

# Constructing undesirables: A critical discourse analysis of ‘othering’ within the Protecting Canada’s Immigration System Act

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## ABSTRACT

Immigration policy in Canada has recently shifted, reflecting changes in other Western countries. We studied the discursive constructions of forced migrants within Bill C-31 “Protecting Canada’s Immigration System Act” and its associated Background documents published by the Canadian Government. The documents were analysed using an approach to critical discourse analysis adapted from Bacchi’s (2009) methodology and informed by a theoretical framework of “othering”. Particular groups of migrants were represented as posing threats to the economy, the integrity of the refugee system, and national security. The documents offered three solutions: the creation of specific categories of migrants, an emphasis upon efficiency of the system, and expanded powers to the government. The problematization of asylum seekers as posing multiple threats to Canadian society obfuscates governmental responsibilities to this population and reflects common strategies of neoliberal governance.

## INTRODUCTION

The number of refugees and asylum seekers rose this century (Castles and Miller, 2009) with the United Nations High Commissioner for Refugees (UNHCR, 2014) documenting a record number of displaced people worldwide, including nearly 1.2 million asylum seekers in 2013. Refugees and asylum seekers are often categorized within the literature on migration as “forced” migrants because their movement is not voluntary; however, individual forced migrants are accorded varying degrees of protection depending on the legal status they obtain following migration (Grove and Zwi, 2006). Research is beginning to address the impacts of governmental policy changes upon forced migrants (Cleveland and Rousseau, 2012), yet the potential impact of discourses embedded within those policies has not been adequately studied.

Failure to examine taken-for-granted assumptions embedded within discourses that inform policy risks perpetuating systems of domination and oppression that may favour powerful groups and increase the disadvantage of minority groups. In particular, discourse is a key mechanism contributing to the social construction of groups within systems of power in ways that shape and sustain inequities. For example, in their analysis of the mechanisms that position forced migrants as “the other”, Grove and Zwi (2006) identify a range of discursively constructed subjectivities including queue jumpers, uninvited guests, threats to public security, and drains on public resources. Moreover, studying dominant discourses is vital because they influence what are understood as problems

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as well as what are forwarded as solutions within policy (Bauder, 2008; Grove and Zwi, 2006). In the Canadian context, Bill C-31 “Protecting Canada’s Immigration System Act” (PCISA) implemented in 2012 has dramatically altered the previous refugee determination system. We argue that the use of discursive mechanisms within the PCISA and its associated Background documents published by the Canadian government creates a constructed binary between “other” forced migrants and “legitimate” refugees who are resettled from abroad.

Changes to immigration and refugee policies have been occurring in parallel across Western nations since the 1980s (Gibney and Hansen, 2003), becoming increasingly linked to economic outcomes since the mid-1990s (Akbari and MacDonald, 2014). While some migratory flows have intensified and been liberalized, other flows have been restricted due to economic and security rationales (Kretsedmas, 2011). In Western countries, immigration and refugee policies tend to emphasize economic priorities while understating family reunification and humanitarian concerns (Akbari and MacDonald, 2014). Kretsedmas (2011) has drawn parallels between the utilitarian economic objectives of neoliberalism and the characterization of migrants as forms of human capital. Strategies of neoliberal economic restructuring have been used to “impose market discipline on a variety of state and non-state actors” (e3). This trend has been associated with a discursive bifurcation of migrants according to economic potential; prioritizing migrants who are constructed as desirable (i.e. skilled economic/labour migrants) above those portrayed as undesirable (i.e. unskilled and economically unproductive migrants, refugees and asylum seekers). For instance, the dominant discourse in Sweden “conceptualises migrants as factors of production whose acceptability and value depend on the contribution they provide to Swedish economic growth” (Bonfanti, 2014: 384).

