DOCUMENTING THE UNDOCUMENTED: REDEFINING REFUGEE STATUS

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To all those who are forced to leave their homes and are struggling to have legal status and recognition

INTRODUCTION

The Centre for Refugee Studies (CRS) is an organized research unit of York University, fostering interdisciplinary and collaborative research in all of its undertakings. The Student Caucus is an integral part of CRS, whose main focus is to engage students in academia to continue discourses on refugee issues by organizing the CRS Annual Student Conference. The United Nations High Commission for Refugees (UNHCR) estimates that 67 million people (51 million are internally displaced (IDPs) and 16 million are refugee) will have been forcibly displaced by the end of 2007. Of these, only 26.1 million under UNHCR mandate have been assisted. The remaining 42 million are deprived of similar assistance due to international disagreement over legal classifications. The aim of this year's conference is to continue respectful dialogue about innovative ways to address this global concern.

Against this backdrop, CRS Student Caucus Annual Conference, which took place on April 16 – 17, 2009 at York University, aimed at scholars, public institutions, non-governmental organizations and other civil society groups across disciplines with keen interest on refugee issues the opportunity to present and discuss their research ideas with fellow students, academics, professional, frontline practitioners, policy makers, researchers and all those interested in forced migration issues. The theme for the 2009 annual conference was **Documenting the Undocumented: Re-defining Refugee Status. The theme embraced** comprehensive discussion under seven (7) major headings: **Forced Migration, Internal Displacement, Environmental Displacement, Gender Persecution, Sexuality Persecution, Economic Hardship Displacement, and Statelessness.** In attendance, were York University students, faculty and staff members, as well as, members of the community- at- large. Some 41 speakers from across Canada, the United States of America, Jordan, India, and Sweden were hosted with graced opportunities of listening to Mr. Francisco Rico-Martinez, Co-director of FCJ Refugee Centre, and Dr. Laura Westra, Professor Emerita (Philosophy), University of Windsor as keynote speakers. This was only possible with the outstanding commitment made by the Conference Team (15 core volunteers Chaired by Veronica Fynn) with strong support from CRS.

The Proceeding is divided into five major sections. Part I looks at labels, status and definition of refugees. Melissa Stachel discusses the impact political powers, labels and definitions can have on refugees, Natalie Perryman examines how application of Canadian refugee policy can exclude innocent victims of war; whilst Jeewon Min paper hinges on the North Koreans women rights to leave their own country. Part II: *Migrants, Migration and Resettlement* starts with a historical slant to migrants movement during the collapse of Yugoslavia between 1991 and 1995. Alisha Ticku engages readers with how female migrant domestic workers in Dubai negotiate spaces of exclusion, leaving Irene Routté with using public art as a critical tool for re-imagining landscapes and redefining communities for refugee resettlement in the United States. Part III: *Students and Status* takes redefinition of refugee status to an unconventional level – international students and status. Ryan Hayes investigates the role of neoliberalism and citizenship in according international and non students' status in Canada; whilst Maria Sian Lew dissects UNESCO's *Education for All* model within the context of refugee education in the United Kingdom.

In Part IV: *Displacement: Internal, Environment & Forced* Ruth Situma outlines contested debates on whether displacement in Kenya is beyond the most recent violent election outbreak. Qasim Hirsi Farah examines an even more dicey issue centering on inclusion of environment displacement in sub-sub-Saharan African into the discourse of refugee movement. Part V: Refugees & Human Rights Veronica Fynn draws from regional and international human rights law to investigate the plight of refugee and IDPs in Africa.

PART I:
REFUGEES: DEFINITION, STATUS & LABELS

CHAPTER ONE
The Political Power of Definitions and Labels: The Impact on Refugees

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Abstract: *In this paper I argue the labels 'refugee,' 'immigrant,' and 'newcomer' construct difference in the Canadian context. Although Canada's identity is presented as 'tolerant' its immigration policies are based on discrimination which continues to construct newcomers as 'others,' creating a hierarchy of citizenship. Immigration and refugee policies are mechanisms of power, which highlight the perceived difference between those who are citizens and those who are not. In the first section of the paper I conduct a genealogical analysis of the definitions 'refugee' and 'immigrant' in the Canadian Immigration Acts (1952, 1967, 1976) and the Immigration and Refugee Protection Act (2001) to identify the knowledge which framed or informed the construction of 'refugee' in each period. Next, I examine how refugees and immigrants are spoken of or represented in the texts (see Carabine, 2001). In the discussion section I look at the conceptualization of human rights to understand why citizens' rights are considered more important than the rights of the displaced. Second, I examine the interplay of Canada's national identity and the perceived threat of 'multicultural others' in the nation building project. Finally, I examine the effects labels have on the experiences of newcomers to Canada.*

