicion and subject to delegitimization attempts, we can see the tug and pull of making and being-made operating in a variety of different venues: the media, the government, the judiciary.

This chapter has established the historical development of refugee policy in Canada which provides the background to the implementation of the next step in Canadian refugee policy, the Balanced Refugee Reform Act (BRRA) implemented in 2010. Canada’s current Immigration Minister Jason Kenney introduced a number of reforms dealing specifically with refugee legislation, to the IRPA to Parliament on March 30, 2010. The bill was passed with virtually no debate in Parliament, however it did undergo considerable discussion and revision during the parliamentary committee stage, and received Royal Assent on July 29, 2010. The next chapter challenges the Canadian government’s insistence that Czech (and Hungarian) Roma refugee claimants are illegitimate due to the democratic nature of their government. Through an examination of the situation Roma face in Hungary and the Czech Republic, I will show that Roma do in fact face persecution and serious violence in those countries.

CHAPER THREE: REFUGEE PRODUCING SITUATIONS: THE CZECH REPUBLIC AND HUNGARY

The previous chapter outlined how refugee policy was developed in league with Canada's immigration admissions policy. This chapter examines the situation of Roma in Hungary and the Czech Republic and will show that, despite the insistence of Canada and other Western nations, Roma do face persecution in these countries. Put differently, these countries are indeed producing refugee-like situations for Roma. The cumulative effect of discrimination faced by Roma in these countries fits the legal standard for accepting Roma as refugees in Canada. I am not contending that all refugee claims from these countries are automatically valid, but rather I am arguing that there are Roma in these countries who would "suit the legal definition of refugee" and this should not be overlooked despite the fact that the Roma live in countries with western-style democratic governments. Furthermore, this chapter will show that Roma are being-made as delegitimized citizens in Hungary and the Czech Republic (as well as other European states) and are treated extremely differently than other citizens. Roma are often seen to be in a state of non-citizenship as many of the laws in place meant to protect them are often ignored by European governments, or actually work to segregate them. Despite Hungary and the Czech Republic not being colonial settings, I nevertheless draw on Kelly and Kaplan's (2001) conception of represented communities to illustrate the discriminatory ways Roma are constructed within these countries.

Both Hungary and the Czech Republic have a history with Canada's refugee determination system due to the previous influx of Roma refugees from both countries in

1997 and 1998.¹¹ Much of the same rhetoric used then to discredit Roma refugee seekers is being used today, especially the claim that democratic or European countries cannot produce refugees. It was argued in the 1990s that despite “widespread discrimination and instances of persecution in Hungary, laws are in place to protect minorities” (Lee 2000:63). Laws and court ruling may be in place to help minorities, specifically Roma, in the Czech Republic and Hungary, but if those laws are not respected, deemed unimportant and not properly enforced, then little is really changing on the ground for Roma in these countries.

This chapter first examines the relationship between discrimination and persecution in international refugee law. I then discuss how the cumulative effect of discrimination is understood to be tantamount to persecution, both internationally and in Canadian law. The next section examines discrimination of Roma in Hungary and focuses on the *Minority Act* and the rise of extremist movements within Hungary, focusing on the Jobbik party and the Hungarian Guard. I then examine discrimination in the Czech educational system, violent attacks against Roma throughout the country and coercive sterilization of Roma women. I follow with a discussion about the relationship of Roma to human trafficking throughout Europe. I look at these two countries specifically because of their relationship with the Canadian Roma influx of 2008-2009. By looking at the systemic discrimination of Roma in these two countries I demonstrate that claims of discrimination by Roma asylum-seekers may have credibility and thus need to be examined on an individual basis to determine if they fit the criteria of refugees.

¹¹ For a detailed overview of the Czech and Hungarian Roma migration in 1997 and 1998 see Lee (2000).

Persecution and Discrimination in Refugee Law

This section focuses on the notion of discrimination based on cumulative grounds, “namely, the understanding in refugee law that the cumulative effect of various discriminatory measures can amount to persecution, even where each incident of discrimination alone would not suffice” (Dowd 2010:29). Persecution is at the core of international refugee law but the term has no legal definition and its relationship to discrimination is somewhat murky when applied to refugee determination systems and the legal responsibilities of nation states. Sections 53, 54, and 55 of the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status provides criteria for establishing the circumstances under which cumulative discrimination is considered to amount to persecution. As UNHCR states, “[t]here is no universally accepted definition of ‘persecution’, and various attempts to formulate such a definition have met with little success” (UNHCR 1992[1979]:para 51). Still, persecution is easier to prove than discrimination as

it may be inferred that a threat to life or freedom on account of race, religion, nationality, political opinion or membership of a particular social group is always persecution. Other serious violations of human rights – for the same reasons – would also constitute persecution. [UNHCR 1992[1979]:para 51]

The only official distinction between persecution and discrimination in refugee law amounts to the general acceptance that persecution constitutes more harm than discrimination. It is helpful to think of discrimination and persecution as existing in a continuum:

It is clear that there is no ‘bright line’ test in refugee law to distinguish ‘mere’ discrimination from persecution. Rather, there is a spectrum of activity directed at individuals on the basis of a Convention ground, with threats to life and liberty at one end and ‘mere’ discrimination at the other. Somewhere, perhaps in the middle, is a point we can call ‘severe’ or ‘serious’ discrimination, which probably

marks the threshold at which persecution begins. The cumulative effects of discrete acts of discrimination must be considered in determining whether this point has been reached in a given case. [Walker 2000:194 cited in Dowd 2010:32-33]

Thus, discrimination can be understood in two ways: 1) as “the link between an incident/treatment and a Convention ground” and 2) “as a word designed to connote less serious forms of harm” (Dowd 2010:31; Foster 2007:94). However, the distinction between the two concepts is always one of degree. Often, refugee decision makers “look for tangible harm to the individual in order to make a finding of persecution” (Dowd 2010:33). Thus, “mere” discrimination is often not enough for adjudicators to grant asylum. However, cumulative discrimination “refers to the situation in which a person faces a number of different discriminatory measures, such as in education, health care, employment and/or housing” (Dowd 2010:39).

Canada has recognized that cumulative effects of discrimination are tantamount to persecution: “the cumulative effects of discrimination and harassment may fulfill the definitional requirements of persecution in some circumstances, even where each incident of discrimination or harassment taken on its own would not” (Hanquan Liang v. Canada cited in Dowd 2010:42). Thus, cumulative discrimination should be factored in when implementing interdiction policies onto nation states, such as the Czech Republic. As discussed in Chapter Four, Minister Kenney claimed that Roma refugees were “bogus” and illegitimate. What this chapter illustrates is that the circumstances of Roma from Hungary and the Czech Republic are aligned with the concept of cumulative discrimination as grounds for refugee determination. Thus, Canada did close the door on those who potentially have legitimate claims for asylum. Not all refugee claimants are legitimate but the movement of people from these countries is legitimate as the systemic

discrimination they face qualifies many Roma for protection, particularly when the state has done little to end the discrimination or to improve the situation for Roma.

Furthermore, in some of the cases outlined in this chapter it is clear that Roma face more than systemic discrimination. Roma also face violence and bodily harm, furthering their need for protection outside of their home countries.

Hungary

Hungary has often been seen as leading the way in terms of policy and projects regarding Roma wellbeing, including the establishment of many NGOs that focus on Roma rights within Hungary and throughout Europe (Ringold, Orenstein and Wilkens 2005:124). Ringold, Orenstein and Wilkens attribute this to three factors: 1) the quick adaptation to post-transition development in the country which lead to its inclusion in the EU in 2004; 2) the large number of Hungarians living as minorities in other countries, which has encouraged more involvement with minority issues within Hungary; and, 3) the rapidity of the growth of civil society in Hungary (2005:124). This section will examine the *Minority Act*, the Jobbik party and its extreme right supporters and the lack of police involvement in protecting Hungary's Roma population. These three elements show that Roma face more than discrimination in Hungary, they also face persecution and human rights violations.

Minorities Act

In 1993, Hungary adopted the *Minorities Act*, “which granted considerable cultural, educational, and linguistic rights to Hungary's thirteen recognized minorities, including the Roma, through a system of a national and local minority self-governments

(MSGs) (Ringold, Orenstein and Wilkens 2005:129).¹² The international community has often looked positively upon the MSG system in Hungary as an indication that the Hungarian government is working towards the betterment of its minorities, especially Roma. However, in this section I will show that the MSG system is deeply flawed when it comes to enacting its original mandate and, furthermore, that despite its name it completely lacks any type of promotion for socio-political action on the behalf of minorities. Thus, the system should not be seen as improving the livelihood of Roma in the country without qualifications. In a way, the system actually promotes the segregation of Roma by limiting their political activities to the MSGs and lacks incentives for Roma to participate in Hungarian social and political life.

The MSG system is a unique program offering Roma the opportunity to participate politically in Hungary. The system was created in 1993 to allow recognized minorities the opportunity to establish local, regional and national self-governments (NDI 2006:5). These self-governments

have the right to make decisions in the areas of local education, language use in public institutions, printed and electronic media, and the protection of their traditions and culture. The local MSG representatives have the right to provide input on all public policy matters through guaranteed access to local council committee meetings, though they have no other special rights in this regard. [NDI 2006:5]

However, many advocates, scholars and policy makers argue that the system is a fundamentally flawed program which “offers the illusion of political power rather than genuine inclusion” (NDI 2006:4).

There are many criticisms raised over the MSG system. There is concern over the separation of “minority issues,” and in this case specifically “Romani issues,” from the

¹² The other twelve minorities recognized by Hungary are Armenians, Bulgarians, Croats, Germans, Greeks, Poles, Romanians, Ruthenians, Serbs, Slovaks, Slovenes and Ukrainians (Ringold, Orenstein and Wilkens 2005:207).

rest of Hungarian society, which implies that problems faced by minorities are of no concern to the majority of society, when in reality they are highly interconnected. Any attempt at addressing the problems facing Roma in Hungary should include the active participation of Hungarian policy makers. Solutions to the problems faced by Roma in Hungary will not be addressed by segregating Roma politically.

Other problems with the MSG system include “unclear competencies, the lack of differentiation between various minority needs, deficiencies in financing, and voter enfranchisement regardless of ethnic affiliation” (NDI 2006:5). There were instances, as in the community of Jazsladany, where “non-Roma [were] elected to Romani MSGs by non-Roma voters with the aim of limiting the effectiveness of the MSG” (NDI 2006:11).¹³ After years of debate, the Hungarian government attempted to address some of these problems with the MSG system through a clearer mandate for the self-governments and their relationship with the local government. The revisions required candidates to now be nominated by an NGO that works with the minority in question and required people running for MSG elections to declare their ethnicity (NDI 2006:6). This last change was particularly controversial among Roma due to the historical relationship between the governments collecting of ethnic data and the *Porajmos*.¹⁴

When establishing the *Minority Act*, the Hungarian government’s stated purpose was “to assure the cultural autonomy of minorities and to fulfill international obligations regarding the protection of minority rights” (NDI 2006:10). Furthermore, the Hungarian government created the MSGs in hopes of bolstering the recognition of minority rights for ethnic Hungarians in neighboring countries. Thus, the act was self-serving, in that it

¹³ For more information on this case see Danko and Pallai 2004.

¹⁴ Porajmos is the Romani word Holocaust, similar to Shoah in Hebrew.

tried to establish Hungary as a country where minority rights were respected so to create leverage when trying to encourage other countries into recognizing minority rights for Hungarians (NDI 2006:10). Thus, the system was never intended to implement real political and societal change for Roma in the country but rather to give the appearance of change. Many were confused over the name “self-government,” as it implies that MSGs have more power than they really do. This can create “disillusionment among Roma and damages the legitimacy of the MSGs in the eyes of the Romani public” (NDI 2006:18). Furthermore, MSGs really marginalize Romani issues by “depositing them in a parallel, fairly powerless, quasi-governmental structure rather than addressing them through established governing bodies” (NDI 2006:6). The way in which the MSG system plays out with Roma communities can be illuminated by Kelly and Kaplan’s concept of “represented communities.” Roma are categorized in Hungary as communities constructed around discrimination and exclusion. Kelley and Kaplan “stress the history of colonial reliance on conceptions of ‘communities’ among the colonized as both an alibi for difference of rights and powers in law and as a vehicle for limiting and channeling political aspirations” (2001:22). Thus, the MSG could have had the potential to engage Roma politically; however the system limits Roma involvement in the wider Hungarian society and politics by restricting their ability to engage in wider political change. In other words, it segregates Romani political life from the rest of society.

Advocates argue that what needs to occur in Hungary, and Europe in general, is the promotion of Roma in mainstream electoral policies at all levels of government, rather than the promotion and praise of a segregated political system for minorities (NDI 2006:6). This segregated system is an example of the Hungarian government constructing

Roma as passive recipients of the active-passive binary of Ong's dual process of "self-making and being-made" (Ong 1996:738). Rather than creating a system which includes minorities, in this case specifically Roma, the government chooses to enact a system which fundamentally excludes minorities by relegating their issues to the sidelines, further shaping Roma as not belonging.

The rise of extremism in Hungarian Society: Jobbik and the Hungarian Guard

The rise in extreme right wing political parties in Europe, including Jobbik in Hungary, has gained considerable attention and public support in recent years. Jobbik has gained seats in both the European Parliament (2009) and the Hungarian Parliament (2010) and also took home more than fifteen per cent of the Hungarian vote in European parliamentary elections in 2009 (Tóth 2010:15). The party has brought back the term "Gypsy Crime" once popular under Soviet rule. The rise in the popularity of Jobbik from fringe to mainstream is alarming due to its extreme right wing ties, its relationship with the ostensibly-defunct neo-fascist vigilante organization the Hungarian Guard (Magyar Gárda), and its anti-Gypsy and anti-Semitic discourse in a country rife with ingrained discrimination against minorities, Roma and Jews in particular.

The connection between Jobbik and vigilante organizations such as the Hungarian Guard continues today in Hungary. Although the Hungarian Guard was dismantled in 2009, a new vigilante organization has formed which has essentially replaced it: the Civil Guard Association for a Better Future (Szebb Jövőért Polgárőr Egyesület) with the same leadership as the banned Hungarian Guard (ERRC, AI, and Human Rights First 2011). Jobbik's slogan, "The movement for a better Hungary," (Jobbik 2011) is very similar to the new organizations' name. The most recent example of their interconnection occurred

in the town of Gyöngyöspata, where the Civil Guard Association for a Better Future began to patrol on March 1, 2011. On March 6, 2011 Jobbik held a rally in the town where Gábor Vona, founder of the banned Hungarian Guard and current leader of Jobbik, gave a speech about “Gypsy Terror” (ERRC, AI, and Human Rights First 2011). After the speech a march through the town ensued consisting of 2 000 participants dressed in black military clothing (Hungarian Watch 2011; ERRC, AI, and Human Rights First 2011). Following the rally it was reported that members of the Civil Guard Association for a Better Future engaged in harassing Roma in the community:

The Szebb Jövőért Polgárőr Egyesület are reported to have followed the Romani residents everywhere they went and to have intimidated them daily. They reportedly prevented the Romani residents from sleeping by shouting during the night, threatened them with weapons and dogs and followed them every time when they left their houses. [ERRC, AI, Human Rights First 2011]

The Romani residents of the town became “afraid to venture out to go to school, to work or even to buy food” (ERRC, AI, Human Rights First 2011). Disturbingly, police did not intervene in the situation to help protect Roma residents.

The police, while present in large numbers, still do not interfere in any way, regardless of the fact that there is reasonable suspicion that offenses such as harassment and bodily injury are occurring on a day to day basis against many of the village’s Roma residents. [Hungarian Watch 2011]

According to Attila Laszlo, the leader of the organization, the para-military organization intends to stay in the town and surrounding area until a local branch can be set up, trained and organized to patrol the city (Hungarian Watch 2011).

The situation in Gyöngyöspata is not an isolated case. On April 12, 2011 the organization met again to control patrols in the town of Hajdúhadház. In this case approximately one hundred eighty representatives organized to patrol in “groups of 8-10 persons, clad in black military clothing, intimidating the Romani residents and filming

them in their homes and gardens” (ERRC et. al 2011). The police, again, did nothing to stop these demonstrations from occurring, despite being required to do so under Hungarian law (HCLU 2011). The police captain in Gyöngyöspata explained that the police did not get involved as “the uniforms were not the uniforms of the dissolved Gárda (Hungarian Guard) and as long as there were no violent acts, there was no legal opportunity for the police to take steps” (HCLU 2011). The HCLU found fault with this logic noting that “in our view it is a false legal interpretation to refer to the lack of facts of minor offenses, when the suspicion of serious crime arises” (HCLU 2011).

This section illustrates that demonstrations organized by the extreme right wing are allowed to proceed free of police intervention, further illustrating how Roma are rarely seen as holding the rights to state protection afforded to other citizens. If Hungary was doing its part to adequately protect Roma from extreme discrimination, humanitarian organizations such as Amnesty International and watchdog NGOs would not have to illustrate the fact that local police were not doing their job in protecting citizens. Without these organizations, the Roma residence of Gyöngyöspata might be in more dire circumstances today. The presence of anti-Roma quasi-military groups patrolling Roma neighborhoods demonstrates extreme discrimination tantamount to persecution, especially when police need to be forced to intervene.