With respect to asylum in particular, Gibney and Hansen (2003: 15) outline four objectives for these policy shifts: 1) preventing access to state territory; 2) deterring claims for asylum; 3) limiting the duration of asylum status; and 4) imposing order on inward movements by limiting mobility within states. Restricting access is a primary concern because international conventions bind states to protocols regarding the treatment of asylum seekers and refugees following their arrival. Asylum seekers are portrayed as more problematic because they do not arrive through formal mechanisms and threaten the manageability and stability of incoming flows (Gibney and Hansen, 2003). Additionally, in the post September 11th context, migration has been increasingly framed as a potential threat to social cohesion (Vukov, 2003; Cheong, Edwards, Goulbourne and Solomos, 2007).

Within Europe, asylum has become a contentious political issue since it is the only way for many to migrate to the continent (Sales, 2002). Sales (2002) has shown how the discursive construction of potentially fraudulent claimants, drawn to Britain in order to benefit from social services, informed more strict application of immigration controls and policies that restricted available supports, such as access to welfare benefits and service access, to deter migration. Specifically, in her analysis of the British government’s 2002 White Paper on immigration entitled “Secure Borders, Safe Haven”, Sales (2005) showed how such changes further built upon and entrenched the discursive dichotomization of “deserving” refugees versus “undeserving” asylum seekers.

Based on a synthesis of studies included in an issue of the *International Migration Review*, Akbari and MacDonald (2014) more recently noted additional policy trends in Canada, the United States, Australia, and New Zealand. These include shifting away from human capital approaches to target specific skills and labour force demands, increasing reliance on temporary foreign workers, attracting international students, regionalizing immigration flows from major metropolitan centres toward secondary cities, and redesigning refugee systems. They stressed that the governance of refugee admissions within the policies of these countries were found to have “been tightened for security reasons and out of concern for misuse of the system” (813). Within the United States, asylum has also been explicitly connected to terrorism in legislation: the 2005 Real I.D. Act aims “to prevent terrorists from using the US asylum system to gain lawful immigration status in the United States” (Cianciarulo 2006: 101-102). The Act limits access to asylum, judicial review and drivers’

licences (Hines, 2006). While it focuses on national security, Acer (2005) argues that the discourse of insecurity has been opportunistically used to restrict immigration.

Within Canada, a refugee determination system for inland claims was not formally instituted until 1976 through the Immigration Act. The Immigration and Refugee Board was later created in 1989 (Lacroix, 2004) and the Immigration and Refugee Protection Act (IRPA) was passed in 2002 (Akbari and MacDonald, 2014; Lacroix, 2004). The last few years have been characterized by unprecedented changes to policy with the passing of a number of bills including the Balanced Refugee Reform Act in 2010, the PCISA in 2012, the Faster Removals of Foreign Criminals Act in 2013, and the Strengthening Canadian Citizenship Act in 2014. Efforts to restrict the arrival of asylum seekers appear successful. While the US recorded nearly 25 per cent more asylum claims in 2013, Canada received 50 per cent less (UNHCR, 2014).

Given the global rise of asylum seekers, it is timely to critically examine how forced migrants are constructed in particular ways through discourses of neoliberalism and security. Accordingly, this article focuses on recent changes to Canadian refugee policy made through the PCISA. This sweeping Bill amended the IRPA, the Balanced Refugee Reform Act, the Marine Transportation Security Act, and the Department of Citizenship and Immigration Act. It overhauled the refugee determination system, targeted human smugglers, and required biometrics from certain temporary residents. Our aim was to critically explore how refugees and asylum seekers are discursively constructed through the PCISA and its associated Background documents.

## CONCEPTUAL FRAMEWORK AND METHODOLOGICAL APPROACH

Our analysis draws on a conceptual framework proposed by Grove and Zwi (2006) who outline how “forced migrants are constructed as the ‘other’” and are subsequently socially excluded (1931). They propose four discursive mechanisms commonly employed to construct the “other”. First, the language of threat (e.g. metaphors of invasion, contagion, and natural disaster) is used to frame migrants’ movements to justify control measures such as detention. Second, framing forced migrants as uninvited guests who are “jumping the queue” serves to further differentiate between “good” (offshore) refugees who wait their turn and “bad” (inland) claimants who do not use formal channels. Third, the charitable nature of host societies in receiving forced migrants through “burden sharing” serves to obscure any agency on the part of forced migrants. Finally, the perception of becoming overloaded with forced migrants is portrayed as placing undue pressure on local resources. Grove and Zwi highlight how these strategies construct the “other” in society and justify a lack of government support for forced migrants.