Introduction: Multiculturalism, Labels, and Refugees

Despite Canada's recognition and celebration of ethnic diversity there continues to be racism and animosity towards newcomers in the country. Himani Bannerji (2000), a Canadian sociologist, and Eva Mackey (2002), a Canadian anthropologist, both argue discrimination in Canada is the result of official multiculturalism which constructs an assumption of a core white, Anglo-Canadian majority which constitutes other cultures as 'multicultural.'

Since the 1980s official multiculturalism has helped to construct the identity of Canada as tolerant and benevolent (Mackey, 2002, p.2), while simultaneously erasing Canada's colonial history and the ethnic cleansing of First Nations. National narratives are a part of the larger nation building project, which are based in theories of modernity and principles of liberal universalism. Canada's national narratives are filled with tales of its territorial transformation from a 'wilderness' to a 'civilization' (Mackey, 2002, p.17). An essential element to obtaining civilization is the improvement of the nation's people. It is within principles of liberal universalism that intolerance is not allowed, but where it is enabled and rationalized as progression (Mackey, 2002, p.161).

In Canada the labels 'refugee,' immigrant,' and 'newcomer' denote difference from Canadian citizens. The labels used in immigration policies define the way people are conceived and situated into convenient categories. In this way, labels can reveal the political nature of policies. The examination of how labels are defined within immigration policies shows the processes of stereotyping, the construction of difference, and the possible impacts they have on the people who are labelled.

In this paper I argue the labels 'refugee,' 'immigrant,' and 'newcomer' construct difference in the Canadian context. Although Canada's identity is presented as tolerant, its immigration policies are based on discrimination which continues to construct newcomers as 'others' creating a hierarchy of citizenship. Immigration and refugee policies are mechanisms of power, which

highlight the perceived difference between those who are citizens and those who are not. In the first section of the paper I conduct a genealogical analysis of the definitions 'refugee' and 'immigrant' in the Canadian *Immigration Act* (1952, 1967, 1976) and the Canadian *Immigration and Refugee Protection Act* (2001) to identify the knowledge which framed or informed the construction of 'refugee' in each period. Next, I examine how refugees and immigrants are spoken of or represented in the texts (see Carabine, 2001). In the discussion section I look at the conceptualization of human rights to understand why citizens' rights are considered more important than the rights of the displaced. Second, I examine the interplay of Canada's national identity and the perceived threat of 'multicultural others' in the nation building project. Finally, I examine the effects labels have on the experiences of newcomers to Canada.

'Refugees' and 'Immigrants' in the Canadian *Immigration Acts*: A Genealogical Approach
This section uses a genealogical discourse analysis of the Canadian *Immigration Act* (1952, 1967, 1976) and the *Immigration and Refugee Protection Act* (2001) to examine the relationship between the label 'refugee' and immigration policies. The aim is to show the representations of 'immigrants' and 'refugees' in the construction of the Acts. This section draws on all four Acts, the *Immigrant and Refugee Protection Regulations* (2002), and the United Nations (UN) 1951 *Convention* and 1967 *Protocol Relating to the Status of Refugees*. By examining the genealogy of immigration and refugee policy I am displaying how concepts, labels, and policies associated with them are constructed and have profound effects on the people who they are imposed upon. My reason for choosing to carry out a discourse analysis of the definition 'refugee' and 'immigrant' arose from my interest in trying to understand institutional and social labeling. To examine the historical conception of 'refugee,' I use Lisa Malkki's (1995) method of locating the "historical moments" that informed policies rather than assuming an evolutionary standpoint (p.497).