Other Discrimination Issues

In March 2011 European Roma Rights Centre (ERRC) released a report on the effectiveness of state authorities in responding to crimes against Roma. It examined the Czech Republic, Hungary and Slovakia. In regards to Hungary, the report found that

there had been forty-eight reported attacks against Roma between January 2008 and December 2010 (ERRC 2011b:5). These attacks:

[t]ook a total of nine lives, including two minors. The attacks left dozens of people with injuries, 10 of which were life-threatening. In 12 cases Molotov cocktails were used; in two cases hand grenades. In 12 cases shots were fired and in nine cases Romani property was vandalized. [ERRC 2011b:5]

In Hungary, the government does not adequately monitor racist violence and “court officials are reluctant to consider racial bias motivation as an aggravating circumstance to crimes: it is not explicitly included in the Criminal Code (only ‘base’ motivation is included)” (ERRC 2011b:20). Hate crime is a separate legal provision in Hungary and not linked with other crimes (ERRC 2011b:20).

The Hungarian government refuses to collect ethnic data on its citizens, claiming that collecting such data infringes on the rights of its citizens. However, it is policies such as these that contribute to the continuation of discrimination against Roma and their lack of belonging in Hungary. Andras Pap, a scholar specializing on hate crimes in Hungary, acknowledges that the restrictions on the collection of ethnic data provides no guarantee that this data is still not used by law enforcement against minorities, but also notes that it becomes increasingly difficult to prove indirect discrimination when there is no acknowledgement by the courts, police and society that ethnic discrimination occurs (2008:110). The European Commission against Racism and Intolerance (ECRI) has acknowledged that a lack of data on ethnic minorities can be a hindrance towards constructive policy:

While acknowledging the fact that collection and utilisation of data on ethnic origin is restricted in Hungary for valid reasons, [the] ECRI is concerned that the lack of reliable information about the situation of various minority groups living in the country makes evaluation of the extent of possible discrimination against

them or the effect of the actions intended to fight such discrimination difficult.
[Pap 2008:110-111]

Additionally, the European Union does allow for ethnic data to be collected and encourages Hungary to do so responsibly, by seeking the consent of individuals and providing assurances that this data would be protected (ERRC 2010c). Thus, it is detrimental to the protection of the Roma that Hungarian officials refuse to collect data relating to ethnicity when it is not legally disallowed (in the European Union) and would provide much needed information for implementing successful policy programs. As the system stands, it discriminates against Roma by refusing to acknowledge the discrimination faced by Roma in the country, or to change the deeply flawed system.

Roma also face extensive discrimination in the educational system and with regards to reproductive rights. The most recent case of coercive sterilization of Roma women in Hungary was reported in 2008 (ERRC 2011a). As for the education system, Roma continue to be overrepresented in schools designed for the mentally disabled and studies have indicated that that their numbers are increasing, not decreasing, in these schools (ERRC 2010c:5). The placement of Roma in these “special schools” is intertwined with the “negligent failure to take into consideration their specific socio-cultural characteristics and owing to – conscious or unconscious – discriminatory considerations” (ERRC 2010c:5). Roma are often segregated in the housing market as well: landlords refusing to rent to Roma families; vandalism and arson occurs to Romani homes in non-Roma neighbourhoods, and there are recorded instances where physical force has been used to prevent Roma from taking up residence in property they have bought and paid for (ERRC 2010c:7). All the while, little is done by the police to protect

the rights of Roma, often resulting in Roma having to look for new accommodations in segregated Roma communities.

It is clear that discrimination against Roma in Hungary is extremely entrenched and, in a way, encouraged by the hegemonic forces of state inaction regarding the protection of its Roma citizens. Systemic discrimination occurs in politics, with the segregation of Roma politics to a mock-government represented by the MSG system and the popularity of the Jobbik party with its close connection to para-military groups such as the Civil Guard. Discrimination also occurs through police inaction in protecting the rights of Roma citizens, in the judicial system's failure to bring charges against perpetrators of crime against Roma and in the education system's segregation of Romani children to special schools. Other kinds of discrimination occur when the housing sector segregates where Roma are allowed to take up residence (FRA 2009) and through the lack of recognition of the continuing processes of coercive sterilization (Danka 2007). This is not an exhaustive list of the systemic discrimination faced by Roma, but it does clearly illustrate that Hungary faces serious problems in relation to upholding its own laws regarding the fundamental rights of Roma. Laws are in place to protect Roma in Hungary, but if the government and the police refuse to uphold these laws, then it is not surprising that Roma wish to leave to see asylum in another country.

Czech Republic

The Czech Republic is experiencing very similar circumstances to Hungary regarding its Roma population. The ERRC has prepared a report to be presented to the Committee on the Elimination of Racial Discrimination (CERD) at its 79th session between 8 August and 2 September 2011. In this report, ERRC takes issue with the

Czech Republic's lack of implementation of the recommendations CERD proposed on the Czech Republic back in 2007. CERD proposed that the Czech Republic take measures towards eliminating three significant areas of discrimination against Roma: 1) the continued segregation of Romani children in the education system; 2) the insufficient state response to anti-Roma violence throughout the country; and 3) the failure to adequately respond to involuntary sterilization of Romani women (ERRC 2011b). ERRC established in this report that few, if any, of these recommendations were addressed and that laws have since passed which contribute to Roma discrimination in the Czech Republic. In this section I will look briefly at these three areas of concern to illustrate the systemic discrimination that Roma do indeed face in the Czech Republic, that the Czech government has done little to recognize the need for fundamental policy changes in regards to each area, and that the movement of Roma out of the Czech Republic is a legitimate movement of asylum seekers.

Roma Education in the Czech Republic

Education of Roma is an extremely important step towards ending discrimination against Roma within the larger society, but Roma children in the Czech Republic continue to be placed in segregated or "special" (now "practical") schools despite a number of court rulings which should have ended this practice. The placement of Roma children into schools intended for children with disabilities is an example of systemic discrimination within Czech society. This section will outline some of the examples of discrimination that Roma children face in the education system. Despite the recent court rulings (in 2005 and 2007) little has practically changed, suggesting that little will change in the future.

On January 1, 2005 educational legislation was passed in an attempt to address and eliminate discrimination and segregation of Romani children within the Czech education system. Simultaneously, more Romani teachers and teaching aids were sought out and preparatory classes were created to help bridge Roma students into the main school system (ERRC 2009:3). Furthering change in the education system in the Czech Republic, on November 13, 2007 the European Court of Human Rights (ECHR) made a landmark decision in the case of *D.H. and Others v. the Czech Republic*, declaring the segregation of Roma children in the school system is illegal. However, the Czech Republic has implemented little change towards ending the segregated schools: “It has produced a lengthy and vague action plan which has no funding, no monitoring and a timetable for implementation that ensures no meaningful change for many years, if ever” (ERRC 2010b).

Although these attempts by the government to implement new policies towards Roma education show intent for improvement, a recent change in the law indicates that Roma children are still more likely to be placed into “special” schools rather than integrated into the mainstream educational system. Decree 147/2011 Coll. amended Decree 73/2005 Coll. and stipulates a child without a medical disability can be placed into classrooms designed for children with disabilities if he/she “is a pupil with social disadvantage and was continuously failing at mainstream school in the long term even with respect to special educational needs and using of equalizing measures” (ERRC 2011c:3). ERRC argues that under Czech law “both disability and socio-economic status can be used as proxy for race, keeping Romani children isolated from their non-Romani peers” (ERRC 2011c:3). Although the “socially disadvantaged” category is in place there

are “no criteria for determining or assessing children falling into this category” (ERRC 2009:18). Thus, Roma are disproportionately placed into schools which are not adequately set up or designed to help them integrate back into the regular school system. The new legislation continues to segregate Romani children. This is officially due to their socio-economic status, but this is a thinly-veiled euphemism that conceals the continuing practices of racial segregation. Furthermore, the legislation is not adequately meeting the needs of disabled children, who are not able to get the proper education they need when schools are filled with children who are not disabled.

Furthermore, as of 2009, the curriculum used in the “special schools” has not changed since 1997. There has been no attempt to update the learning material to fit with the new mandate (ERRC 2009:18). It is hard to imagine that Roma children attending these special schools will be able to integrate back into the regular school system when they are being taught material more than a decade out of date at a slower rate than the normal school system. The government lacks a sense of urgency in implementing changes to its segregated and discriminatory education system. The National Action Plan of Inclusive Education implemented in 2010 indicates that the government recognizes that something needs to be done in regards to Roma educational standards in the Czech Republic, but no concrete action is scheduled to take place until 2014 (ERRC 2011c:4). Delaying reform will only lead to more Roma children being placed into “special school” and make it harder for them to obtain the secondary and post-secondary education needed to break out of the poverty cycle.

Violent Attacks against Roma

Attacks against Roma in the Czech Republic (and other countries) have been on the rise since 2008. In 2011, the ERRC presented an account of the number of reported attacks against Roma in the country. They found that there had been seventeen attacks against Roma (and/or their property) between January 2008 and December 2010 (ERRC 2011b:5). The report states:

These attacks left 11 people, including two minors, with injuries, two of which were life-threatening. In eight cases Molotov cocktails were used; one case involved a tear gas grenade. In one case shots were fired. In seven cases Romani property was vandalized. In three cases Roma were beaten and in one case adults attacked a minor. [ERRC 2011b:5]

The report by ERRC is not exhaustive but does illustrate the kinds of attacks which are occurring against Roma in the Czech Republic. The ERRC discovered that state response to these attacks left much to be desired.¹⁵ Only when media attention is high does adequate police and judicial response occur. This is exemplified by an incident in the city of Vítokv in 2009 when Molotov cocktails were thrown into a Romani house. Three family members suffered injuries, including a two year old girl who suffered second and third degree burns on eighty per cent of her body (ERRC 2011b:14). The incident garnered heavy media attention both nationally and internationally. Four perpetrators were arrested, with three of them receiving twenty year sentences and one receiving a twenty two year sentence (since reduced to twenty years) (ERRC 2011b:14). However, sentences like these are not the norm. Frequently attackers are never identified and those that are often leave the courts with reduced sentences. One well-known neo-Nazi supporter, an associate of the extremist group White Justice, “selected and attacked

¹⁵ For more information on the rise of neo-Nazi violence against Roma throughout the Czech Republic and other Eastern European countries see Albert (2009).

Romani individuals on the street [but] was sentenced to 400 hours of community labour” (ERRC 2011b:11). The ERRCs research found that, despite clear methodological guidelines produced by the General Prosecutor for the investigation and prosecutions of extremist crimes, often these guidelines are not consulted or implemented. Of even more concern is the fact that police and prosecutors often do not know of the existence of these guidelines (ERRC 2011b:12).

Pogrom attempts have occurred in recent years throughout the Czech Republic. One of the more prominent attempts occurred in the city of Litvínov on November 17, 2008. During a scheduled rally for the far right Workers’ Party (Dělnická strana) in the city centre, the extremists were joined by citizens not usually involved in such rallies. After the rally the group diverted from its intended route and moved towards the predominantly Roma neighbourhood of Janov (ERRC 2008b). The group consisted of about five hundred demonstrators “armed with stones, firecrackers and gasoline bombs with the apparent intention of attacking the Roma community” (ERRC 2011d). A pogrom was only avoided when the police stepped in to prevent the group from reaching Janov. The Workers’ Party was active in many vigilant protests and in May 2009 ran a campaign advertisement for the European Parliament elections that promised a “final solution to the Gypsy question” (Caparini 2010:11). In February 2010 the Supreme Administrative Court in the Czech Republic banned the Worker’ Party due to its xenophobic and racist program, which it said led “incitement to national, racial and ethnic intolerance and amounted to an attempt to infringe the basic rights and freedoms of certain groups, in particular the minorities” (ERRC 2011d).

On March 12, 2011 the Workers' Social Justice Party (Dělnická strana sociální spravedlnosti – DSSS), a clear descendent of the Workers' Party as it holds “the same chairman, the same leadership and the same platform,” organized a demonstration in the town of Nový Bydžov (ERRC 2011d). Tensions were running high between Roma and non-Roma residents of the town due to the rape of a twenty-one-year old woman, allegedly at the hands of a Roma man. The mayor, Pavel Louda, publically blamed the crime on Roma as a whole while also making disparaging statements to the public and press regarding the situation, stating that the incident was “the last drop of hatred of citizens towards Gypsies” (ERRC 2011d). Following this, DSSS applauded the mayor and offered assistance to the town. It called for an “open and truthful naming of the problem” and offered to provide monitoring patrol to the area (ERRC 2011d). Despite the mayor's rejection of its offer of assistance, the organization still planned to hold a rally on March 12, 2011.

Three Roma men were assaulted by a group of twenty neo-Nazis during the demonstrations (ROMEIA 2011). The police arrested thirteen members of the group but it is not known if they were charged and prosecuted. The event attracted around five hundred neo-Nazis and supporters of the DSSS party. A peaceful counter-demonstration was also present, consisting of around two hundred people who attempted to prevent the DSSS from marching. The police warned the counter-demonstrators that “they were preventing the procession of a properly announced gathering” and they moved them away from the DSSS marchers (ROMEIA 2011). The leader of the Green Party, Ondřej Liška, attended the peaceful demonstration and found the police involvement to be “brutal and disproportionate,” further stating “they should have dispersed the neo-Nazi demonstration

as we requested. Once again it has been shown that neo-Nazis receive more protection from the state than do citizens demonstrating for democracy and human rights” (ROMEIA 2011).

What is most alarming about the rise in popularity of extremist groups in the Czech Republic is the support they garner from the wider population and the inaction in the prevention of rallies intended to intimidate and incite hatred towards Roma. The fact that extremist groups are able to gain support indicates the level of deeply rooted animosity toward Roma. Also indicative of the continuing support of neo-Nazi groups is the speed and impunity with which banned groups re-organize under new labels. Without adequate punishments for the people who promote hatred and violence against Roma, these kinds of attacks will no doubt rise.

Coercive Sterilization

The coercive sterilization of Roma women in Czechoslovakia was common practice from the 1970s until 1990 and was conducted “programmatically, as part of policies aimed at reducing the ‘high, unhealthy’ birth rate of Romani women” (Cahn 2006). Although the practice officially ended in 1990, there is evidence that it has continued (ERRC 2010a). It is important to note that women often do not discover they have been sterilized until many years have passed, and that many cases undoubtedly go unreported. One reported case as late in 2007 proves that the Czech Republic still has a serious problem with coercive sterilization. Furthermore, the Ombudsmen’s report in 2005 stated that: “The Ombudsman is convinced that in the Czech Republic, the problem of sexual sterilization – carried out either with unacceptable motivation or illegally – exists, and that Czech society stands before the task of coming to grips with this reality”

(Cahn 2006). Although there has been some recognition by the Czech government that these forced sterilizations were wrong, there is yet to be an official recognition by the state of wrongdoing or an official investigation by the police regarding the illegality of practicing forced sterilization, nor any kind of significant financial compensation.¹⁶

Often, confusion regarding sterilization of Roma revolves around the issue of informed consent and whether or not health professionals are properly obtaining consent from Roma women. The International Federation of Gynecology and Obstetrics (FIGO) has established guidelines in order to make sure that consent is always voluntary when performing sterilizations. However, the laws regarding informed consent in the Czech Republic (and Hungary) are not in accordance with these guidelines (ERRC 2011e).¹⁷

Human Trafficking and its effect on Roma

The links the Canadian government has made between human trafficking, illegality and Roma tend to ignore the fact that Roma are more likely to be victims of human trafficking than other groups due to their “low socio-economic status, low educational achievement and high levels of unemployment, compounded with high levels of discrimination and racism” (ERRC 2011a). According to a 2010 US State Department report, Roma are overrepresented as victims of trafficking and “their high vulnerability to sexual exploitation, forced labour and child begging in nearly half of the European countries covered” (ERRC 2011a). Furthermore, ERRC research found that Roma represent forty per cent of victims in Hungary and up to seventy per cent of victims in the Czech Republic (ERRC 2011a). Nonetheless, because Roma are often seen as

¹⁶ Only one victim of coercive sterilization has been compensated by the state (ERRC 2011f).

¹⁷ FIGOs guidelines for informed consent on voluntary sterilization can be found here:
<http://www.figo.org/files/figo-corp/FIGO%20-%20Female%20contraceptive%20sterilization.pdf>.

perpetrators of human trafficking and not victims, little is done to protect Roma from trafficking.

The relationship between Roma and human trafficking is complex, especially due to a sense of complicity of Roma in trafficking among society at large. Connections certainly exist between child marriage, begging, prostitution and trafficking; however it is not simply the case, as it often assumed, that these activities are ingrained in Romani culture or that Roma are “predisposed to inflicting these harms on themselves” (ERRC and People in Need 2011:1). A joint study conducted by the ERRC and People in Need found that, despite Roma representing between three and ten per cent of the European population, they account for between fifty to eighty per cent of victims of human trafficking in Bulgaria, seventy percent of victims in the Czech Republic, forty per cent of victims in Hungary, fifty per cent of victims in Romania and sixty per cent in Slovakia (ERRC and People in Need 2011:75). As discussed earlier, the lack of data disaggregated by ethnicity is negatively affecting policy development in the legal system; this is especially true in regards to data collected on trafficking. Most European countries have developed strategies to fight human trafficking but do not tend to consider the vulnerability of Roma to this particular type of crime (ERRC and People in Need 2011:76). Furthermore, Czech and Hungarian policies do not list Roma as a group vulnerable to human trafficking despite their being overrepresented as victims. Czech law only notes Roma involvement on the criminal end of trafficking in regards to prostitution and petty crime (ERRC and People in Need 2011:76). These governments are more than willing to recognize Roma involvement in perpetrating these crimes but dismiss the vulnerability of Roma as victims of these crimes.