This binary between “us” and “them” has been reinforced through recent policy changes. Citing Feldman (2005), Cheong et al. (2007) explain that the immigration “crisis” is sustained under practices predicated on binary oppositions so that in the post 9/11 period, “migration is increasingly framed in relation to terrorism, crime, unemployment and religious fundamentalism” (34) rather than as a benefit to society. The increased portrayal of immigration as a security issue incites practices characterized by suspicion of newcomers (Cheong et al. 2007). Moreover linking immigration to a discourse of limited resources further positions immigration as negative.

The construction of others or “undesirables” through policy has implications for the daily lives of forced migrants. Lacroix’s (2004) study of the social construction of a refugee claimant’s subjectivities in Canada argued that one “fleeing persecution, becomes a refugee claimant when confronted with a refugee determination system put in place by a given country” (149). She described this new subjectivity as a rupture from one’s earlier life and identity, with consequences in relation to family, work, and the state. For instance, restrictions on her study participants’ rights to engage in paid labour negatively impacted their professional subjectivities by creating a need to access

social welfare services. Being *forced* migrants imposed a particular subjectivity that was directly fostered by policy. This conceptual framework of binary othering between us/them, good/bad, desirable/undesirable informed the methodology for this study. We conducted a critical discourse analysis informed by Bacchi's (2009) "What's the problem represented to be?" (WPR) approach to address the active role that the government plays in shaping how problems are understood by its constituents. WPR is informed by Foucault's governmentality theory, which aims to uncover how values, norms and "truths" become embedded within practices of governing (Bonfanti, 2014). Foucault's work is useful for examining how power operates through "governing strategies, means of discipline and other kinds of social technologies that could be mobilized by a variety of institutions and social actors" (Kretsedemas, 2011: e4).

The WPR approach uses the following six questions to study the discourse of policy (Bacchi, 2009: 48):

- 1) What's the problem represented to be in a specific policy?
- 2) What presuppositions or assumptions underlie this representation of the problem?
- 3) How has this representation of the problem come about?
- 4) What is left unproblematic in this problem representation?
- 5) What effects are produced by this representation of the problem?
- 6) How/where has this representation of the problem been produced, disseminated and defended?

Bacchi explains that studying policy-as-discourse is premised on the notion that specific problems are created and shaped by "the very policy proposals that are offered as 'responses'" (2009: 48). Bacchi's approach of identifying dominant discourses and examining how they are used provides a means for discovering and challenging their underlying assumptions and consequences (Pereira, 2014).

Bonfanti (2014) used Bacchi's WPR approach to conduct a critical discourse analysis of Swedish labour migration changes made in 2008. She analysed the "paradigm of managed migration" within Sweden and found that policy reforms targeted the "problem" of perceived skills and labour shortage. Similar to the impact of neoliberalism on the bifurcation of desirable and undesirable migrants, these reforms promoted more restrictive regulations for asylum seekers and provided more permissive approaches for labour migrants. Using a similar approach, we analysed Bill C-31 (PCISA) and the 14 Backgrounders about the bill. We created an interrogation guide informed by Laliberte Rudman and Dennhardt's (2015) critical discourse analysis method to "interview" documents. Bacchi's (2009) six questions were incorporated into the interrogation guide to frame our analysis of each text.