Definitions of 'Refugee' and 'Immigrant' in the Canadian Immigration Acts
The 1951 UN *Convention Relating to the Status of Refugees* institutionalized the conceptualization of 'refugee.' The term 'refugee' was not included in Canada's 1952 *Immigration Act*, despite the UN *Convention* inaugurated the year before, because it was not part of Canadian law until 1978. Furthermore, the *Convention* was not international law until the signing of the 1967 *Protocol Relating to the Status of Refugees* at the fourth Geneva Convention (Malkki, 1995, p.501). Nevertheless, in the 1952 Act a definition was provided for 'immigrant,'

> Means a person who enters Canada with the intention of acquiring Canadian domicile[1] and for the purposes of this Act every person entering Canada shall be presumed to be an immigrant unless belonging to one of the following classes of persons, hereinafter called 'non-immigrant classes' (*Immigration Act* 1952, c. 93, s.2 (j)).

The absence of 'refugee' in the 1952 Act does not denote that there were no displaced people admitted to Canada during this time. In fact, in 1947 the government agreed to admit thousands of displaced Europeans following World War II (WWII). Both Canada and the U.S. welcomed those who were displaced as they viewed the presence of refugees as confirmation of

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1 "Canadian domicile is acquired by a person only having his domicile for at least five years in Canada after having been landed therein" (*Immigration Act* 1976-1977, c. 144, s. 2).

the "East's tyranny" and believed that if they did not help there would be a "danger to liberal democracy" (Harrell-Bond, 1986, p.11).

Although humanitarianism and politics may have played a role in the government's decision to admit displaced Europeans, economic interests were also important. As a result only people from certain countries, namely England and northern Europe, were admitted to fulfill specific needs in the economy. Many entered under the 'bulk labour scheme' whereby logging, mining, and lumbering industries requested labour from the Department of Labour (Knowles, 2007, p.164-167). Anti-immigration sentiment was brought on by the 'bulk labour movement' by those who were opposed to immigration. Representatives of the 'Canadian Labour Movement' and the 'Co-Operative Commonwealth Federation' were among those who criticized immigration for weakening the wage rates and taking jobs away from Canadians (Knowles, 2007, p.167). At this time humanitarianism was not a primary concern for Canada as asylum was only granted to young able-bodied men to meet specific labour needs.

The 1967 *Immigration Act* does not use or define the term 'refugee' in the text. The term 'immigrant' in this Act "means a person who seeks admission to Canada for permanent residence" (*Immigration Act*, 1976-1977, c. 144, s. 2). Although not yet constituted as refugees in the 1967 Act 'non-sponsored immigrants' continued to be admitted into Canada. Following WWII Canada needed more immigrants to help contribute to economic growth. The Canadian government actively recruited immigrants from Holland, Scandinavia, and the United Kingdom. Regardless, Polish, Jewish, and other Eastern Europeans were immigrating in increased numbers. As a result, theories ensued about the impact their presence would have on the "fundamental character of Canada" (Mackey, 2002, p.52). The 1958 recession also spurred concern over the growing number of unskilled immigrants (mainly Italian) and family members without paid employment. Consequently, the *Immigration Act* was amended with a clause that restricted the admission of immediate family members (Knowles, 2007, p.179-181). At around the same time, the Conservatives came into power. They put a halt to immigration through measures that restricted visitors from gaining employment and making prospective immigrants apply for landed status in their home countries (Knowles, 2007, p.180-181). Although the government's inadmissibility could no longer be based on issues of race because of the UN *Charter of Rights and Freedoms* signed in the 1940s, they got around it by creating inadmissible clauses such as "unsuitability of climate" and "inability to become readily assimilated" (Mackey, 2002, p.52-53). In this way, discriminatory immigration practices did not end with the 1967 Act, but became hidden.

World Refugee Year (1959-1960) changed the restrictive course of immigration policies. Ellen Fairclough, chair of Citizenship and Immigration Canada, admitted 325 refugees with tuberculosis and 501 members of their family. The admittance of people with contagious diseases was a first for Canada and gave more opportunity for asylum seekers to seek refuge in the country. The total number of refugees admitted that year was 6,912 who mostly came from Poland, Ukraine, and Yugoslavia (Knowles, 2007, p.185).

Fairclough also created a reform that would abolish racist language from immigration policies. As a consequence Canada started to admit non-European immigrants, including third world migrants. Racist language may have been abolished from policy, but classism remained. The need for specific qualifications continues to be the basis for the point system which remains in place today. The point system was introduced in the 1967 Act with the aim to construct an objective system of admitting unsponsored immigrants that are highly educated and skilled to boost the economy (Knowles, 2007, p.195).