Governments often do not provide adequate or any preventative and protection services for victims of trafficking, and often self-identification is the only method through which victims are designated. The stigma involved with human trafficking prevents victims from seeking help because they often “fear reprisal from their traffickers or . . . had committed illegal acts while in the trafficking situation and feared prosecution” (ERRC and People in Need 2011:77). Due to a lack of support and investigation on the part of governments, Roma are extremely likely to be re-trafficked (ERRC and People in Need 2011:77). Trafficking is a serious problem, but governments tend to punish victims rather than help them. There is a tendency to incite discrimination and violence against Roma as a whole rather than focusing on the actions of individuals. Often when a Romani person has committed a crime (or is perceived to have done so), a backlash affects the entire community, as we have seen in regards to the marches in Litvínov and Nový Bydžov.

Conclusion

Discrimination against Roma happens in all sectors of society in the Czech Republic and Hungary and often police take too little interest in implementing anti-discrimination laws and protecting Roma from organized harm. The examples provided in this chapter are not exhaustive but they need not be to establish a pattern of systemic discrimination and violent hate crimes towards Roma in these two countries. It is clear that Roma have been constructed as distinct communities through systemic discrimination and hate crimes which involve the destruction of their homes as well as bodily harm. These crimes pervade all aspects of Roma life within the Czech Republic and Hungary. This chapter outlined *some* of the systemic discrimination and violence

towards Roma life pervasive in these two countries. Yet discrimination and violence against Roma is entrenched throughout most, if not all, European countries. Take for example the treatment of Roma in Italy under the Berlusconi government where anti-Roma sentiment has been on the rise since 2008. The Italian Interior Minister, Roberto Maroni, even suggested creating a census through the fingerprinting of all Roma within Italy. He stated:

We'll go ahead with the census and with all other measures to fingerprint all (Roma), including children, to avoid phenomena such as begging. ... I have been elected to solve the problem of security and I will do that without being affected by groundless controversy. ... I must be able to know who is in Italy, where they live, what they do, what they will do in coming months. ... It's no secret that children who are exploited and commit crimes are moved from one city to the next to escape checks. [Times – Transcript 2008]

Due to pressure from various NGOs and the EU parliament the fingerprinting of all Roma never happened. However, the Italian government did establish a crackdown on Roma camps and have been forcibly removing Roma ever since.¹⁸

France, under President Sarkozy, began to conduct targeted evictions of Roma in August 2010 which have continued on into 2011. A fact-finding mission by ERRC and other organizations suggested that France was (and continues to be) in violation of EU law when it carried out mass expulsions of Roma camps. Specifically, France violated the Free Movement Directive, the Data Privacy Directive and the Charter of Fundamental Rights (ERRC 2010d:1). Between June and August 2011 in Marseille, France more than five hundred Roma have been evicted from camps (ERRC 2011h). During these evictions Roma were

subjected to violence from private actors that was not investigated or punished, and others were subjected to police abuse. Roma were made homeless and then

¹⁸ For more information regarding the treatment of Roma in Italy see Trucco 2008, Scicluna 2008 and Colacicchi 2008.

scattered around Marseille, becoming yet more vulnerable to violent attacks and police harassment. [There were also] several alarming incidents of police violence which have not been properly investigated or punished. [ERRC 2011h]

This suggests that Roma are not being adequately protected by Western European countries any more than by Eastern European countries. Moreover, these removals were not limited to France and Italy. In 2010 Denmark expelled twenty-three Roma to Romania, Sweden expelled fifty Roma to Romania and Germany paid more than a hundred Roma to go back to Romania. Finland also threatened expulsions due to public outcry (ERRC 2011g). These examples show that Europe is not seriously looking at solving the issues that lead to systemic discrimination, marginalization and violence against Roma.

All of the anti-Roma practices highlighted in this chapter illustrates that Hungary and the Czech Republic need to seriously engage with Roma to eliminate the systemic discrimination and lack of state protection within the countries and furthermore, that the movement of Roma out of the countries is justifiable considering the conditions they live in. The systemic discrimination outlined here can be tantamount to persecution for Roma. Canada cannot simply ignore systemic discrimination by labeling it as “difficulties” while simultaneously imposing a visa which prevents Roma from seeking asylum within Canadian borders (O’Neil 2009f). It is irresponsible for countries, both within and outside of Europe, to turn a blind eye to the situation of Roma in Europe, and it is especially irresponsible for the Canadian government to defend the Czech Republic’s human rights record when implementing the visa in 2009. Ong has observed that

[r]acial oppositions are not merely the work of discriminatory laws and outright racists but the everyday product of people’s maintenance of their “comfort level”

of permissible liberal norms against the socially deviant ... who disturb that sense of comfort. [1996:740]

As clearly shown, in many European states Roma are distinguished from other citizens as a particular “represented community,” in legislation, policies, and social actions. They are a “community,” as Kelly and Kaplan (2001:22) put it, “renewed in their existence not only by representations in the semiotic sense, but also by representation in the political, institutional sense.” Thus, Roma are *the* social pariahs for much of European society, differentiated from other citizens in many of the European states and so long as this attitude persists and without significant changes to government policy, real change for Roma is unlikely. The next chapter outlines the major events related to Roma refugee claimants between 2007 and 2010.

CHAPTER FOUR: ROMA IN THE CANADIAN MEDIA

The previous chapter established that both Hungary and the Czech Republic do in fact produce refugees based on persecution and violent hate crimes. This chapter focuses on the representation of Roma refugees between 2007 and 2010 by advocates, government officials and critics in the media. I choose to focus on media stories to understand how Canadian state policy has interpreted and treated Roma refugee applicants, thus adding to the history of refugee and immigration policies established in Chapter One. The dates I chose were to supplement previous research by Julie Pearson and her major research paper, “Mainstream Media Representation of Roma in the Canadian Context: The Discourse on Invisible Canadians,” which looked at Roma representation in Canadian Media between 1997 and 2007. Pearson’s study suggested that stereotypical and discriminatory views regarding Roma were prominent in major Canadian newspapers and furthermore that the courts have promoted negative images through the use of biased discourse (2008:3). I am using the media as a tool to analyze how the government has constructed Roma refugees as illegitimate.

Stasiulis and Bakan have observed that

There are internal divisions within states – between legislative, administrative and judicial branches, and/or between various political parties – in their orientation towards migrant/refugee rights. While migration and refugee policies are a contested terrain, there is a secular trend towards more restrictive and selective immigration, refugee and border crossing laws and policies within advanced states. Objectives of these policies invariably defined in terms of ‘national interests’ privilege first and foremost, the interests of regionally and globally oriented businesses, and minimally the interests of migrants or nongovernmental organizations concerned with migrant and human rights. [Stasiulis and Bakan 2005:30]

This quote reminds us of the hegemonic force behind the implementation of refugee policy in that whatever internal disagreements may exist within a government, the clear overall trend is towards greater security and restriction. This chapter shows how the government is continuing to restrict which groups are allowed access to the refugee category by splitting the label into “legitimate” and “illegitimate” refugees. I examine the role of labels and labeling of Roma related stories by applying Zetter’s (2007) theory of labels and their transformative and political natures to the media coverage. I look at three specific labels used in the media when discussing Roma asylum seekers: “queue jumpers,” “economic migrants,” and “bogus refugees.” This chapter is organized around a chronological outline of the main news stories relating to Roma as reported by the Canadian media between September 2007 and November 2010 and is broken down into smaller subsections to highlight and analyze some of the major events in relation to the dichotomous labels “illegitimate refugee” and “real refugee.”

The Dichotomous Refugee Label

Zetter argues that in the past, humanitarian organizations used the labeling process for the inclusion of refugees into policy, whereas today states mobilize around the bureaucratization of labeling to de-legitimate, exclude and marginalize refugees (Zetter 2007:189). This fractioning of the refugee label in turn polarizes interpretations of what it means to be a refugee and who is and is not included in the “prestigious” category. As I outlined in my theory section, Zetter’s three axioms consist of the formation, transformation and politicization of the refugee label, and the fractioning of the label has come about due to the managing of forced migration in a globalized world (Zetter 2007:174). I understand the refugee label to be more dichotomized then

fractioned. The label is now seen as split between “real” refugees and “illegitimate” refugees.

The de-legitimation of the refugee has increased under the current Immigration Minister, Jason Kenney. During the visa reimposition on the Czech Republic, Minister Kenney bypassed the IRB by stating that the Roma refugees were “bogus” and “economic migrants” (Clark 2009; Blanchfield and White 2009). By using those terms, Kenney made moral and ethical accusations about the character of Roma asylum seekers. He turned the debate into one about morals rather than facts by implying that asylum seekers (a phrase often use erroneously, although also intentionally, as a synonym for immigrants) who are “gaming the system” or who have “criminality” amongst them are definitely not “genuine refugees.” Such labeling subtly implies that this group of asylum seekers is illegitimate and is not truly deserving of Canada’s compassion.¹⁹ We can also think of this in terms of Ong’s “dual process” where Roma refugees and advocates are seeking to legitimize the group while the government insists on imposing its own definitions of “illegitimate” refugees, thus creating a tug and pull scenario between the two.

The case of Roma asylum seekers illustrates the dichotomization of the refugee label since they were referred to in the media and by the government with different labels, most of which implied illegitimacy. The labels “economic migrant” and “economic refugee” has acquired the role of de-legitimizing refugees in recent years. The

¹⁹ There were a number of other Roma issues reported in the Canadian media that I have not discussed in this section as they did not relate directly to the issue of Roma in Canada. Many of these news stories were related to the treatment of Roma in other European Countries, such as Italy, Romania and France. These stories would have introduced the Canadian readers to some of the overall issues and problems related to Roma in Europe, but they did not directly relate to the visa reimposition or the usage of biased labels.

current Canadian government accepted the Czech government's assurances that the Roma are "economic refugees" without relying on its own investigation and evidence. The assertion from the Czech government about the illegitimacy of these "refugees" happened relatively early on in the coverage of Roma in the news and by the government.

Additionally, the use of the term "queue jumping" has increased in popularity as a way to distinguish and distance asylum seekers from "real refugees" (Clyne 2005). The term gained recognition in Canada during the 1980s during heated debates surrounding Tamil and Sikh refugee claimants, as discussed in Chapter One. This term has emerged as a popular one, not only in Canada, but also in Europe and Australia, for unplanned and unwanted asylum seekers. The term challenges the legitimacy of a claimant by suggesting that the way in which an individual arrives in a country has a direct connection to their legitimacy as an asylum claimant.

By using the term "queue jumpers," governments claim they are protecting the immigration system for people who are willing to wait their turn, rather than these people who are, theoretically, taking someone else's spot in line. This is where the line between the immigration system and the refugee system becomes blurred. The government often uses "queue jumper" to contrast the fraudulent refugee applicant with the patient immigrant (who must wait years to be processed) rather than with the "real" refugee (who presumably is not jumping queue but applying based on "real" persecution). "Real" refugees are often understood as arriving through refugee camps, but in reality, many claimants are from countries where camps are nonexistent, usually due to political reasons. For example, many people seek asylum due to their sexual orientation, because of gender violence or because of political activism against their government; for these

types of refugees faced with individual oppression, refugee camps are not feasible. Traditionally, governments prefer to pick refugees from pre-existing refugee camps where many asylum seekers have already been determined to be “legitimate” (Bossin 2009). In reference to the use the term “queue jumper” by Australian politicians, Michael Clyne suggests the implication is that people who are waiting for a visa will miss out on their chance to immigrate due to queue jumpers’ demanding priority (2005:185). However, this is fundamentally an unsound argument because there are different rules and regulations for in-land refugee determination and overseas selection. Politicians are well aware of this and thus use the inaccurate label “queue jumpers” for their own political purposes.

The Numbers Game: Acceptance Rate of refugee claims from the Czech Republic and Hungary by the IRB

During the time period covered by this thesis, widely different numbers were quoted regarding the acceptance rate of refugees from the Czech Republic and Hungary. Throughout this thesis, media reports will have quoted numbers which are different from the official statics which I will provide below. This in part is due to the information available at the time. For example, one news article reported that Roma had an acceptance rate of 94.4 per cent so far that year (Taylor 2009a), however the statistics which I have provided include the acceptance rate for the entire year. Thus, at the time the story went to press the acceptance rate may very well have been 94.4 per cent but at the end of the year the average could be very different. Statistics regarding acceptance rates have been compiled by Assistant Professor Sean Rehaag from the Osgoode Hall Law School at York University since 2006 and have been published in conjunction with

the CCR. Regaah's (2008, 2009, 2010) analysis of the IRB data shows that the acceptance rate for the Czech Republic was 85.71 per cent in 2008, 56.86 per cent in 2009 and 8.14 per cent in 2010. The significant drop in acceptance rates between 2009 and 2010 is the obvious consequence of the IRB fact-finding mission to the Czech Republic and the subsequent visa reimposition. Hungary had a 33.33 acceptance rate in 2008 and 2009 and a 26.32 acceptance rate in 2010 (see Table 1).²⁰

The numbers of claimants accepted, rejected or abandoned quoted by the government and the advocates are interestingly inconsistent in the media. Often, a personal impression on the part of a government spokesperson that approval rates are below average can influence the public into thinking this is true, without the actual citation of official numbers. This is frequently the case in the rhetoric which originates from the office of Minister Kenney as discussed later in this chapter. The acceptance and rejection numbers put forth by the different stakeholders involved, whether the government or advocates, clearly indicate bias towards their perspectives. The government's citation of lower acceptance rates and overall refugee claimants, as well as a high abandonment rate works to further its claim that these refugee claimants are illegitimate and not in need of Canada's protection. It argues that if Roma were in true need, the abandonment rates would not be so high. The advocates, on the other hand, quote high acceptance rates and leave out the number of withdrawn cases, arguing that these have no effect on the number of refugee claimants which have been deemed legitimate. The IRB, to my knowledge, has not publically provided independent clarification regarding the conflicting numerical scenarios cited in the media. However,

²⁰ These numbers invite the question as why the acceptance rates are so different between the Czech Republic and Hungary but the answer is not immediately clear.

Rehaag was able to gain access to the numbers through the Access to Information Act.

Please see Table 1 for a comparison of the Czech Republic, Hungary and the total acceptance rates for all refugees for the years of 2008, 2009 and 2010.

Table 1: Refugee Acceptance Rates in the Czech Republic and Hungary

2008

Country of Origin	Expedited Positive	Neg. No Credibility	Negative	Positive	Total	Grant Rate %	Grant Rate (Excl. Ex. Pos)
Czech Republic			4	24	28	85.71	85.71
Hungary			8	4	12	33.33	33.33
Total	1218	227	3896	3787	9128	54.83	47.88

2009

Country of Origin	Expedited Positive	Neg. No Credibility	Negative	Positive	Total	Grant Rate %	Grant Rate (Excl. Ex. Pos)
Czech Republic		2	20	29	51	56.86	56.86
Hungary			4	2	6	33.33	33.33
Total	2002	198	5874	5358	13405	54.90	46.99

2010

Country of Origin	Expedited Positive	Neg. No Credibility	Negative	Positive	Total	Grant Rate %	Grant Rate (Excl. Ex. Pos)
Czech Republic		7	72	7	86	8.14	8.14
Hungary		7	35	15	57	26.32	26.32
Total	1630	349	8239	6483	16701	48.58	43.02

Source: Rehaag 2009, 2010 and 2011.

Early Media Attention: Visa removal from Czech Republic and Hungary

On October 31, 2007, then Minister of Citizenship and Immigration Diane Finley removed the visa requirement on travel between the Czech Republic and Canada. The removal of the visa requirement became effective immediately and resulted in the free movement of people between the two countries. The visa had been introduced in 1997 as an interdiction method to stop refugee claimants from the Czech Republic from travelling to Canada. Between 1996 and 1997, approximately 1 500 Czech nationals applied for convention refugee status (CIC 2009). Due to the influx, a visa requirement was re-imposed on the Czech Republic in 1997 after having been removed in 1996. The visa was effective at stopping refugee claimants as many did not qualify for a visa after the interdiction policy was applied. The situation repeated itself with regards to Hungary in 1997 and again in 2008; on March 1, 2008, Minister Finley removed the visa requirement for Hungary which was placed in 1997.

In March 2008, the Canadian government unofficially acknowledged the rise in Czech refugee claimants by suggesting that if the number of claimants was to rise to 2 per cent or more of the Canadian total in refugee seekers, it would bring back the visa requirement for the Czech Republic (Keung 2008). This reaction indicates that the government had intended to impose a visa based on an arbitrary percentage which it deemed to be too high for a particular group of asylum claimants. It also suggests that the government might act impulsively to bring back interdiction measures on the Czech Republic despite the high level of claimants seeking asylum, and regardless of their acceptance rates. In response, Paul St. Clair, director of the Roma Community Centre

(RCC) said, “If we open the border, we open the border. We shouldn’t limit how many refugees can apply from a country” (Keung 2008).