The 1976 *Immigration Act* created by the office of Prime Minister Pierre Elliot Trudeau included new classes of immigrants: family class, assisted relatives, independent immigrants, and

refugees. Incorporated into the Act from the 1951 UN *Convention* and 1967 *Protocol Relating to the Status of Refugees* was the definition of 'Convention refugee,' means a

> ...person who, by reason of well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,
>
> *(a)* is outside the country of his nationality and is unable or, by reason of such fear, is unwilling to avail himself of the protection of that country, or
>
> *(b)* not having a country of nationality, is outside the country of his former habitual residence and is unable or, by reason of such fear, is unwilling to return to that country (1976-1977, c. 52, s. 2(1)).

The definition in the 1976 Act and the 1951 UN *Convention* are the same with one exception in the last clause. The second application of the term refugee in the *Convention* is a person "who, not having nationality and being outside of his former habitual residence *as a result of such events*, is unable or, owing to such fear, is unwilling to refer to it" (UN Convention, 1951, Article 1, A(1), my emphasis). The use of 'events' in the *Convention* refers to WWII. The 1951 *Convention* states that it is "limited to those persons who became refugees as a result of events occurring before 1 January 1951" which means "events occurring in Europe prior to that date" (Article 1(b)). Since the induction of the 1967 *Protocol* these points have lost significance. It is evident the exact wording of the 1951 *Convention* was not adopted by the Canadian government because refugee protection was no longer restricted to displaced Europeans as a result of WWII.

The 1976 *Immigration Act* is considered a breakthrough in immigration policy because it was the first time it included refugees as an identifiable category. As well, it recognized Canada's international legal obligations to the 1951 UN *Convention* and 1967 *Protocol Relating to the Status of Refugees* (Knowles, 2007, p.209). The Act introduced the establishment of a Refugee Status Advisory Committee who were in charge of determining refugee status and ensuring that individuals were not deported to countries where their lives were at risk. In addition, included in the 1978 *Regulations* was a new sponsorship program whereby permanent residents and Canadian citizens could sponsor family members to come to Canada (Knowles, 2007, p.210).

The definition of 'immigrant' in the 1976 Act was limited to "a person who seeks landing" with 'landing' defined as "lawful permission to come into Canada to establish permanent residence" (*Immigration Act*, 1976-1977, c. 52, s. 2(1)). If we examine the 1952 Act's definition of 'immigrant' it is evident that a person may enter Canada and after five years become a Canadian domicile. The change in the wording in the 1967 Act indicates that immigrants must want to become permanent residents, but they must apply for landed status in their home countries as the clause; "immigrant is a person who enters Canada," is erased. The subtle change to the 1976 Act also displays a change in policy by stating that an immigrant is someone who "seeks landing" suggesting that permission to land must be sought before entering the country.

The 2001 *Immigration and Refugee Protection Act* expands the limited definition of 'Convention refugee' from the previous Act to include more persons who can obtain protection. The use of the term 'Convention refugee' is carried over from the previous Act however three more definitions are added;

> 1) 'Refugee protection'- Section 95(1) states: "Refugee protection is conferred on a person when
> *(a)* the person had been determined to be a Convention refugee or a person in similar circumstances under a visa application and becomes a permanent resident under the visa or a temporary resident under a temporary resident permit for protection reasons;

(b) the Board determines the person to be a Convention refugee or a person in need of protection; or

*(c)*except in the case of a person described in subsection 112(3) [refugee restrictions], the Minister allows an application for protection.

2) 'Protected person'- Pursuant to section 95(2): "A protected person is a person on whom refugee protection is conferred under section (1), and whose claim or application has not subsequently been deemed to be rejected under subsection 108(3) [rejected claim], 109(3) [conferral of refugee protection nullified] or 114(4) [decision is vacated].

3) 'Person in need of protection'- Section 97(1) states: "A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture[2]; or

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care (*Immigration and Refugee Protection Act* 2001, c. 27).

The 2001 Act includes 'protected persons' and incorporates the provisions of Article 1 of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (1984). As such, the state is required to provide protection to individuals at risk of torture or inhuman treatment if deported to the country of habitual residence. While the new Act set out to revamp the refugee system by emphasizing those in most need, the increased security measures following the September 11th, 2001 attacks on the U.S. restricted asylum seekers access to protection (Knowles, 2007, p.256).