Adolf Horvath in the Canadian Media

The border remained open throughout 2008 and there was little reporting on Roma refugee claimants and their situation until April 2008 when the case of Adolf Horvath, a designated “person in need of protection,” became known publicly. Horvath had gone into hiding, fleeing from immigration officials seeking to extradite him back to Hungary to face criminal charges. This case became a key source for establishing Roma issues and representation in the Canadian media and also illustrates Ong’s dual process of self-making and being-made well. Horvath came to Canada from Hungary in 1999 with his wife and son after he was stabbed and beaten, harm that he alleged was due to his ethnic background. His family claimed to be convention refugees upon arrival and in 2002 his wife Erika and their son Adam were found by Citizenship and Immigration Canada (CIC) to be persons in need of protection. In 2004, Adolf was also deemed to be in need of protection. In 2003, however, Hungary requested the extradition of Mr. Horvath based on charges of robbery, blackmail and extortion. Despite Mr. Horvath’s status as a person in need of protection, the Department of Justice complied with the request (The Current 2008). According to the Horvath family and their supporters, charges were trumped up due to their Roma ethnicity. The Horvath family fought the charges but they were eventually upheld by the Ontario Court of Appeal, and the Supreme Court of Canada declined to hear the case in the spring of 2008. The Department of Justice gave the following justification to CBCs *The Current* in regards to the removal order against Mr. Horvath:

After reviewing the evidence provided by Hungary in support of its extradition request, the extradition judge found that if the alleged conduct had occurred in Canada, the evidence would have supported the Canadian offences of extortion, uttering threats and robbery. He therefore committed Mr. Horvath for extradition. [The Current 2008]

Mr. Horvath had been out on bail while the courts were debating his fate, but failed to turn himself into custody following their decision and has been in hiding since the spring of 2008.

There were indications that officers doubted Horvath's Roma background at some of his immigration hearings. During one of his refugee hearings, one of his immigration officers "wondered 'at first blush' how someone called Adolf could be a Roma" (Taylor 2008a). Horvath had to provide an official Roma certificate to prove his ethnicity to the court. The immigration officer also found that, "owning a business, a nice home and a car 'is not exactly consistent with that of Roma'" (Taylor 2008a). This suggests that the officer had little, if any, background knowledge regarding the circumstances of Roma in Eastern European countries.²¹ This case also illustrates the performative nature of the refugee claimant. The officer questioned Horvath's authenticity because he did not live up to the officer's preconceived idea of a Roma or a refugee as owning property is contradictory to the public image of a refugee. A key part of Horvath's argument depends on him being seen as a legitimate Roma, yet in most of the media coverage the term "Gypsy" also appeared alongside that of "Roma," subtly implying a lack of legitimacy by emphasizing the label more connotative of criminality. Furthermore, Horvath and his

²¹ There are many differences between Roma in relation to ethnicity, group affiliations and class. Roma (Gypsies) can be thought of as different groups/tribes, more closely resembling classifications similar to First Nations groups in Canada and the United States than a single culture. See Bancroft (2005), Stewart (1997), Barany (2002, 1998) and Fraser (2003) for more in-depth ethnographic background on European Roma and Okely (1983) for British Gypsies. See Ian Hancock (2002) for an academic and Roma perspective.

family situation illustrate Ong's dual process as their legitimacy is being "dialectically determined by the state and its subjects" (Ong 1996:738). In this case, the state and its various agencies, such as the IRB, have imposed illegitimacy as a refugee category onto these subjects despite their own fundamentally different construction of themselves.

Czech Roma and Canadian Asylum

Beginning in July 2008, the Canadian press began reporting frequently on the increasing number of asylum claimants coming from the Czech Republic. Many of the reports discussed the Roma specifically as the party who were abusing Canada's refugee system. The Czech Republic announced it would increase its cooperation with the Canadian government in limiting the increasing number of asylum seekers coming out of the country.

The office of Immigration Minister Diane Finley released a statement in response to the rising numbers of Czech asylum claims in the summer of 2008. This statement illustrates a fundamental lack of distinction between those who arrive in Canada seeking asylum (such as Czech Roma) and immigrants. The departmental spokesperson, Danielle Norris, states:

Canada's refugee system is intended to help true refugees. We are concerned when individuals make refugee claims where it is clear that they are not in need of Canada's protection. ... This reduces our ability to help those in genuine need. Simply showing up in Canada or at a port of entry is not the way to immigrate to Canada. [Taylor 2008b]

Norris' statement illustrates the crafty use of euphemisms when discussing refugees today. She starts by discussing Canada's need to help "true refugees," implying that the current asylum seekers do not belong in the refugee category. Furthermore, she claims these "individuals," rather than refugees, are hindering the ability to help people in

“genuine need.” Norris ends by stating this is not the proper way by which immigrants should be entering Canada, implying that these people are not refugees but immigrants. The statement serves to de-legitimize asylum seekers, and completely ignores the role of the IRB, which looks at the facts of each individual case.

In November 2008, the Czech Minister for Human Rights, Jamila Stehlikova, visited a community centre in Toronto and addressed Roma who had fled to Canada. Stehlikova was in Canada to meet with Immigration Minister Jason Kenney to discuss the rising number of asylum seekers coming from her country. Stehlikova maintained that Roma are only “economic refugees” and do not face persecution in the Czech Republic (Taylor 2008c). Stehlikova faced heavy criticism from the GTA Roma community and local activists throughout the meeting. One Roma advocate, Paul St. Clair, compared the ongoing situation in the Czech Republic with that of Germany in the 1930s (Taylor 2008c). The concerns of the local Roma and advocates raised at the meeting seemed to fall on deaf ears. Immigration spokesperson Alykhan Velshi continued to imply that the asylum claims from the Czech Republic were illegitimate: “we are concerned about the number of apparently unfounded refugee applications coming from the Czech Republic” (Taylor 2008c). Of the Czech refugee claimants whose cases were finalized before the IRB in 2008 the acceptance rate was 85.71 per cent (Rehaag 2009) yet the government had seemingly already established, clearly independently of the IRB, that these claims were “unfounded.” The statement was extremely vague but still emphasized the supposedly “illegitimate” group. Velshi also took the opportunity to note that there were currently no plans to impose visas on travelers to Canada from the Czech Republic

despite the impression of CIC that these refugee claimants were unsubstantiated (Taylor 2008c).

On March 10, 2009 it was reported that the IRB acceptance rate for Roma refugees was about 94.4 per cent and the IRB had accepted eighty-four people as refugees and rejected only five (Taylor 2009a). These statistics suggest that Roma do indeed face serious persecution in the Czech Republic (and more to the point, that the IRB is well aware of it). It is likely that such high acceptance rates coming from a western democratic country led to an IRB fact-finding mission to the Czech Republic in early March 2009. The investigation was set to begin on March 21 and last about ten days. Its purpose was to gather information from both government and non-government authorities regarding the treatment of Roma, their level of protection against violence and intimidation, and whether or not they have safe movement throughout the country (Taylor 2009a). At this time, Paul St. Clair publicly asked the government to add three areas of interest to the fact finding mission: segregated schools, the emergence of neo-Nazi parties and the input and opinions of non-government organizations and journalists (Taylor 2009a).²² The findings of the fact-finding missions and analysis will be discussed in Chapter Five.

In April 2009, Minister Kenney began to speak out more forcefully against the rising numbers of Czech citizens claiming refugee status upon arrival in Canada. Kenney publicly called for the Czech Republic to “crack down” on “unscrupulous operators” whom he claimed encourage citizens to apply for asylum in Canada when they do not face any persecution in their own countries (O’Neil 2009a). Kenney stated to the press

²² The IRB or the researchers on the fact-finding mission did not officially recognize St. Clair’s request. The segregated schools and the rise of neo-Nazism in the Czech Republic were touched upon in the report and many of the interlocutors were from the NGO sector, thus they were included as interview subjects.

that, “Although, like every other democracy, it has its challenges and its shortcomings, it’s hard to believe that the Czech Republic is an island of persecution in Europe” (O’Neil 2009a), and called on the Czech Republic to work with Canada, “to prevent people from abusing our very generous refugee determination system” (O’Neil 2009a). Steeped in Eurocentrism, Kenney’s statement implies that no persecution of racial/ethnic minorities occurs throughout Europe and that if persecution does exist that it would be noteworthy for being against European standards. Kenney fails to take into account the vast amount of targeting of Muslims and the growth of Islamophobia throughout Europe in the past decade, as well as the persecution of specific minorities in different European countries (e.g. Turks in Germany). In short his construction of Europe as a place where persecution is implausible if not impossible flies in the face of obvious realities. Statements such as these by Minister Kenney illustrate how the Czech Roma claimants are being-made illegitimate even as the government garners support for stricter border policies with the Czech Republic. At the same time, numerous NGOs and activists began to speak out about human rights abuses which occur in the Czech Republic, such as neo-Nazi and skinhead marches into Roma ghettos, unauthorized sterilizations of Roma women and the segregation of Roma children in the education system (O’Neil 2009a).²³

On April 18, 2009 there was a firebomb attack against a Roma family in the Czech city of Vítkov. Three Molotov cocktails were tossed into a Romani home. A two year old girl suffered from severe burns over 80 per cent of her body (O’Neil 2009c; O’Neil and Leung 2009; AI 2009). During the attacks it was alleged that one of the

²³ Forced sterilizations stopped being enforced by the Czech Government in 1991 but there are reports that serializations were still ongoing well into the 2000s and continue until today. See ERRC’s Open Letter (2008a), Cameron (2009) and Dickson (2011). For more information on Roma Women and their reproductive rights see Magyari-Vincze (2006).

attackers yelled, “Gypsies, burn to death!” (O’Neil and Leung 2009). This racially-motivated attack was much discussed throughout the Czech Republic, Europe and Canada. Many advocates pointed to the attack to urge the government of Canada to listen to human rights groups about the reports of violence and persecution towards Roma in the country. Much of the Czech Republic was shocked by the attack and President Vaclav Klaus, known for refusing to sign anti-discrimination measures into law, condemned the attacks and called the incident “a brutal, abominable crime” (O’Neil and Leung 2009).

On April 29, 2009 a coalition of human rights groups, including Amnesty International (AI), raised concerns that the Canadian government was interfering with the rights of Roma who were fleeing persecution from the Czech Republic. They specifically took aim at some of Minister Kenney’s remarks that called into question the legitimacy of the asylum seekers (O’Neil 2009b). AI also raised concerns about how Canada was dealing with the refugee increase from the Czech Republic, noting that:

Roma in the country continue to suffer discrimination at the hands of both public officials and private individuals, including in the areas of housing, education, health care and employment. Not only do they face forced evictions, segregation in education and racially motivated violence, but they have been denied justice when seeking redress for the abuses against them. [AI 2009]

AI urged Canada to discuss alternatives to imposing a visa requirement and put pressure on the Czech Republic to improve conditions of Roma in their country.

Czech Prime Minister Mirek Topolaneck disputed the allegations of government and public persecution towards Roma within the Czech Republic. Topolaneck instead focused on the perceived ills of the Canadian refugee determination system. In response to Minister Kenney’s accusation that the Czech Republic was not doing enough to stop the “illegitimate” asylum seekers, Topolaneck stated that, “Canada has a very soft asylum

procedure ... and it is very easy to get an asylum in Canada and for that reason it is being targeted by individuals who are seeking economic, rather than any other asylum” (Brennan 2009). In this statement, Topolonek does not refer to the term refugee, sending a clear message that these “people” are to be associated with economic motivations alone. Furthermore, Topolonek never specifically identifies the asylum seekers in question as Roma, yet it is clear these are the people seeking asylum. By laying the blame for the Roma asylum seekers at Canada’s feet for not having a stricter system, his rhetoric mirrors that used by Minister Kenney to bolster support for asylum determination reform. Lastly, Topolonek was pushing for Canada to name the Czech Republic as a “country of safe origin” which would essentially mean that a citizen of the Czech Republic would not be allowed to claim refugee status in Canada (Brennan 2009).

Varying degrees of skepticism were voiced both from within and outside the Roma community over the reasons why Roma were choosing to seek refuge in Canada. Anna Polakova, head of Romani-language public broadcasting in Prague, disputed Canadian and Czech officials’ claims that middlemen were responsible for presenting misinformation and organizing asylum seekers. She also questioned the notion that Roma are motivated to claim refugee status in Canada simply based on the welfare program, noting “even if you have little [in the Czech Republic], your family has been here for two, three generations. You know the language. We have our graves here. ... Despite all the talk, the fascists are walking down the street.” (Spectator 2009). Polakova even admitted to having considered applying for refuge in Canada herself after her son was attacked by skinheads.

In the middle of May 2009, as discussed in the Canadian media, human rights advocate Gwendolyn Albert spoke out in the *Prague Post* about the treatment of Roma in the Czech Republic and claimed that Roma justifiably lived in fear throughout the Czech Republic. Albert questioned the motivation behind Roma asylum seekers, suggesting that economic incentives were not sufficient enough motivation for leaving Europe, stating that Roma already have access to social welfare benefits so leaving simply for that reason seems unlikely (O'Neil and Leung 2009). She claimed that the Conservative government was being shortsighted and naïve by accepting the Czech claims that the Roma are simply “economic migrants.” Albert argued that the real incentive for Roma to seek asylum in Canada is to escape systemic discrimination, noting that:

The reputation Canada has, for them, is that of a fair society in which they will not be stigmatized and where they will be able to get on their feet. No one will give them a second glance due to their appearance or anything else, and their children will not be exposed to violence and will be able to access education. [O'Neil and Leung 2009]

Albert implies that Roma do have legitimate claims to asylum outside of Europe.

However, the difficulty in the case revolves around whether or not Czech Roma are exposed to enough discrimination to amount to persecution. Certainly, the implication of the difference between the two concepts is significant: advocates such as Albert believe Roma are facing serious persecution while the Czech and Canadian governments suggest that it is “mere” discrimination instead.²⁴

²⁴ Curiously, even some Czech Roma who appear to have been direct victims of persecution believe that Roma are seeking asylum in Canada for economic reasons. Anna Sivakova, the mother involved in the aforementioned firebombing, has stated: “I’ve heard people say that they are leaving out of fear, and also that the fear results from what happened to my family... I don’t think it’s right to use our incident as an excuse. I think people are going to Canada for the money. I don’t want to judge them but I don’t believe them. [O’Neil and Leung 2009].” Sivakova and her family have not left the Czech Republic to seek asylum in Canada.

At the beginning of June 2009 it was reported that ninety-five Roma claimants arrived at Pearson International airport in Toronto, and the police reported that they expected claimants to continue arriving in Canada at this rate throughout the summer (Valiante and Laidlaw 2009). The following day, June 3, 2009, Mr. Velshi, stated again that the government was closely monitoring the increasing number of asylum claimants from the Czech Republic. According to him, the approval rate for claimants from the Czech Republic was below average (Valiante 2009a). This provides another example of the implied illegitimacy of Czech refugee claimants devoid of statistical information regarding the actual approval rate of the IRB. At the end of 2009, the finalized acceptance rate for Czech claimants was 56.86 per cent whereas the total acceptance rate for all refugee claimants was 46.99 per cent (Rehaag 2010). At the time of Velshi's inference, the acceptance rate was likely higher as it was before the fact-finding mission had been released and visa reimposition on the Czech Republic. At the time government did not want to discuss the potential of reimposing visa restrictions arguing it would create a "run at the borders" (Valiante 2009a).

Paul St. Clair discussed the Roma situation with the *National Post* and claimed that the number of refugee claims will only increase unless something substantial is done to stop the violence against Roma in Eastern European countries (Valiante 2009a). He argued that because Hungary and the Czech Republic are already members of the European Union, Brussels (the head of the European government) is not paying as much attention to the treatment of minorities as it did before they were granted membership. Jeffery Kopstein, director of the Centre for European Studies at the University of Toronto, argued that an absence of a civil rights era throughout many Eastern European

countries has created hardships for minorities such as the Roma (Valiante 2009a).

Kopstein suggested that the situation is similar to the United States during the 1950s:

“That’s to say you have a broad range of opinions, ranging from quite liberal to deeply discriminatory. ... Everyone always worries about looking for scapegoats” (Valiante 2009).

The aforementioned Roma journalist Anna Polakova and her family came to Canada seeking asylum in the middle of June 2009. She was known for commenting on the situation facing Roma in the Czech Republic and had been quoted frequently in the Canadian media. She wrote on a Czech website after leaving that, “I believe it would have been naïve to risk further attacks ... being aware that one is risking the life of one’s children or someone else in the family. Just consider that during the past 20 years, more than 30 Roma have died this way” (Taylor 2009b). Paul St. Clair stated that, “The situation in the Czech Republic is getting progressively worse. ... These are the people who can afford to sell something and come. There are more Roma in Hungary or Slovakia facing the same thing, but they are poorer” (Taylor 2009b). St. Clair noted that 75 per cent of people who applied for refugee status were accepted in 2009 and the rate of acceptance for 2008 was even higher at 95 per cent. It may have been true that 75 per cent of Czech refugee claimants were accepted by mid-June but by the end of the year only 56.86 per cent were accepted. This indicated that the fact-finding mission and visa imposition had a significant effect on the decline in acceptance rates at the IRB. However, St. Clair overestimated the acceptance rate for Czech refugee claimants in 2008 by about 10 per cent. This indicates that advocates are also part of “the numbers game” and have a tendency to overemphasize their perspective in the media to garner support.

St. Clair was concerned that none of the Roma refugees who have arrived since April 2009 had a refugee hearing scheduled (Taylor 2009b) and sensed that the government was waiting for the results of the fact-finding mission before they made a decision regarding implementing a visa (Interview with author, May 14, 2009).