The definition for 'immigrant' is replaced in the 2001 Act with 'foreign national,' which "means a person who is not a Canadian citizen or a permanent resident, and includes a stateless person" (*Immigration and Refugee Protection Act*, 2001, c. 27, s. 2(1)). The term 'foreign national' includes all people who immigrate to Canada placing refugees and immigrants into the same category. In social and development discourse 'foreign nationals' are referred to as 'newcomers.' The conceptualization of 'newcomer' tries to eliminate difference between immigrants and refugees, but it is problematic because it signifies difference from Canadian citizens. 'Permanent resident' is defined as, "a person who has acquired permanent resident status and has not subsequently lost that status under section 46" (*Immigration and Refugee Protection Act*, 2001, c. 27, s. 2(1)). Pursuant to section 46(1) mentioned in the above definition a permanent resident loses his or her status when they become a Canadian citizen, they are outside of the country for two out of each five years, vacate the decision for claim or application for refugee protection, or a removal order has come into force (*Immigration and Refugee Protection Act*, 2001, c. 27). Both immigrants and refu-

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2 The *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Article 1 states: "1. For the purposes of this Convention, the term 'torture' means any act by which severe pain or suffering, whether physical or mental is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising from, inherent in or incidental to lawful sanctions. 2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application."

gees can obtain 'permanent residence' although each has different requirements. As per section 12 of the *Immigration and Refugee Protection Act* (2001) there are three main categories of permanent residents. First is the family class which according to section 12(1) includes spouse, common-law partner, child, parent, or other category defined by the *Regulations* (2002). Second is the economic class which includes skilled workers who are assessed on a point system- National Occupational Classifications- whereby the applicant can select the categories he or she would like to be assessed with and include education, proficiency in English and French, experience, age, arranged employment, and adaptability (Waldman, 2003/2004, p.31). Other economic classes include business immigrants who are sub-divided into entrepreneurs, investors, and self-employed persons. The last class is the refugee class which includes persons under similar circumstances who must meet the definition of a 'Convention refugee' and do not meet any of the exclusion criteria.[3] The homogenization of immigrants and refugees leads to the erasure of their differences which gives the impression that no class of immigrants is preferred and that both immigrants and refugees have the same opportunities regardless of status.

The genealogical analysis of 'immigrant' and 'refugee' definitions in the Canadian *Immigration Acts* reveal that labels have the power to erase human experiences through their inclusion with other moving people, which is evident in the absence of the term 'refugee' in the 1952 and 1967 Acts. The short history of immigration presented alongside these definitions also reveals the politicized nature of definitions and labels. It shows that labels are non-participatory, are consequences of state policies, and change over time depending on the state's needs. Through the processes of defining certain groups representations emerge. In the next section, I examine the interplay of the definition 'refugee,' policies, and state authorities.

Representations of Refugees: Discourses of State Authority

A variety of discourses are called upon by both the *Convention Relating to the Status of Refugees* (1951), the *Immigration Act* (1976), and the *Immigration and Refugee Protection Act* (2001) that re-establish modern nation-states as necessary and natural forms of life. For instance, the assumption that all individuals are citizens of a country is made explicit in one clause in the definition of 'Convention refugee'- "person who is outside the country of his nationality." The recognition of stateless persons is made in the clause "a person who not having a country of nationality," but is followed by a clause-"is outside of the country of his formal habitual residence"- which assumes individuals should reside within a state controlled territory. Evidently the definition of 'Convention refugee' is a contradiction; the term itself is applied to the displaced but assumes emplacement as natural, a point I expand on later in the paper.