The Reimposition of the Czech Visa

By the end of June and early July 2009, rumours spread that Canada was intending to reimpose the visa restriction on the Czech Republic in an attempt to control the number of asylum seekers coming from the country. The first report of the IRB fact-finding mission to the Czech Republic was released at the end of June 2009 with a second report to be released in July 2009. The Czech media reported in early July that Minister Kenney had informed the Czech government that the visa restriction could come within the week. Minister Kenney stated his opinion on the matter to the *Toronto Star*:

My understanding is the report essentially says there is no evidence of state-sanctioned persecution of Roma. If someone comes in and says the police have been beating the crap out of them, the IRB panelist can then go to their report and say, 'Well, actually, there's been no evidence of police brutality.' [Taylor 2009c]

Max Berger, an immigration lawyer who has represented over four hundred Roma clients, noted that in the one hundred cases involving Roma that the IRB has heard, there had been a success rate of 85 per cent, much higher than the rate for overall refugee acceptance of 40 per cent (Valpy 2009a). CIC acknowledges there has been a high acceptance rate for the claims from the Czech Republic but countered the statistic by stating that half of the total claims have been withdrawn before being heard (Valpy 2009b), another good indication of how selective reporting of numbers reflect the biases of different stakeholders. Furthermore, Berger characterized the comments Minister

Kenney made in regard to these refugee claimants as inappropriate and called the concern surrounding the numbers of incoming refugees to be out of line and “overstated panic,” as there were much larger numbers for incoming immigrants during the 1990s (Valpy 2009a). Berger also noted in the press that applying a visa restriction to the Czech Republic will “shut the door on genuine refugees and tarnishes Canada’s refugee program and reputation in the eyes of the international community” (Valpy 2009b).

Around the same time, Peter Showler, former Chairperson of the IRB, voiced concerns about how politics were increasingly being interwoven into the IRB (Taylor July 4, 2009). Showler shared Berger’s opinion that the politicization of the Roma situation is compromising the IRB’s integrity. He suggests that the government’s agenda is to generate public goodwill for an overhaul of the IRB and the creation of a new Canadian refugee determination system. Showler stated at a refugee conference that:

The government would like to create a system where countries with high refusal rates can be dealt with quickly through some form of expedited process involving a decision by an immigration officer. Refugee law is about protecting people who have a well-founded fear of persecution. Minister Kenney is dead wrong when he keeps implying that the Roma do not require protection. ... In essence, we would be slamming the door. [Taylor 2009c]

In a way, Showler is also politicizing the issue by taking the opposite stance to Kenney, implying that providing protecting for Roma asylum seekers is a necessity for the Canadian government. He implies that Kenney is interfering with an institution (the IRB) from which he should be distant, since the IRB should maintain a reasonable distance from CIC and the policies of government. One fundamental point of difference between Minister Kenney and advocates such as Peter Showler is the role of refugee determination systems. Where Kenney is preoccupied with “fraudulent” claimants and the security of Canadian borders, Showler is first and foremost concerned with protecting

the rights of refugee claimants. The politicization of the refugee system by the government was a common theme among the advocates who opposed the visa reimposition.

After a successful political campaign to paint Roma refugee claimants as “bogus,” the government prioritized the reforming of refugee law to fit with the fight against the supposed abusers of the refugee determination system. On July 14, 2009 the Canadian government announced that it would be reimposing the visa requirements on the Czech Republic and Mexico the following day, citing the rising number of refugee claimants.²⁵ Minister Kenney defended the interdiction tactics by playing up the supposed illegitimacy of both Mexican and Czech asylum seekers while minimizing the concerns of advocates. This prioritization of “national security” interests over human rights reflects the observations of Stasiulis and Bakan as discussed earlier in this chapter. Once the visa was reimposed, “economic migrant” became synonymous with Czech and Mexican asylum seekers in the mind of Minister Kenney as he directly associated these particular asylum seekers as only in search of better economic opportunities. Kenney stated to the press:

In addition to creating significant delays and spiraling new costs in our refugee program, the sheer volume of these claims is undermining our ability to help people fleeing real persecution. All too often, people who really need Canada’s protection find themselves in a long line, waiting for months and sometimes years to have their claims heard. This is unacceptable. ... The visa requirement I am announcing will give us a greater ability to manage the flow of people into Canada and verify bona fides. ... By taking this important step toward reducing the burden on our refugee system, we will be better equipped to process genuine refugee claims faster. [O’Neil 2009d]

²⁵ A visa requirement was announced for Mexico at the same time as the Czech Republic. The rise in refugee claimants from both countries was the main reason for the visa implementation, with Mexican claimants tripling since 2005 with Mexico being responsible for 25 per cent of all refugee claimants to Canada in 2008 (CIC News Release Mexico 2009).

Kenney's statement is full of loaded labels and accusations of illegitimacy. Kenney essentially blames the "breakdown" of the refugee system on "bogus" refugees, and targets primarily Czechs (Roma) and Mexicans, which can be assumed from the context of this statement. His claim that their presence is hindering Canada's ability to "help real refugees" presumes that these asylum seekers are somehow fraudulent and not "real." Kenney concludes by stating that the visa requirement has improved the refugee determination process, without actually making any changes to refugee law, and that the system is now able to process refugees faster. Kenney's rhetoric relies on the *mala fide* label to justify the implementation of the visa.

By grouping the Czech Republic and Mexico together, the Canadian government ignored the vast differences between the individual countries and chose to focus on Canada's supposedly lax immigration system. Mexican refugee claimants represented around 25 per cent of all refugee claims from all countries yet had a very low acceptance rate, around 11 per cent (Berger 2009). Furthermore, "[t]he absence of a visa requirement permitted Mexican claimants to fly directly to Canada, and allowed Mexicans already in the U.S. to claim asylum at our land border – giving Mexicans an advantage over most refugees from other countries" (Burger 2009). The situation in the Czech Republic differs dramatically: "Almost all of these refugees are Roma or gypsy claimants and their claims are all alike – beatings at the hands of neo-Nazi skinheads, systemic employment discrimination, being turned away from stores and restaurants – with the state being unwilling or unable to offer protection" (Berger 2009).

Announcing the visa restrictions on the Czech Republic and Mexico moved the focus away from the circumstances in individual refugee-producing countries to Canada

and ultimately created a change in dialogue from “illegitimate” asylum seekers to how Canada was going to improve and reform their own immigration system. It also allowed Kenney to highlight backlogs within the refugee determination system, which he attributed to “economic migrants” whom he characterized as abusing the system:

This does underscore the need to reform our asylum system so that it ensures that real victims of persecution get swift relief and protection in Canada, and that economic migrants seeking to abuse our generosity are shown to the door quickly. ... When we raise with our partners in foreign countries the issue of false asylum claims, or large flows like we’ve seen from Mexico and Czech Republic, they turn the discussion back on us, and say, ‘Your system is inviting this kind of abuse. And you need to fix your system. It’s not lost on economic migrants who want to jump the queue that we have a system that’s fairly easy to abuse. And where people can settle in Canada, sometimes for several years, with a mixture of a work permit and/or social benefits, and if they’re determined to, they can game our system and abuse our generosity. [quoted in Clark July 15, 2009]

This quote from Minister Kenney clearly constructs “economic migrants who want to jump the queue” as illegitimate in the eyes of the government. Kenney asserts that “economic migrants” who are not selected by the government are the cause of a “broken immigration system” and that their main goal is to abuse our “generous immigration system.” In this context “economic migrant” becomes a derogatory term. Furthermore, the second part of Kenney’s quote makes the connection between “queue jumpers” and “criminality” quite clear, implying that people who jump the imaginary queue are inextricably criminal through their “gaming of the system.” It reflects Stasiulis and Bakan’s observation that the “selective criminalization of certain types of migrants and the privileged treatment of others . . . create and reinforce the hierarchical nature of national citizenship” (2005:11). Kenney refers to the Roma refugees as economic migrants, which is the first step in de-legitimation, and then goes on to accuse these “migrants” of taking advantage of the welfare system and abusing Canadian generosity.

For Kenney, the “economic migrant” exists as a scapegoat on whom he can assign blame for the “broken” asylum system. “Queue jumping” and associated labels are straw-mannish and detract from the larger debate about refugee rights in Canada. Such labeling places blame on outsiders without effectively examining immigration and refugee determination problems thoroughly.

In an effort to restructure a system many consider too lenient, the Czech Roma asylum seekers have been assigned the role of scapegoats. Following the imposition of the visa restrictions many of the news stories questioned the legitimacy of asylum seekers from the Czech Republic while simultaneously calling for Canada to improve its refugee determination system, indicating a direct connection between the two scenarios. In reaction to the new visa requirement, the Czech Republic recalled its ambassador to Canada and required all Canadian diplomats to now have visas when visiting the country.

The visa reimposition highlights the inherently political nature of the Roma refugee claimants in Canada. As Loescher points out, “Too often refugees are perceived as a matter for international charity organizations, and not as a political and security problem. Yet refugee problems are in fact intensely political: mass migrations create domestic instability, generate interstate tension and threaten international security” (cited in Malkki 1995b:504). Simply by entering Canada, Roma refugee claimants forced Canada to judge whether or not they were acceptable refugees, an act which carried heavy political consequences. If it was accepted that these Roma asylum seekers faced persecution from their country of origin, then Canada would become intertwined in the politics of Europe and its treatment of ethnic minorities. By imposing a visa, the government essentially avoided making an official statement regarding Roma issues in

the Czech Republic. Critics would allege that the government did not want to take in this particular refugee population, but all that is really known is the governments stated reasons for the visa. The real reasons for the visa imposition are not fully understood, especially when we consider that countries with similar situations, such as Hungary, were not targeted. The government also avoided dealing with the acceptance rate of Roma refugee claims by the IRB by imposing a visa. Existing claims would be dealt with but future claims would be stopped, lessening the pressure on Canada to become involved in European minority issues. Despite the many disputed numbers in the media, the IRB accepted that Roma faced legitimate persecution when the documentation was adequate. This is illustrated in a 2008 finding by the Refugee Protection Division of the IRB.

In the case at bar, considering the claimants' particular circumstances, I find that although the government has taken steps to address the Roma issue, the panel finds that there is more than a mere possibility that these claimants will face serious harm amounting to persecution should they return to the Czech Republic. [IRB 2008]

It is hard to argue that the state criteria for inclusion within the category of "refugee" are not politically and morally grounded, especially in circumstances such as these.

Advocate Response to the Reimposition of the Visa

A number of advocates, experts and lawyers spoke out against the visa reimposition and how it was a serious hindrance towards closing the door on legitimate refugees. The advocates focused more on the rights of the refugee than on the "broken" refugee system that was the main focus of Minister Kenney and the Canadian government. Paul St. Clair stated that, "I don't know who is a refugee if these people are not refugees" (Valiante 2009b). He felt the decision was fundamentally discriminatory:

“What other country do we retaliate against like this? It has something to do with the fact that these claimants are Roma” (O’Neil and Fitzpatrick 2009).

Max Berger, lawyer for Roma refugee claimants, felt that the re-introduction of the visa requirement on the Czech Republic “tarnishes our reputation in the international community with respect to refugee protection because we are slamming the door on genuine refugees” (Dawson Creek Daily News 2009). Geraldine MacDonald, president of the Refugee Lawyers Association, indicated that the government was to blame for the high claimant rate and the backlog with the refugee determination system, stating that, “To take this action against these two countries specifically on the grounds that there is a high volume of refugee claims from these countries is contrary to the human rights principles and sense of justice that Canada stands for” (Ditchburn 2009).

Minister Kenney quickly refocused the issue of visas to the supposedly broken refugee determination system in Canada. He called for a major overhaul to the system which would stop “queue jumpers” and “economic migrants” from taking advantage of Canadian generosity and would further move to limit access to the refugee determination system. Similar to “queue jumpers,” the “bogus refugee” label, or simply “bogus” on its own, was thrown around frequently in the media during the coverage on Roma asylum seekers. Minister Kenney referred to Roma, as well as Mexicans, as bogus on a number of occasions, often pitting them against “real refugees.” For example, Kenney stated after the visa reimposition:

We need to streamline the system to provide faster protection for real victims of persecution, while showing bogus claimants to the door much more quickly. Until we’re able to come up with reforms along those lines, unfortunately, the visa policy becomes our only recourse. [Blanchfield and White 2009]

Re-instating the visa became a way for the government to establish itself as protecting Canadian citizens and all those potential *legitimate* refugees who are being forced to wait to have their claims processed due to these bogus claimants. Kenney also reaffirmed his position by associating a quicker system with a better system and associated “bogus claimants” with slowing the system down.

In response to Minister Kenney’s suggestion that the system needs to be overhauled, Janet Dench, executive director of the CCR, claimed that Kenney was using this situation as a talking point for a potential fall election. Dench stated that, “The problem is not in the system, but in the failure of the government to appoint enough board members to avoid a backlog” (Blanchfield and White 2009). This rhetoric can quickly turn into a “blame game” where activists blame the government for the backlog while the government blames the asylum claimants for “holding up the system” for “real refugees.”

Kenney was criticized by refugee lawyers and advocates for his use of the word “bogus” in reference to refugee claimants. Lawyer Rocco Galati has stated that his Roma Canadian clients intend to sue Minister Kenney and the IRB over the “institutional biases” evident in some of the public comments Minister Kenney made about the Roma claiming refugee status (Keung 2009). Galati claims that usage of the word “bogus” in relation to refugee claimants amounts to “political interference” with the IRB’s ability to make independent decisions in regards to refugee determination, a claim which has been supported by other immigration advocates. William Bila from the RCC went even further by claiming that, “[the] Canadian government is creating a policy of ‘none is too many,’” a phrase that connects the refusal of the Canadian government to deal with the refugee

claims of the Roma to that of the denial of entry into Canada of Jews throughout the 1930s and 1940s (Keung 2009). The RCC has launched a petition which calls for the Canadian government to address the human rights violations against Roma occurring in Europe as well as asking for the end to the visa restrictions which were recently placed on the Czech Republic.

Immigration lawyer Max Berger wrote a letter to *The Gazette* which illustrated the many differences between the Mexican situation and those being faced by Czech Roma. Berger also suggests that Minister Kenney has overstepped his power and is imparting his will over the IRB in using statements which imply fraudulent status. Berger writes:

For Kenney to state publicly ‘it’s hard to believe the Czech Republic is an island of persecution in Europe,’ not only ignored evidence of the refugee board’s high acceptance rates for Roma refugee claims, but also undermines the operation of his own board. The minister’s political interference has already been raised in a number of challenges filed in the Federal Court, citing the apprehension of bias when refugee decisions are made by politically appointed board members who look to the same minister to secure their reappointment to the board. The effect of the visa requirement upon the Czech Republic will be to shut the door on the ability of genuine Roma refugees to reach Canada. [Berger 2009]

Berger claimed that Minister Kenney was undermining the IRB by stating who was and was not a valid refugee (Taylor 2009c). Once the announcement was made, Berger stated that the visa restriction on these countries “shuts the door on genuine refugees and tarnishes Canada’s refugee program and reputation in the eyes of the international community” (Valpy 2009b). There is a fundamental difference between the government and advocates on what constitutes a “genuine” refugee in this case. Many advocates look towards the cumulative effects of discrimination placed on refugee claimants from the Czech Republic as an indicator of “genuine-ness,” where the government has avoided

making that connection and has instead chosen to link these refugees with illegitimacy and a weak refugee determination system, thus constructing them as not belonging. Rather than “establishing criteria of belonging within a national population and territory” (Ong 1996:738) Minister Kenney is clearly using rhetoric of exclusion when de-legitimizing the Roma refugee claimants.

During discussions about potential reforms to the IRB, Janet Dench of the CCR was concerned the government would adopt a new immigration system which would see civil servants, rather than vetted IRB board members, making refugee claimant decisions. Dench discussed these concerns in an opinion piece in the *Toronto Star* at the end of July 2009, writing:

The refugee system exists to protect refugees – to whom we have legal and moral obligations. The Canadian system is far from perfect and could certainly benefit from changes to allow it to better meet challenges. But we must avoid a system that gives higher priority to rejecting non-refugees than to protecting refugees. [Dench 2009]

Dench’s statement expresses her support for reforms to the IRB and noted that there are problems with the system. However, she stressed that an independent system is vital to provide for the rights of the refugee. She warned against a system which would politicize refugees and the refugee determination process citing the United Kingdom as an example:

The U.K. has seen a deeply unhealthy cycle of sensational media coverage leading to politicians promising to ‘get tough,’ which in turn reinforces popular misperceptions about the scale of the problem. Policies adopted in this context are usually designed more to appeal to the public than to provide viable solutions. Meanwhile, public support for refugees is undermined. [Dench 2009]

The opinion piece came at a time when the government was trying to paint the picture of a “broken refugee system” which needs a complete overhaul. Dench provided some counter points to the official picture the government was presenting to the public.

In August 2009, Peter Showler, former chairperson of the IRB, questioned the way government officials have been throwing around the word “bogus” when discussing failed refugee hearings. In an editorial in the *Vancouver Sun*, Showler called on the government to recognize that, despite imposing a visa on both the Czech Republic and Mexico, the IRB had indeed found there to be legitimate refugee claimants from those countries. He stated that a definition involving a bogus claim would be, “one who makes a false refugee claim *knowing* that he or she is not a refugee” (Showler 2009 – my emphasis). Showler wrote:

That definition would undoubtedly cover some Mexican claimants who come to Canada with a phony story about horrible events that never happened. It would even cover the Mexican migrant who has naively been misled by an unscrupulous travel agency to simply arrive in Canada. It would not, however, describe many of the failed Mexican claims. [Showler 2009]

Showler discredits the assumption that a failed refugee claimant is logically a “bogus refugee.” Furthermore, Showler suggests that Minister Kenney is overstepping his authority and directly challenging the independence of both the IRB and the Federal Court by publicly stating his own personal beliefs in the case. Showler states:

When Kenney says that he does not believe that Czech Roma or Mexicans are refugees, and therefore they are presumably bogus refugees, he is contradicting both the IRB and the Federal Court which have both said that some Czechs and some Mexicans are refugees who are at risk of serious harm. These are issues of fact and law, not government policy. Kenney does not like the answers but he has not challenged any of the positive decisions on refugee claims by the IRB in court, which is the government’s right. [Showler 2009]

He emphasizes how Minister Kenney's agenda influences his ability to act impartially in relation to refugee matters. Showler argues that the Conservative government is responsible for delays with the IRB, having neglected to appoint new board members to the IRB for the previous two years. He contends that this is a significant part of the backlog in the immigration hearing system, supporting the CCR and Dench's criticisms.

Showler goes on to suggest an alternative reason for the backlog at the IRB which does not place blame onto the victims of persecution or involve major reform to the refugee determination system. The backlog and delay at the IRB can be contributed to a government that does not place a high priority on its allocation of proper resources to its refugee determination system:

The Conservative government was a principal cause of that delay, starving the IRB of members for two years, a partial cause of the current backlog of more than 60 000 claims. The longest delays lie in the back end of the system where refugee claimants linger for years before government officials complete ineffectual risk reviews before removing claimants. These are delays that lie within the government's control but are conveniently ignored. [Showler 2009]

Showler highlights many issues which are under the direct control of the government and focuses on those as systemic problems which need to be addressed, before blame is assigned to the refugees who use the system. Another refugee advocate, Geraldine MacDonald, president of the Refugee Lawyers Association, agreed with Showler's assertions that the backlog in the refugee determination system lies in the hands of the government who was slow in filling vacant positions for years and not with refugees themselves (Ditchburn 2009). MacDonald felt Canada was acting in contradiction to human rights laws by reimposing the visa on the Czech Republic and Mexico because of their high claimant numbers. MacDonald stated: "To take this action against these two countries specifically on the grounds that there is a high volume of refugee claims from

these countries is contrary to the human rights principles and sense of justice that Canada stands for” (Ditchburn 2009).

In September 2009 Mr. Velshi claimed that the visa restrictions on the Czech Republic were a big success by “stopping bogus asylum claims, saving taxpayers money, and allowing us to redirect our resources to focus on genuine refugees” (Trail Times 2009). He went on to say that the complete lack of asylum claims from the Czech Republic allowed the government to focus on the “protection [of] real refugees facing genuine persecution” which further justified the de-legitimation of the Roma refugee claimants after the visa was imposed (Trail Times 2009). Through the successful labeling of refugee claimants from the Czech Republic as “bogus,” “economic migrants” and “queue jumpers,” the Canadian government has been successful in significantly reducing the number of asylum-seekers coming from this European country. Yet, as clearly shown in the previous chapter and noted by activists here, Roma from the Czech Republic are the recipients of violent hate crimes and persecution. By relying on the heavy handed interdiction tactic of implementing a visa onto the Czech Republic, this particular Canadian government signaled that it is incapable of making well-informed and researched decisions regarding the best interests of refugee claimants.

Hungarian Roma Asylum Seekers

The last few months of 2009 saw an increase in refugee claimants from Hungary. The visa on Hungary was lifted in March 2008, following the lifting of the Czech Republic’s visa in the fall of 2007. It was reported that Minister Kenney had flown to Budapest to discuss the increase in refugee claimants. Velshi, Kenney’s spokesperson, said they were working with the Hungarian government to “resolve this issue of

unregistered immigration consultants misleading people into coming to Canada and making asylum claims” (O’Neil 2009e). At the same time, Andras Pap, an Associate Professor at Eötvös University (ELTE) in the Department of Media and Communication who has written on hate crime in Hungary, stated that: “Under current international law standards Hungarian Roma should not qualify as political refugees, even though Hungary should be much more stringent in providing protection to its minorities. ... Such claims can legitimately be dismissed by Canadian authorities” (O’Neil 2009e). Pap is endorsing the government stance that the Roma are not “legitimate refugees” because they are not political refugees. However, it should be noted that Roma have not been claiming to be political refugees but rather refugees fleeing persecution based on their ethnicity and cumulative effects of discrimination.

With the increasing focus on claimants coming from Hungary, the government claimed that there was no connection between the increase in refugee claimants from Hungary and the Czech Republic. Mr. Velshi stated:

In the 84 days before we imposed on the Czech Republic, we’d received roughly the same number of asylum claims from Hungary as in the 84 days after we imposed on the Czech Republic. What that shows is (sic) the visa imposition on the Czech Republic had zero effect on asylum claimants coming from Hungary. [Pedwell 2009]

The fact that asylum seekers from Hungary and the Czech Republic belonged to the Roma minority was prominently absent from the reporting.

News broke early in 2010 that the Canadian government was considering implementing visas on Hungary as it had done with the Czech Republic in the summer of 2009. Immigration spokesperson Velshi stated that the numbers of asylum claimants from Hungary have gone up despite Canadian and Hungarian efforts to collaborate and end the

surge of asylum seekers. Velshi attributed the increase of asylum seekers not to “genuine refugees” but rather on a “growing willingness to abuse Canada’s visitors’ processes; an increase in human trafficking; or an increase in unscrupulous immigration consultants” (Scofield 2010). The rhetoric used against Hungary is strikingly similar to how Velshi and the government spoke of the Czech Republic and its asylum seekers in 2008 and 2009 before the visa was re-imposed on the Czech Republic. The emphasis remains on the moral corruption of the asylum seekers, or the country which they come from, and not on the circumstances surrounding the asylum seekers. Velshi maintained that these problems are Hungarian and not the concern of the Canadian government.

In March of 2010, during the Winter Olympic games held in Vancouver, seven visitors filed refugee claims to stay in Canada. Four claims came from Hungary (Roma), two claims came from Japan and one from Russia (Fong 2010). Minister Kenney claimed, once again, that the rising number of claimants signaled a broken refugee system and singled out the Hungarian claimants in particular. He neglected to mention who the asylum seekers from Hungary actually were. Kenney stated that most asylum seekers from Hungary withdraw their claims and further claimed that:

Unfortunately our system is sending a message that if you want to get in the backdoor of immigration to Canada without waiting in queue, you can just come and make an asylum claim. ... I am concerned that some appear to be coming to Canada, signing up for social benefits. ... I think that says to us that people are gaming our system and abusing our generosity, suggesting to us they are not really seeking Canada’s protection but something else. [Fong 2010]

In this statement, Kenney once again conflates the immigration system and the refugee determination system by implying that many refugee claimants are simply impatient immigrants. By signaling out Hungarian claimants and then going on to insinuate illegality on their part, Kenney is sending a clear message that the system is broken and

furthermore, is being abused by bogus claimants. On March 30, 2010, Minister Kenney introduced the Balanced Refugee Reform Act to Parliament. It is in this context, that Kenney makes his statement regarding Hungarian refugee claimants and their legitimacy as an element of his construction of a “broken” system in dire need of reform.

In March 30, 2010, Kenney was still de-legitimizing Hungarian refugees by implying their involvement in perpetuating the “broken” system. In an article on the CBC website, Kenney cites Hungary as the top sourcing country for refugee claimants in 2009 asserting that of the 2 500 claims made, twenty five were found to be “legitimate” (positive) and further claims that “ninety-seven per cent [were] abandoned or withdrawn” (CBC 2010). These numbers strikingly illustrate the “numbers game” engaged in by the Minister, where misleading statistics are cited to make his point. Dench counters these numbers by pointing out that in 2009 of the 2440 claims made by Hungarians only 259 were abandoned or withdrawn (2010). The ninety-seven per cent figure is for *finalized* claims and the majority of Hungarian claims had not been granted a decision yet with 2434 claims still pending at the end of 2009 (Dench 2010). Dench also notes that claimants should not be demonized for withdrawing a claim:

If we are concerned about the refugee claim process being used by people who don’t need protection, shouldn’t we be pleased if people withdraw? Might it not suggest that after understanding more clearly the refugee definition, they realized they didn’t belong in the process? By withdrawing, they save the system the cost of a hearing. [Dench 2010]

Thus, Kenney was not accurately presenting the Hungarian refugee situation. His misleading use of numbers also illustrates the danger in not looking beyond statistics when it comes to refugee determination numbers.

Margaret Wente vs. Paul St. Clair

In response to the situation of the Hungarian Roma refugees, and perhaps in support of the proposed reforms to the IRPA, Margaret Wente wrote a comment column for the *Globe and Mail*. It ran April 1, 2010, and bore the title: “When it comes to refugee claims, it’s pretty easy to ID the ‘safe’ countries,” which heavily alluded to the illegitimacy of Hungarian asylum seekers (who are mostly Roma) while also suggesting that it is “easy” to identify “safe countries.” (Wente 2010). Wente began by questioning the legitimacy of accepting refugee claimants from Hungary when there are “clearly” more deserving countries such as Sri Lanka, Somalia and Haiti. She claimed that the refugee determination system in Canada has failed and that it had been failing for a long time. Wente argued:

Has there been a sudden outbreak of human rights abuse in Hungary? Well, yes, in a way. Scam artists tell their victims how easy it is to get refugee status in Canada, then sell tickets to them. They coach them on how to lie to the authorities. Once in Canada, police say, many of these people fall under the control of criminal gangs, who force them to work for free and help them apply for welfare. The welfare money goes to the gangs. Of the 2,500 claimants from Hungary, only three have been declared in need of protection. [Wente 2010]

Though Wente never distinguished Roma by ethnicity, the connection being made between criminality and Roma is clear. She does not explain where her statistics are from: she claims that 2 500 claimants have applied for asylum but does not quantify this number with a start date, or indicate how many of these claimants have actually had hearings. We see here another example of the numbers game with Wente stating numbers without proper citation.

Wente uses many of the same labels the government put forth a year before during the lead up to the visa reimposition: “broken refugee system,” “phony refugees”

and “jumping the queue.” Her usage of these labels illustrated the implementation of illegality onto Roma refugees which started with the government. Furthermore, Wente echoes Kenney by claiming that claimants are “gaming” the system. Wente writes:

Our broken refugee system is not new news. Criminals and phony refugees who simply want to jump the queue have been gaming Canada for decades. Successive waves of bogus claimants have come from such unlikely hellholes as Portugal, Chile (post-Pinochet), Costa Rica and Mexico. Fifty-eight per cent of all asylum claims are eventually ruled invalid. But, until now, claimants knew that, no matter the outcome, they’d be allowed to stay for years. [Wente 2010]

Wente quotes Janet Dench of the CCR, Gloria Nafziger from AI and MP Olivia Chow as advocates for a system which determines refugees based on individual and situational facts rather than a list of “safe countries” based on “the depth of their human-rights abuses” (Wente 2010). Furthermore, she supports the option of having “safe third countries” and dismissed the aforementioned critics by saying the government will expedite hearings but they will still be fair.

Despite Wente’s claims that it is relatively straightforward to decide which countries are safe and which are not, she does not actually lay out any criteria for doing so, writing, “For the most of us, it’s pretty easy to tell the most and least ‘safe’ countries. Switzerland and Sweden are safe. Somalia is not” (Wente 2010). She suggests that only in continents such as Africa do human rights abuses and persecution of ethnic/racial minorities exist, never in Europe. This is a model expression of Eurocentrism, which “envision[s] the world from a single privileged point. It maps the world in a cartography that centralizes and augments Europe while literally ‘belittling’ Africa” (Shohat and Stam 1994:2). As well, the rhetoric behind Wente’s argument is misleading as it uses dualistic criteria labeling countries as “safe” and “unsafe.” These labels never really indicate who is supposed to be safe and from whom. Furthermore, Wente also claimed that the

monumental *Singh* decision, as discussed in Chapter One, was “a terrible Supreme Court decision,” (Wente 2010) which either indicates her lack of knowledge regarding refugee development in Canadian history or her ignorance as to its importance in refugee law. Wente ends the article on a note hostile to refugee advocates by writing, “We accept more refugees than almost any other nation in the world, and we treat them well. The usual suspects in the immigration and human-rights industry would have you think otherwise. Don’t believe them” (Wente. 2010).

Paul St. Clair from the RCC wrote a response in the *Globe and Mail* to Wente’s article a week later on April 7, 2010 titled “Hungary’s asylum seekers.” Although his response was short and took aim mostly at her characterization of the Hungarian asylum seekers, he did effectively challenge her assertions that “safe countries” are not so easily determined while also illustrating a lack of reporting with regards to refugee claimants from Hungary. St. Clair wrote:

It is particularly arresting that as perceptive a writer as Margaret Wente would ignore the mere possibility that many of the Hungarian refugees, whom she calls scam artists, are actually victims of serious human-rights abuses. Like other commentators, [Wente] singled out the Hungarians without mentioning who they actually are. They are long suffering Roma (or Gypsies), who are being targeted by skinheads, neo-Nazis and ordinary Hungarians, without police or state protection, despite Hungary’s democratic laws. They are persistently harassed, verbally and physically attacked. Having the minister determine what countries are safe will only politicize the refugee process and we may be refusing those who really need our help. [St. Clair 2010]

St. Clair hit on an important recurring issue in the debate about the reforms to the IRB: having a policy based on keeping out so called “bogus” refugees at the expense of people facing legitimate persecution. St. Clair took aim at an often-claimed belief that democratically elected governments cannot (or are unlikely to) persecute its citizens. He ended by warning of the dangers of politicizing the refugee determination system by

assigning “safe” countries and how this can be detrimental to people in need of asylum. At the same time St. Clair reinforces his view that Roma are often victims of systemic discrimination in Hungary, in striking contrast to Wente’s and the governments’ portrayal of these refugee claimants as being “bogus.”

As of the writing of this thesis, the Canadian government has yet to impose a visa onto Hungary despite its similarities to the Czech Republic and high numbers of refugee claimants. I would suggest that the circumstances are different politically, as Canada might not be so willing to place another member of the EU on notice by imposing a visa. Minister Kenney used the situation of the Czech Republic to highlight what he perceived to be a broken refugee determination system. Once the visa was placed onto the Czech Republic Kenney was able to argue for and push reform. Hungary may become the test for the government in establishing if the new system is keeping out what it perceives to be “bogus” claimants. There is a clear rift between stakeholders on how refugee Roma claimants are presented: one side interprets them as taking advantage of a generous system, the other sees them as victims of systemic discrimination.

Roma and the French Government

Hungary and the Czech Republic are not the only European countries having issues with Roma migration. At the end of July, France had decided to crack down on illegal immigrants and specifically targeted illegal Roma camps. The French government claimed that the camps were involved in “smuggling, exploiting children for begging, prostitution or delinquency” (Edmonton Journal 2010a). Many saw this as an attempt by French President Nicolas Sarkozy to gain support for the upcoming elections in 2012. Opposition arose from Roma advocate groups and Sarkozy’s political opponents who

saw the crackdown as stigmatizing minority communities and failing to distinguish between ethnic Roma and Gypsies and a separate community of French Travellers (Edmonton Journal 2010a).²⁶ An opinion poll published in France after the crackdown began showed that 75 per cent of voters agreed with the crackdown on the illegal camps (Edmonton Journal 2010b). President Sarkozy then threatened to remove French citizenship from new citizens if they were found guilty of committing serious crimes while Christian Estrosi, the Industry Minister, said that immigrants must choose if they want “to be French or hoodlums” (Winnipeg Free Press 2010c).

Canada was drawn into the issue when Minister Kenney agreed to attend a meeting in France which was described as an “anti-Roma” gathering by some of the critics of Sarkozy’s crackdown (O’Neil 2010a). Liberal MP Ujjal Dosanjh suggested that “[by] attending this meeting, Mr. Kenney is sending the message that he agrees with the far right policies of President Sarkozy” (O’Neil 2010a). Dosanjh felt the Canadian government should be openly condemning France’s treatment of the Roma. Meanwhile, Mr. Velshi, speaking on behalf of the government defended Canada’s participation in the meeting by saying that “Canada should be engaging with the world on immigration, border security, human trafficking and smuggling, and the resettlement of refugees ... Canada isn’t about to start boycotting international conferences hosted by the French government” (O’Neil 2010a).

France maintained that the policies were not based on discrimination due to race or ethnic background. However, a leaked note from August 5, 2010 suggested otherwise.

²⁶ It is unclear what the article means by “French Traveller.” However, it is likely a distinction between Roma of foreign birth opposed to Roma who have been in France for decades and centuries. “Traveller” is often used to speak broadly about people of Roma or Gypsy background yet in the United Kingdom, Irish Traveller and Traveller are used specifically to talk about an ethnic group which has distinct and different origins from Roma and Gypsies.