The 2001 Act expands the definition of those 'entitled' to protection to include persons who are at risk of torture or any other cruel or inhuman treatment from being deported to their country of nationality or habitual residence (Waldman, 2003/2004, p.13). The *Convention against Torture* (1984) requires state complicity in the act (Waldman, 2003/2004, p.182). Torture "does

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3 The *Immigration and Refugee Protection Act* (2001, c. 27, s. 101(1)) states that a claim is ineligible if: "(a) refugee protection has been conferred on the claimant under this Act; (b) a claim for refugee protection by the claimant has been rejected by the Board; (c) a prior claim by the claimant was determined to be ineligible to be referred to the Refugee Protection Division, or to have been withdrawn and abandoned; (d) the claimant has been recognized as a Convention refugee by a country other than Canada and can be sent or returned to that country; (e) the claimant came directly or indirectly to Canada from a country designated by the regulations, other than a country of their nationality or their former habitual residence; or (f) the claimant has been determined to be inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality, except for persons who are inadmissible solely on the grounds of paragraph 35(1)(c) [inadmissible where Canada has sanctions]."

not include pain and suffering arising from, inherent in or incidental to lawful sanctions" (*Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* 1984), however Waldman (2003/2004), a human rights lawyer, "wonders how this section is applied" as there are persons who are imprisoned without a fair trial (p.183). Torture includes both physical and mental suffering, but it must be severe. The decision whether a person's suffering is severe seems to be at the discretion of state officials because what constitutes torture has evolved over the years (see Waldman, 2003/2004, p.182). As a consequence, the state holds the power to decide what constitutes severe suffering and torture.

The discourses used to define refugees reinforce the power state actors and policies have over the lives of the displaced. 'Refugee protection' is added to the 2001 Act and offers three categories of persons protection is 'conferred upon.' The use of the term 'confer,' synonymous with 'award' or 'grant,' signifies the state's authority in deciding who will be admitted. The term 'refugee determination' legitimizes the state's power in deciding whether a refugee's claim is 'genuine.' The discourses of 'determination' and 'confer' construct the belief that there are refugee claims that are not genuine with the consequence of constituting all refugees as deceptive. The discourses of the genuineness of refugees get transformed into discourses of refugees as threats which actively perpetuate divisions between Canadian citizens and refugees.

The Homogenization of Refugees
While the 1976 Act considered refugees as distinct from other classes of immigrants, refugees continue to be treated as a homogeneous category erasing individual and family histories and replacing them with a stereotype. The problem with such a limited conceptualization is that the only category of persons who are entitled to refugee protection must fall under the definition 'Convention refugee' or 'persons in need of protection' (Waldman, 2003/2004, p.13).

The label 'refugee' constructs undifferentiated experiences of displacement. Consequently, the discourse of the gendered refugee is less common. Although scholars and policy makers have realized that "gender counts" in other social and political arenas, when people are displaced their "multiple identities tend to disappear" (Colson, 1999, p.23-24). In the Acts the use of the pronoun, 'his,' to refer to displaced people construct women as a non-category. In addition, the 1951 UN *Convention Relating to the Status of Refugees* does not include gender-related persecutions. Gender was not considered because concepts such as 'persecution' and 'well-founded fear' were thought to be a male phenomenon. In addition, torture was thought to be inflicted by state actors within a political context. Women were not thought to be involved in politics therefore they were not victims of persecution (Daenzer, 2008, p.229). According to Geraldine Sadoway (2008, p.245), refugee protection has failed to protect women from harm in their habitual states under the 1951 *Convention*. The sovereignty of the state supersedes international law therefore women's protection is thought to be subject to the very states that do not protect them. Women who seek asylum from acts of violence including rape, sexual slavery, bride burning, forced sterilization, female infanticide, and female circumcision therefore were not protected by international law until recently.

There have been new initiatives taken by the UN and the Canadian government to recognize that displacement is gendered. In 1991 the United Nations High Commissioner for Refugees (UNHCR) recognized gender-related persecution by publishing *Guidelines to Protection: Gender-Related Persecution with the context of Article 1 A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, which outline the ways gender can be applied to persecution in the *Convention* and *Protocol*. In addition, the Chair of the Immigration and Refugee Protection Board

in Canada published guidelines that take into consideration women asylum seekers, *Women Refugee Claimants Fearing Gender-Related Persecution* (1993). The Guidelines do not change the definition of 'refugee' to include gender on the grounds of persecution. Instead, they offer a way to interpret the existing definition to recognize the interplay between gender and persecution. One of the main criticisms of the guidelines is that they are not applied to women who cannot get to Canada on their own (Macklin, 1995, p.220). This policy is justified with international policies concerning state sovereignty.