The note, signed by Interior Minister Brice Hortegoux's chief of staff, expressed a desire to clear three hundred illegal camps within three months and singled out "Roma camps" as "a priority" (O'Neil 2010b). Dosanjh understood the note to be a clear indication that, "France is engaged in a premeditated attack by expelling the Roma en masse" (O'Neil 2010b). Other agencies, such as the United Nations, warned that the new French policy would simply worsen the social stigmatization of Roma throughout the country and Europe. Despite the leaked note, Besson maintained that, "The concept of ethnic minorities is a concept that does not exist for us" (O'Neil 2010b).

Balanced Refugee Reform Act

On March 30, 2011, *Bill C-11 the Balanced Refugee Reform Act* (BRRA) was first introduced to the House of Commons, sponsored by Jason Kenney. The second reading occurred on April 26, 27 and 29 of 2010 and it was subsequently sent to committee for further consideration (only after calls from the advocate and NGO community were made). The committee presented their significantly altered report on June 6, 2010 and the third and final reading occurred on June 15, 2010. The bill passed the Senate unamended and received Royal Assent on June 29, 2010. In a stark contrast to how provocative immigration and refugee reforms proved in the late 1980s, this bill was passed through Parliament with almost no resistance amongst parliamentarians. Much of the work of reforming and revising the bill was done in Committee with the advocate community, opposition parties and civil society playing an important role in ensuring revisions were made to the legislation.

Throughout the process a number of refugee advocates submitted detailed lists of concerns about some of the proposed legislation. In April 2010 the CCR wrote an Open

Letter addressing their concerns with the changes to *Bill C-11*, signed by the heads of ninety-one other organizations involved with refugees. On May 11, 2010 Amnesty International Canada submitted an eighteen page brief about concerns with the proposed new legislation to the Standing Committee on Citizenship and Immigration. On May 27, 2010 the Mennonite Central Committee (MCC) did the same. The legal community, represented by the Canadian Bar Association (CBA), also had concerns over the proposed changes to IRPA and the National Citizenship and Law Section of the organization submitted an overview with comments and suggestions to Parliament in May 2010.

The concerns of all these organizations overlapped but can be summed up as concern over three main changes. First, there were major concerns over the proposed usage of “designated safe countries” and how they would be implemented. The CCR argued that a designated safe country clause

would create an unfair two-tier system, denying some claimants access to the appeal based on nationality. Claimants that will be particularly hurt include women making gender-based claims, and persons claiming on the basis of sexual orientation or sexual identity. In many countries that otherwise seem fairly peaceful and “safe”, there can be serious problems of persecution on these grounds. An effective refugee system requires determination of individual claims, based on all the facts and the law, by an expert, independent body. [CCR 2010b]

Secondly, advocates took issue with the expedited processes proposed to deal with the refugee backlog and the removal of the twenty-eight day PIF form and replacing it with an interview within eight days and hearing within sixty days of making a refugee claim. The MCC argued that such a short period as eight days significantly affects the ability for claimants to seek out legal advice and a lawyer to represent their case at the IRB. Although a lawyer is not needed, they noted that acceptance rates for applicants are

highly affected by the presence of a lawyer. In 2009 just over 50 percent of cases were accepted, however

for unrepresented claimants the average acceptance rate was 14.7%. This suggests that it is not merely the substance of a case that determines its success, but the manner in which it is presented. It is therefore crucial that claimants have access to counsel who can help them organize, articulate, and present their story in the clearest way possible. [MCC 2010]

Third, there was concern that interviews occurring so quickly after arrival may place unnecessary pressure on the refugee claimant. Under the previous system refugee claimants would have twenty-eight days to complete their PIF form under the guidance of “a lawyer or with a friend, where they have time for reflection and recollection, and can calmly sort through details that may still be highly personal, traumatic or repressed” (MCC 2010). Any information omitted or misrepresented can jeopardize claimants’ credibility at a hearing. Thus, advocates were concerned over the pressure placed on refugee claimants after their arrival. Thirdly, there were concerns over time restrictions on accessing other immigration procedures, specifically humanitarian and compassion (H&C) applications.

In the Open Letter from the CCR the signatories criticize, in particular, the type of language used by the government in discussing refugee claimants and their relationship with *Bill C-11*, such as “bogus claims”. The letter states:

We need reasoned, fact-based discussion of the issues. Not everyone who makes a claim needs protection but that doesn’t make such people “abusers”. They may have compelling reasons for leaving their country, even though they may not meet the narrow refugee definition. Nor is it fair to refer only to costs associated with refugee claimants, who also contribute as taxpayers to the Canadian economy. It is the responsibility of the government to educate Canadians about our legal obligations towards refugees and to promote the positive value of a welcoming refugee policy. [CCR 2010b]

The rhetoric of “abuse” to which the CCR is referring was used by the government when discussing the fact-finding mission to the Czech Republic, as well as the fallout regarding the visa implementation on the Czech Republic and Mexico in 2009. In “abusers,” the CCR has created a new, catch-all label to encompass the other labels (“bogus,” “economic migrant,” “criminality,” et al) that the government has used, unchecked, for years. The CCR statement acknowledges the rights of asylum seekers without assuming they all meet the legal definition of refugees and avoids using terminology such as “legitimate.” The CCR has carefully chosen its language in constructing this letter to highlight the role of government commentators in regards to their language and how it can and does affect the opinions of the general population. The CCR calls for government to approach refugee issues by using more neutral language which does not carry heavy moral judgments regarding refugee claimants.

Conclusion

I have shown that the dichotomy in how the government and other detractors utilize the refugee label, as well as “bogus,” “queue jumper” and “economic migrant” (in contrast to the “genuine”), have lasting effects on how refugees and refugee determination are constructed by the government and advocates in the media. It is important to point out that many advocates do not doubt that some people can and have abused the refugee determination process. However, refugee policy should not be an exclusionary process, where we are turning away people in need simply to keep out a few “bogus” refugees nor should it be a process where restricting access becomes the primary motivation for new policy. One of the biggest problems with the approach the

government has taken towards the Czech Republic is the implication that asylum seekers whose claims have been rejected are automatically illegitimate refugees.

This chapter has extended Stasiulis and Bakan's points about the restrictive trend towards immigration, refugee and border policy by the Canadian government through examining the use of "legitimate" and "illegitimate" labels as applied to Roma refugee claimants from the Czech Republic and the visa reimposition on the country. The refugee label has become dichotomized between "real" and "illegitimate" and influences the hegemonic power flow of Ong's dual process. The government uses such labels as "economic migrant," "queue jumper" and "bogus refugee" to construct these claimants as not belonging. In other words, Czech Roma are being-made to be illegitimate by the government of Canada. The next chapter will examine the relationship between the 2009 Czech Republic fact-finding mission conducted by the Immigration and Refugee Board of Canada and the debates in Canada leading up to the *Balanced Refugee Reform Act* (BRRA). I will show that, despite the fact that both Hungary and the Czech Republic are increasingly becoming refugee-producing countries due to the unchecked discriminatory treatment of Roma, the Canadian government persists in arguing that democratic countries do not produce refugees. The rhetoric is designed to help create a system where the rights of the refugee are secondary to the security interests of Canada.

CHAPTER FIVE: THE 2009 IMMIGRATION AND REFUGEE BOARD FACT-FINDING MISSION TO THE CZECH REPUBLIC

The previous chapter outlined the ways the refugee label has been divided and how Roma refugee claimants were presented in the media by advocates and the government. A certain amount of bias played out against Roma, and the chapter established the timeline regarding the implementation of the visa onto the Czech Republic. This chapter focuses on the 2009 IRB fact-finding mission to the Czech Republic. I explain what fact-finding missions are and how they are used by the IRB and then I discuss the two reports which came out of this particular fact-finding mission and the response by the government and advocates. The government latched onto, essentially an internal report, and used it to further their claims that Czech refugee claimants were taking advantage of the Canadian refugee determination system. This allowed them to utilize the report to serve the Canadian Immigration Minister's own purpose of delegitimizing Roma refugee claimants.

Immigration and Refugee Board Fact-finding Mission

The IRB fact-finding mission served to validate the government's construction of the Roma asylum seekers as illegitimate. Although doubt was cast upon the Czech Roma asylum seekers early on due to their country of origin, it was not until the fact-finding mission that government representatives and ministers were able to use certain terms such as "bogus," "economic migrant" and "queue jumper" more freely and forcefully. The fact-finding mission provided the "proof" that these people were taking advantage of the system as well as justification for constructing the Czech Roma refugee claimants as illegitimate.

The IRB uses fact-finding missions to gather more information regarding the internal workings of a particular government, in this case the Czech Republic. They are meant to be used in coordination with a National Documentation Package (NDP) compiled by IRB researchers from information available publicly, such as media, government releases and online sources. The IRB maintains NDPs on most countries to keep track of the country's history and policies in regards to key areas. The sixteen areas which are included in these NDPs are:

1. General Information and Maps
2. Human Rights
3. Identification Documents and Citizenship
4. Political Activities and Organizations
5. Gender, Domestic Violence and Children
6. Sexual Orientation
7. Criminality and Corruption
8. Military Service Issues
9. Judiciary, Legal and Penal Systems
10. Police and Special Forces
11. Media Freedoms
12. Religion
13. Nationality, Ethnicity and Race
14. Exit/Entry and Freedom of Movement
15. Labour, Employment and Unions
16. Other

The NDP for the Czech Republic was updated as recently as April 13, 2011 (IRB 2011b). Fact-finding missions are intended to gather information supplementary to the NDPs through a select group of researchers conducting interviews with a variety of interlocutors in the country in question. These interlocutors usually consist of a combination of advocacy, media and government groups. The purpose of a fact-finding mission is to help board members with their decisions by creating better background information on a particular country. The IRB completed two fact-finding missions to the Czech Republic in 1997 and 2009.

The Research Directorate of the IRB undertook a fact-finding mission to the Czech Republic from March 23 – 31, 2009. This mission resulted in two Issue Papers. Issue Papers exist to provide, “in-depth research on issues relevant to the refugee determination process” for a particular region or country (IRB 2009a, IRB 2009 b, IRB 2011b). They are often used when more detailed background information on a country is greatly needed due to a sudden influx of asylum seekers. The first four Issue Papers on the Czech Republic came out in 1997 after the Czech Roma influx. The beginning of the June 2009 Issue Paper concerning the Czech Republic states that “The aim of the IRB’s mission was to address information gaps related to the situation and treatment of Czech Roma as well as their access to state protection and the possibility of internal relocation” (IRB 2009a:5). Thus, the goal of the mission was to find out specifically if the Czech Republic engaged in any official forms of persecution against Roma, its largest minority population, and whether or not the government was both willing and able to protect Roma if and when they faced persecution.

The mission was also intended to assess whether or not Czech Roma could relocate within the Czech Republic to escape persecution if they faced it. The answer to this question would play a direct role in determining whether or not Roma needed to seek asylum in a new country such as Canada. A successful refugee claimant must be determined to face a “well-founded” fear of persecution in his or her country of origin, and “has to show that no part of the country is safe for them. If it is possible for someone to relocate safely to another part of the country, asylum will not be granted” (Bohmer and Shuman 2008:179). Thus, these papers were intended to update the presumably outdated information on the country and its government’s treatment of Roma. The first Issue Paper

was released in June 2009 and examined “state protection mechanisms, as well as non-state services, that assist Czech Roma who are victims of discrimination or violence” (IRB 2009a:5).²⁷ The second paper came out in July 2009 after the visa reimposition on the Czech Republic and “provide[d] information about the situation and treatment of Roma, including the factors that influence their ability to relocate within the Czech Republic” (IRB 2009a:5).

Findings of the Czech Republic Fact-finding mission

The June 2009 Issue Paper came back as inconclusive, thus leaving it open to interpretation. For example, the Ministry of the Interior claimed that action taken against extremist groups was successful, with extremist crimes declining from 473 in 2002 to 196 in 2007 (IRB 2009a:10). Yet, the NGO and academic interlocutors remained critical of the Ministry’s anti-extremism unit “for its failure to gather sufficient evidence to ban the far-right Workers’ Party” and questioned the ability of the local police to work efficiently with the anti-extremism unit due to its “inefficient and unprofessional” behavior (IRB 2009a:10).²⁸ The Czech government, NGO and academic interlocutors also diverged on other important aspects of the paper such as adequate reaction to extremist demonstrations (IRB 2009a:10), police “discriminatory” or “disrespectful” attitudes towards Roma (IRB 2009a:11) and the lack of accessibility of the judiciary system for Roma as well as the system’s bias towards Roma (IRB 2009a:14).

²⁷ The page numbers used for the fact-finding missions correspond to the printed versions of this document. The document is available online as a unit and is not broken up by page number, thus I have assigned ones which fit the printed version of the documents.

²⁸ As discussed in Chapter Four, the Workers’ Party was officially disbanded in 2010 but has since reformed under a new name with the same leadership as the banned party.

The July 2009 Issue Paper outlined many fundamentally disturbing signs of discrimination in the Czech Republic. The paper inspired many opposing opinions, again between government officials and the NGO and academic communities, on how the state was living up to its obligations towards its Roma minority. This paper was broken down into four major sections focusing on Roma social exclusion, the situation of Roma in the Czech Republic, the treatment of Roma in the Czech Republic and the potential for internal relocation within the Czech Republic. It focused on what are commonly referred to as “socially excluded Roma localities,” which the paper changes to “socially excluded localities” or SELs, dropping Roma from the name (IRB 2009b:6). The paper specifically points to the importance of SELs despite stating that “the majority of Roma do not live in SELs.” It then goes on to discuss criminality, indebtedness and loan sharking taking place within these locations (IRB 2009b:7).

It is questionable why so much attention is placed on SELs when it was stated that most Roma do not live in these locations. As Gupta and Ferguson note: “as actual places and localities become ever more blurred and indeterminate, *ideas* of culturally and ethnically distinct places become perhaps even more salient” (1997:39, original emphasis). Thus, SELs are intricately tied to the *idea* or image of Roma. There tends to be an assumption of a natural association between a “culture,” a people, and a place as outlined by Gupta and Ferguson:

anthropologists still talk of “American culture” with no clear understanding of what such a phrase might mean, because we assume a natural association of a culture (“American culture”), a people (“Americans”), and a place (“the United States of America”). Both the ethnological and the national naturalisms present associations of people and place as solid, commonsensical, and agreed on, when they are in fact contested, uncertain, and in flux. [Gupta and Ferguson 1997:40]

It is possible that the focus on SELs, as opposed to other locations where Roma are located, is due to the association of Roma with SELs made by many of the interlocutors involved in the fact-finding mission. This is not to say that the association is made intentionally, as these associations often occur due to the unchallenged idea that the link exists. SELs became easily identifiable locations to focus on, rather than examining the more varied locations Roma inhabit. The argument seems to be that although Roma are mostly found outside of SELs, SELs are their expected setting. Borrowing from Gupta and Ferguson's thinking, there is an association with a "Culture of Poverty" (criminality, indebtedness and loan sharking), a people (Roma), and a place (the SELs).

Under the Social Perception subheading in the July 2009 Issue Paper, it was reported that hidden discrimination was a pervasive problem within the Czech Republic and that public opinion surveys "found that between 60 and 95 per cent of Czech citizens held negative attitudes toward Roma" (IRB 2009b:8). Furthermore, the paper reported that, "Roma are confronted with discrimination in their daily lives, simply for being identified as Roma" (IRB 2009b:8). With the examples that "Roma rarely travel by train for fear of being intimidated or attacked, and instead prefer to travel by bus," and that "[Roma] were not seated in restaurants because of their Romani ethnicity," (IRB 2009b:8) it is clear that discrimination is embedded into the daily lives of Roma in the Czech Republic. Furthermore, the paper outlines how people identify Roma.

A combination of factors [are used to identify Roma] such as dark physical features, name, accent and/or address. In restaurants, Roma are more likely to be identified by their physical features, while in the sectors of employment and housing they may also be identified by their accents. Nevertheless, interlocutors cautioned that not all Roma are easily identifiable as some have lighter features or a recognizably Czech name. [IRB 2009b:8]

The paper goes on to note that many non-Roma disapprove of what is popularly referred to as a “Romani lifestyle” marked by “chronic unemployment, high rates of criminality, dependence on social assistance, low levels of education, tax evasion and public disturbance” (IRB 2009b:9). As Ong discusses,

there is a tendency, in daily institutional practices, towards interweaving of perceived racial difference with economic and cultural criteria, with the result that long-term residents ... are ideologically constructed as “the stereotypical embodiments” of ethicized citizenship. [1996:740]

Roma are often seen as the “stereotypical embodiment” of these traits which are more broadly represented as a “culture of poverty” rather than qualifiers for an ethnic culture.

The 2009 Issue Paper also outlined the discrepancy in education between Roma and non-Roma, finding that only, “29.0 percent [of Romani adults] had completed primary school, 9.3 percent had completed vocational training and 1.3 percent had completed secondary or university diploma; the remaining 60.4 percent had not completed primary school” (IRB 2009b:11). The report noted that although some improvements had been made by the government, it was likely to be years before the situation would improve significantly. Many of the interlocutors attributed the poor academic turnout to “the poor quality of education available in Romani-majority schools, the low expectations of Romani parents concerning education, as well as the continuing placement of some Romani children in schools for students with learning disabilities” (IRB 2009b:11). The government and the advocates differed on the main reason behind low education Roma with the government blaming the parents and the Roma community itself, while the NGO sector blamed the segregated government-mandated educational system.