The definition of 'Convention refugee' erases millions of other displaced people who do not fit into the category. The assumption that an individual is only a 'refugee' when he or she is outside of his or her country or habitual residence erases the plight of millions of internally displaced persons (IDPs). As with gender-related persecution, IDPs are not recognized under international law because they are subject to laws in the states of their habitual residence (Hajdukowski-Ahmed, Khanlou, & Moussa, 2008, p.215). In addition, by conceptualizing refugees as political there is an erasure of the millions of environmental refugees and those uprooted by development. The institutionalized definition of 'Convention refugee' demonstrates the political nature of refugee policies.

Discrimination and the State
Human Rights of the Emplaced over the Displaced
The Canadian *Immigration and Refugee Protection Act* (2001) is based upon internationally recognized human rights whereby the rights of both displaced and emplaced persons are protected. Mark Franke (2008), a human rights scholar, argues that a response to displaced persons cannot be carried out within the current human rights regime. International human rights, developed by the West, cannot offer the same human rights to the displaced as they do to the emplaced because they are based on inequalities between displaced persons who seek emplacement and citizens of states (p.262-263).

International human rights were created to protect modern nation-states and their citizens rather than the displaced. The examination of immigration policies demonstrates that Canada puts its citizens' rights before the rights of displaced persons, despite its national narrative of humanitarianism. One example is the increased security measures at its borders. The *Safe Third Country Agreement* (2002) between Canada and the U.S. was implemented on the premise of state security even though it was proven by many scholars to be a violation of human rights. The discourse analysis of the term 'refugee' and the history of Canadian immigration at the time of the Acts show that the state is only obliged to provide protection to refugee claimants who apply for protection, are able to convince state authorities that they are 'genuine' refugees, and prove they are not a threat to the state. It becomes clear that morally, Canada sees nothing wrong with putting its citizens' first, despite the fact that the basic premise of *international* human rights suggest equality of the displaced and emplaced (*see* Franke, 2008, p.263-266, my emphasis).

The history of immigration policies demonstrates that Canadian immigration has been constructed on racist and discriminatory principles in its attempts to maintain British hegemony. The racism is seen in, for instance, the way Canada 'selects' its immigrants based on its economic need. For example, during WWII Dutch immigrants were admitted into Canada to work on farms based on their perceived expertise (see Knowles, 2007). Policies are also exclusionary based on a person's ethnicity. This point became evident when Canada readily admitted ex-Soviet refugees escaping from Communist regimes, but questioned the 'genuineness' of the Viet-

namese boat people's claims (Bannerji, 2000, p.114). The changing definitions in the Acts all have the same premise; the government decides who is admissible, who can do what work, and defines what it means to be skilled (Bannerji, 2000, p.113-114). The next section will examine how official multiculturalism reproduces the perceived difference between the displaced and Canadian citizens.

Threats to National Identity

The Acts' discourses demonstrate the perceived legitimacy of state power over non-citizens. It is especially evident in the execution of state power whereby officials decide who is admitted, what qualifications are needed, and who is a 'genuine' refugee. Mackey (2002) argues that multiculturalism was a response to the politics of difference following WWII. She contends that rather than erasing difference multiculturalism was a policy that institutionalized it, which controlled who had access to power while legitimizing the state's power (p.50). Similarly, Bannerji (2000) argues that multiculturalism was a reaction and strategy to mute Quebec's separatist and First Nations land claim struggles as well as a way of coping with non-European immigrants (p.9). Both scholars maintain that multiculturalism was created to manage threats against nationalism. The recognition of cultural difference continues to uphold the tolerant image of Canada while the power to define what will be tolerated remains with the dominant group (Mackey, 2002, p.70). Nevertheless, the concept of 'tolerance' itself is problematic as the concept reproduces domination because its antithesis 'intolerance' implies that power is held by those who choose to tolerate or not (Mackey, 2002, p.16).

The notion that Canada must protect itself from outsiders is evident in the feminization of Canada as defenceless to its U.S. masculine neighbour. According to Mackey (2002), "the construction of Canada as a gendered body, victimized by external and more powerful others, creates a fiction of a homogeneous and unified body, an image that elides the way the Canadian nation can victimize internal 'others' on the basis of race, culture, gender or class" (p.12). The discourse of internal and external threats to nationalism is also reproduced by the narrative of "Canada is in crisis," which legitimizes and defends a core culture. Mackey (2002) found that the local, white Canadians she interviewed during the 125 Canada Day celebrations blamed "different groups" for the "crisis" in Canada's identity and believed that these "outsiders" should not be allowed to change Canadian institutions and laws (p.143-145). An important point is that the term 'outsider' was readily applied to people who are considered 'multicultural' and are therefore considered not Canadian (Mackey, 2002, p.150). Nevertheless, Mackey found that non-threatening expressions of cultural diversity were tolerated because they presented a multicultural Canada.

The open door policy was initiated at around the same time as discourses of multiculturalism and diversity emerged. At this time the Canadian government actively sought immigration from ex-colonized countries, including third world migrants and political refugees. On the one hand, refugees were seen by the government as taxpayers and voters therefore they needed to be included in national policies. On the other hand, refugees were viewed as a 'problem' that needed to be managed. Official multiculturalism was seen as a solution by the government, but it was not third world migrants who forced the implementation of multicultural policies. They did raise issues, however, about discrimination in various aspects of their lives. The demands of 'newcomers' have never been primarily cultural therefore multiculturalism was not the answer to their problems. While the multicultural model admits difference, the reasons for difference are constructed in terms of 'ethnic cultures.' The result is that it reduces issues of injustice to cultural issues, which focus on religion and 'tradition' (Bannerji, 2000, p.44-45). In turn, this

perpetuates the idea that 'multi-cultures' have identifiable cultures, seen as traditions brought from their past (Mackey, 2002, p.151). As a consequence, newcomers are thought to be a threat to modernity and thus nation building, so they must be controlled, improved, and developed. Thus, labels are appropriated to manage and control these 'internal threats.'

Conclusion: Labels and Their Impact

Labels force a named and ascribed otherness. They are a coding of categories, which is like wearing a badge that shows you are not a legitimate citizen (Bannerji, 2000, p.65). Within official multiculturalism labels such as 'immigrant,' 'refugee,' and 'newcomer' encode people as 'us' and 'them' in social and political claims. Concepts are invented and used normatively within Canadian immigrant and refugee policies which construct common sense notions of what it is to be a refugee.

During WWII the conception of 'refugee' as a distinct category was created. Along with the new category of 'refugee' came a standardization of the management of refugees and of institutions to meet refugee needs, such as the administration of refugee camps and refugee law (Malkki, 1995, p.497). According to Malkki (1995, p.499), displaced Europeans were considered a military problem, but with the 1951 UN *Convention* they became an international and humanitarian problem. They were considered a 'problem' because of their increasing number and their dependency on nation-states. In Canada this stereotype maintains the belief that refugees are a burden on health and welfare systems. Equally harmful, the term 'refugee' invokes images of helpless victims that need outsiders to take care of them (Harrell-Bond, 1986, p.11). The victim stereotype can have disastrous effects on those who apply for refugee protection that do not fit the victim image (see Razack, 1996).

Studies on refugees' experiences show that labels, such as 'refugee' tend to universalize heterogeneous populations and also strip refugees from their political identities and their histories (Zetter, 1991; Malkki, 1992; Voutira & Harrell-Bond, 1995). A consequence of the separation of the individual from their context and the reconstruction of an identity that meets the institutionalized definition is a distinction between 'case' and 'story' whereby the individual is replaced with the stereotyped identity. As a result the label enforces control and forces an identity upon a person (Zetter, 1991, p.44).

The definitions, practices, and political interests of nation-states determine interpretations of the definition of refugee. Moreover, people's experiences and circumstances do not often fit into the government's neat boxes. This applies especially to women and children who frequently enter Canada as undocumented refugees. Immigration regulations keep these women in a state of limbo that stalls family reunification and reinforces the image of a "dependent refugee that is a drain on Canadian resources" (Spitzer, 2004, p.50).

The impact of the label 'refugee' in the Canadian context is not answered easily. A web of assumptions and constructions underlie definitions. It has been my contention throughout this paper that labels are powerful political tools of control. In the Canadian context of official multiculturalism these labels constitute newcomers as different from Canadian citizens. Labels are appropriated to meet state needs, but have consequences on the lives of the people who are labelled. It is through policies and their historical constructions that we can begin to understand how these labels have been constructed and implemented. Research that examines how labels in specific contexts impact people's experiences of migration is needed to understand the relationship between official policies and the effects they have on people's lives.

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