Far-right extremist activities were discussed under the “Treatment of Roma” section of the report. One of the drawbacks of the reports was a lack of reliable statistics relating to racially motivated violence within the Czech Republic “since figures on extremist crime are not disaggregated by ethnicity, nor is there an official monitoring body recording cases of anti-Romani crime” (IRB 2009b:14). The Ministry of the Interior reported that “there has been a steady decline in the number of perpetrators of racist crimes since their peak between 1999 and 2002 (except for a slight increase in 2004)” (IRB 2009b:14). The Ministry cited data derived from the Security Police Department (SPD) to back up their claims, noting “that the 217 crimes categorized as being committed within a ‘racist/extremist context’ represented 0.06 percent of the 343,799 criminal offences recorded in the Czech Republic in 2008, a decrease from the 473 racist/extremists crimes, representing 0.1 percent of all crimes, which was recorded in 2002” (IRB 2009b:14). The report goes on to outline the makeup of members of extremist groups.

Lastly and most importantly was the section on “Potential for Internal Relocation.” If Roma are capable of successfully relocating to another part of the Czech Republic, they will not qualify for refugee status in another country. Many of the interlocutors stated that they were unfamiliar with the idea of internal relocation of Roma in the Czech Republic (IRB 2009b:16). Roma were “largely inhibited by limited financial resources and poor employment prospects” with “discrimination against Roma in the housing market” further preventing the ability for Roma to relocate (IRB 2009b:17). Thus, the findings indicate that Roma are prevented from relocating mainly by a lack of financial freedom combined with systemic discrimination throughout the country. The

report indicates that there are no governmental barriers to Roma relocating to avoid discrimination, but the report also lacks any evidence that there is any part of the Czech Republic under which Roma would be free of discrimination.

Support and Critiques of the Fact-finding mission

The Canadian government supported the findings of the fact-finding mission, using the reports to justify the “illegitimate” refugee category it had already established for refugee claimants from the Czech Republic. Advocates, meanwhile, were concerned about how the reports would be interpreted by the IRB Board Members and how the findings would affect the acceptance rates of asylum claimants. Paul St. Clair of the Roma Community Centre (RCC) suggested during an interview with the *Toronto Star* in March of 2009 that the initial scope of the fact-finding mission was too narrow. St. Clair requested that three areas of interest be added to the mission: First, to examine the segregated school situation where many Roma children are sent for their education; second, to look into the re-emergence of neo-Nazi parties in the country; and third, to examine the roles of advocates in the non-governmental organization (NGO) sector and Roma journalists’ opinions on the Roma situation (Taylor 2009a). Most of St. Clair’s suggestions were at least touched upon in the papers through the inclusion of NGO experts in the interviewing process. However, after the reports were released, St. Clair felt that although they were “even-handed,” the report lacked an investigation into the segregation of Roma children in the Czech school system (Valiante 2009b). The report did touch upon the segregated education system but focused more on the positive changes which have been made in the Czech legal system over the past few years rather than the

continuation of the practice throughout the country (which has changed little despite promised changes to policy).

For the government, the fact-finding mission supported its assertion that Roma are not refugees but rather “economic migrants.” Government officials focused their support of the Issue Papers on the lack of sanctioned discrimination within the Czech Republic, thus downplaying the systemic discrimination referred to in the July Issue Paper as “hidden discrimination” (IRB 2009b:8). The fact-finding mission’s specific mandate was “to address information gaps related to the situation and treatment of Czech Roma as well as their access to state protection and the possibility of internal relocation” (IRB 2009a:5; IRB 2009b:4). Minister Kenney interpreted the mandate as focusing exclusively on the Czech government’s official policy towards minority groups, specifically Roma, and dismissed the systemic discrimination against Roma, arguably the leading cause of their seeking asylum elsewhere. As established in the previous chapter, cumulative discrimination is grounds for filing a refugee claim and often situations arise in the Czech Republic where the government has not protected its Roma citizens according to the law. When the June Issue Paper was published, Kenney stated:

The report, as I’ve read it, says there are difficulties for Roma in the Czech Republic, we all know that, but the government is doing its best to improve the legal treatment of, and economic opportunities for, members of that community The Czech Republic is a full member of the European Union and in compliance with the European human rights law, I think the report underscores that there is no policy of state-sponsored persecution against Czech Roma.
[O’Neil 2009f]

In essence, Kenney stated that the Czech Republic does the best it can for the protection of minorities and that it is receiving help from the European Union (EU) and therefore it is not enforcing the persecution of Roma. The Czech Republic does not have an “official”

policy of discrimination, but who would expect it to after gaining entry into the EU in 2004? Kenney's straw man argument allows him to avoid the real questions about systemic discrimination at levels other than policy. Kenney also highlights the economic disadvantages of Roma in this statement, reflecting his persistent characterization of Roma as "economic migrants," a label that seems to exclude the possibility of legitimate persecution.

Advocates such as St. Clair read the report differently and felt that it did highlight the serious injustices Roma face in the Czech Republic. Some including immigration lawyer George Kubes (Valiante 2009c) look toward a 1993 Supreme Court of Canada ruling to justify the claim of Roma persecution in the Czech Republic. The Supreme Court ruling of *Canada (Attorney General) v Ward* concluded with "persecution under the Convention includes situations where the state is not in strictness an accomplice to the persecution, but is simply unable to protect its citizens" (1993:45). Thus, as discussed in Chapter Three, discrimination over a long period of time can amount to persecution as long as it is based on race, religion, nationality, membership in a particular social group or on political opinion (in other words, on Convention grounds), and this is how many advocates interpreted the Roma situation in the Czech Republic.

The differing views represented in the report led St. Clair to be concerned with how it would be used by the IRB in making decisions. He was concerned that IRB board members would pick and choose pieces to support their decisions (Valiante 2009b). He felt the report neglected to mention the segregation of Roma children in the education system and that it was being used as evidence to support reinstating the visa requirement on the Czech Republic (Valiante 2009b). St. Clair contested the labeling of the Roma

refugees claimants as “illegitimate,” claiming that the high acceptance rate by the IRB is proof of their legitimacy (Blanchfield 2009) and also stated that the visa requirement was “preventing genuine refugees from reaching safe haven” (Valiante July 14, 2009). It would be interesting to examine the IRB to see whether or not the visa implementation significantly affected the acceptance rate of Czech refugee claimants. One can look at the difference in acceptance rates between 2009 (56.86 per cent) and 2010 (8.14 per cent) and deduce that St. Clair’s predictions may indeed be true.

Disputes over Police abuse of Roma in the Czech Republic

Minister Kenney overstepped his boundaries as Immigration Minister by discussing how the IRB should use the fact-finding mission reports when making decisions on cases involving Roma. Kenney stated:

My understanding is the report essentially says there is no evidence of state-sanctioned persecution of Roma. If someone comes in and says the police have been beating the crap out of them, the IRB panelist can then go to their report and say, ‘Well, actually, there’s been no evidence of police brutality.’ [Taylor July 4, 2009, emphasis added]

The Minister is supposed to remain neutral regarding the IRB yet Kenney publicly instructed Board Members in how to reject refugee claimants from the Czech Republic. Furthermore, the Issue Papers contained evidence of police misconduct and of the police misguiding Roma in relation to legal matters. Thus, Kenney ignores the existence of police misconduct regarding Roma. The reports show that many Roma have a limited understanding of the legal process and thus rely on the police when filing complaints. A number of interlocutors interviewed in the Issue Paper reported that, “police had been known to dissuade Roma, especially those from socially excluded localities, from filing a complaint” (IRB 2009a:12). NGO representatives interviewed reported a number of

police tactics which were used to dissuade Roma from filing police reports such as, “testing” Roma legal knowledge, making Roma wait for extended periods of time while trying to file a report or, “to make a Romani complainant rewrite his or her complaint several times” (IRB 2009a:12). Lastly, it was noted that, “the police are sometimes reluctant to issue copies of written complaints” (IRB 2009a:12). Perhaps physical brutality is not practiced outright by the police against Roma, at least not officially; however, it is clear that the police do overextend their boundaries and make it difficult for Roma to maintain trust in the police by practicing such tactics. Again, Kenney seems unwilling to distinguish between the official Czech policy in place and actual practices regarding the treatment of Roma. Simultaneously, Kenney implicitly labels any Roma person claiming to have been the victim of police brutality as a liar regardless of specific circumstances, apparently alleviating the need to investigate the claim.

Additionally, the June 2009 Issue Paper states that, “several NGO and academic interlocutors commented that the police generally have a negative view of Roma that sometimes includes ‘discriminatory’ or ‘disrespectful’ attitudes” (IRB 2009a:11). One interlocutor emphasized that “police tend to view Roma as potential criminals, rarely as victims” (IRB 2009a:11). It is clear that there is a significant difference of opinion regarding Roma/police interactions between the NGO and academic community and the government representatives in the Issue Papers.

Kenney’s example of police brutality is a poor one for a number of reasons. The Issue Paper did not clearly state whether or not police support and adequately investigate Roma crime; on the contrary, interlocutors disagreed on this point. Furthermore, police brutality is not the only way in which police can intimidate and affect investigative

outcomes. If it were acknowledged by the IRB that police are known to withhold reports to Roma, this would be an important finding as a refugee claimant is required to have a significant amount of documentation to support their asylum claims. Kenney's usage of this example of police brutality broadly connects the idea of Roma criminality and deceit, thus bolstering his construction of them as "illegitimate" asylum seekers. Furthermore, the faith Kenney puts in the documents as the final say in terms of Roma discrimination/persecution is fundamentally misplaced since the disclaimer to the report clearly states that, "This document is not, and does not purport to be, either exhaustive with regard to conditions in the country surveyed or conclusive as to the merit of any particular claim to refugee status or asylum" (IRB 2009a, IRB 2009b). The IRB fact-finding mission was meant to be used internally by the organization and was not intended to inform the policy decisions of the government regarding visa implementation or anything else yet Kenney used it to justify the visa implementation and promote the idea of a "broken" refugee determination system.

Conclusion

The IRB's fact-finding mission to the Czech Republic resulted in two Issues Papers which had unintended consequences, arming the government with support for its argument that Roma are "illegitimate" refugees. The June 2009 report was quickly forgotten after the visa restriction on the Czech Republic, and by the time the July 2009 report was released, the government had imposed a visa on the country. In the end, Canada was willing to accept certain assertions from the Czech government about its own treatment of Roma over the claims of those people who are actively involved in their daily lives and struggles. The stance of the government seemed to be that official policy

was sufficient in protecting Roma rights but as I have shown this claim is a dubious one at best. Overall, the fact-finding mission was controversial, with the NGO sector and other Czech experts differing with the Czech government on certain points, particularly police brutality. Thus, the reports meant to clarify circumstances in the Czech Republic for the sole purpose of refugee determination principally served to strengthen the Canadian Immigration Minister's attempts to de-legitimize Roma refugee claimants ... attempts that have been overwhelmingly successful.

CHAPTER SIX: CONCLUSIONS

By bringing theories of labeling, cultural citizenship and border policies to bear on the refugee label as applied to Czech Roma refugee claimants (and to some extent Hungarian Roma refugee claimants) in Canada, I have illustrated that the categorization of these refugee claimants as “illegitimate” was implemented by the Canadian government through its use of rhetoric in the Canadian media. In this thesis I have outlined the major historical events regarding the development of immigration and refugee policy. I have shown that Czech and Hungarian Roma face serious human rights violations within the Czech Republic and Hungary which are grounds for making a refugee claim in Canada. Rather than confronting the conditions of Roma in these countries and continuing to keep Canadian borders open for refugee claimants, the government of Canada chose instead to implement a visa for visitors from the Czech Republic in order to halt all “illegitimate” refugee claimants, thus illustrating “the discriminatory impact of border policies of modern democratic states” (Stasiulis and Bakan 2005:5). I have illustrated Zetter’s fractioned, or as I understand it, dichotomized refugee label by looking at media articles and statements made by government spokespeople and ministers and have demonstrated that the government used the negative categorization of Roma refugees to push for refugee determination reform under the guise of a “broken” refugee determination system. Lastly, I have illustrated how the IRB’s fact-finding mission to the Czech Republic in 2009 resulted in boosting or promoting the government assertion that Roma refugee claimants were “bogus” despite evidence in the reports which suggest that systemic discrimination, persecution and violence are occurring in the Czech Republic. If the IRB has determined, independently based on

individual case facts, that even a portion of asylum seekers are in need, then it is irresponsible for government officials to insist that these claimants are illegitimate.

According to the government, the main fault for the broken system was “bogus” refugee claimants and not the system itself. Thus, after the visa came out, many of the talking points focused on a need to fix a broken system which fails to effectively dissuade “economic migrants” from coming to Canada. It was clear from the government’s perspective that reforms to the *Immigration and Refugee Protection Act* (IRPA or *Bill C-11*) were needed to curb the large numbers of refugees from democratic countries, thus preventing “false claimants” from coming to Canada to begin with, and from lingering in Canada after they have been denied asylum. The proposed government reforms to the refugee system had four main areas of focus: faster decisions, the implementation of the Refugee Appeals Division (promised back in 2001 but never implemented), provisions to establish a Safe Third Countries list and lastly, timely removals of failed asylum claimants (CIC 2010a). The government believed these changes would deter “bogus” claims and reduce the extensive backlog of claimants already in the system.

The Canadian government should be aware of the anti-refugee discourse which is prominent in its documents and in its language to the media and be aware that this labeling has the potential to influence Canadians’ viewpoints on refugee matters. This thesis has emphasized one half of Ong’s process of cultural citizenship, the process of being-made by hegemonic forces, by focusing on the government’s construction of Roma identity through the use of de-legitimizing labels in the media. Future research should focus on the other half: Roma construction of their own identity in Canada, thus complementing this research by providing the other half of this equation. The

government contributes to the erosion of the refugee label, so much that moral labels such as “queue jumper” appear when the government issues information to the public.

The “illegitimate” refugee labels discussed in this thesis were systematically introduced to the public through the conversation on Roma refugee claimants by the government and were especially present through the rhetoric of Minister Kenney. These labels which dichotomized the refugee into “genuine” and “illegitimate” were quoted repeatedly in the media and eventually began to inform government policy with the implementation of the BRRA. The “illegitimate” labels are now appearing unchallenged and accepted as “fact” on government documentation intended to inform the public. On a CIC governmental website designed to explain the concept of “designated countries of origin” to the public, CIC clearly uses biased language when discussing the designated countries. CIC states that:

Most Canadians recognize that there are places in the world where it is less likely for a person to be persecuted compared to other areas. Yet many people from these places try to claim asylum in Canada, but are later found not to need protection. This suggests that they may be using Canada’s asylum system *to jump the immigration queue*. Too much time and too many resources are spent reviewing these *unfounded claims*. Designated countries of origin will include countries that *do not normally produce refugees*, that have a robust human rights record and offer strong state protection. States with strong democratic, judicial and accountability systems are likely to provide the necessary protection to their citizens. [CIC 2010b – my emphasis]²⁹

This document, which is meant to inform the public on policy, clearly uses biased rhetoric when implying that refugee claimants are trying to “jump the queue,” and that many of these people have “unfounded claims” and that these people come from countries which “do not normally produce refugees.” It is very concerning for the refugee determination process in Canada when documentation such as this exists which imply

²⁹ Salter and Mutlu (2010) came to the same conclusion regarding the questionable language used by the government in these documents.

democratic countries cannot produce refugee situations. As we have seen in this thesis, they most certainly do – on a systematic basis.

In my early correspondence with Ronald Lee, I was told that not much has been written about Roma in Canada on an academic level. My hope is that this thesis will start to correct this omission in the academic literature as there are many issues to be resolved and lessons to be learned through studying the Roma migration to Canada. This study has provided some of the essential background research into Roma issues abroad and hopefully future anthropological research can examine more closely Roma issues through ethnographic research with the newly emerging Roma refugee community in Canada.

Furthermore, this thesis touches upon some broader questions regarding refugee studies and the global refugee regime, such as the politics of location, the definition of refugee and whether or not this case is uniquely Canadian. This thesis addresses and challenges the notion of where refugees are located spatially and temporally within the global world. B.S. Chimni has claimed that there is a “myth of difference” regarding the relationship between the global North and global South in refugee studies, where legitimacy lays with refugees from the global North, and illegitimacy from the global South (1998). However, in this study I suggest that the opposite is now beginning to emerge in refugee studies. Europe was once seen as being the fundamental ground for refugees, but as this thesis has illustrated, the notion of refugees in Europe today is rare and often seen as being unimaginable. The Roma refugees are seen to be illegitimate precisely because they are found in Europe. Thus, this thesis is in continuing dialogue with emerging themes in refugee studies today.

Furthermore, the Roma refugee case as established in this thesis questions the international definition of the refugee label. Is it time to revisit the definition of the refugee label? If that were to be done, on what grounds would this redefinition proceed: ethical, political or legal? The 1951 Convention is sixty years old this year and as world politics change and globalization increases it may be necessary to revisit the label in an effort to establish new criteria to address the increasingly diverse issues regarding displaced persons. The case of the Roma refugee claimants outlined in this thesis is currently a unique case, however I doubt it will remain that way for long. Canada, as well as other western democracies, are continuing down a path of increased securitization regarding refugees. This case may be generalizable to other situations and it is likely that we will see more use of heavy handed interdiction policies aimed at keeping refugees out rather than a more open policy intended to help resettle displaced peoples.

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