Three of the authors read Bill C-31 and the "Overview of Canada's Refugee Programs" Backgrounder (Government of Canada, 2013), independently completed an interrogation guide for both documents, and subsequently met to discuss their respective analyses. The second author then completed interrogation guides for the remaining 13 Backgrounders (Government of Canada, 2012a–h) and the first author reviewed each of them upon completion. The guides were filled in while the documents were read, with specific examples and direct quotations drawn directly from the texts to support the "answers" provided to the questions included in the guide. The same three authors then met again to discuss the complete data set, and a fourth author contributed to the study framing and ongoing interpretation of findings. Analysis across the guides and texts was conducted to identify dominant assumptions, messages, and subject positions. Specifically, we identified ways that particular discursive features and strategies were used within and across documents, such as repetition of key statements or "facts". For example, a number of documents (Government of Canada, 2012a–f) mention the abuse of the former system and explain how the policy measures taken were necessary to deter such abuse. The findings from our analysis are presented next.

## FINDINGS

The PCISA focuses largely on reforming Canada's Inland Refugee Determination System by distinguishing between different claimant groups and their terms of entitlement. The legislation also establishes significant changes for temporary migrants, including the collection of biometric data (e.g. fingerprints). The Backgrounders released by the Canadian government provide a context to justify the proposed changes, outline their legislative amendments and explain their effects. Our analysis identified three main "problems" constructed within the documents, as well as "solutions" to address them. Particular groups of forced migrants were discursively constructed as threats to: 1) the economy, 2) the integrity of the refugee system, and 3) national security. The policy changes aim to "solve" these problems through: 1) the creation of specific categories of migrants associated with varying rights and subjected to differing types of managerial and surveillance practices, 2) enhancing efficiency within the system (e.g. reducing processing times, ensuring timely removals), and 3) expanding governmental powers. Drawing on specific examples from the texts, we outline how these problems and solutions are constructed and discuss the corresponding justifications provided for the policy changes.

### **Problematizations of forced migrants**

#### **Threat to the economy**

The inefficiency of Canada's inland refugee claim system is characterized as draining resources with significant delays in processing asylum claims, appeals and removals. With no limit to the number of asylum claims that can be made each year, Canada's system is portrayed as in danger of being taken advantage of unless new control mechanisms are introduced immediately: "New proposals further accelerate the processing of refugee claims and would help deter abuse of the system" (Government of Canada, 2012a). The problem is focused on the magnitude of fraudulent asylum claims because "Large numbers of unfounded refugee claims are a financial burden on the economy. But attraction of Canada's social assistance programs and associated benefits is a draw for many" (Government of Canada, 2012b). The cost of processing illegitimate claims is also emphasized: "Too many tax dollars are spent on asylum claimants who are not in need of protection" (Government of Canada, 2012b).

The growing numbers of asylum applications from claimants from Designated Countries of Origin (DCOs) are also specifically addressed, with the vast majority of claims described as "unfounded". DCOs are described as countries that typically respect human rights, offer state protection, and do not produce refugees (Government of Canada, 2012b). Pointing to the number of failed claims from DCOs, the Department of Citizenship and Immigration Canada (CIC) states that:

Canada is currently receiving a disproportionately high number of refugee claimants who come from countries that historically have very low acceptance rates at the independent Immigration and Refugee Board of Canada (IRB). These are often countries such as those in Europe with solid democratic and human rights. (Government of Canada, 2012b)

Access to public services, such as health care, is also problematized as the CIC asserts, "It is unfair that those who have not followed the rules be rewarded for their action by having access to more generous benefits than the average Canadian receives" (Government of Canada, 2012c). In this section, we have highlighted how the government has argued that the unregulated Canadian inland refugee determination system is financially problematic due to abuses of both the asylum

and welfare systems. Next, we explore how Canada's international reputation and national values for welcoming asylum seekers has been framed as making the system vulnerable, under attack, and in need of protection.

### **Threat to the integrity of the refugee system**

Findings show that human smuggling is forefronted as a major, growing problem threatening the stability of the Canadian immigration system and Canada's identity as a "world leader in refugee resettlement" (Government of Canada, 2013). While Convention refugees<sup>1</sup> are presented as legitimate claimants needing protection, asylum seekers are presented as problematic. Canada's international identity of having a "proud history and tradition of welcoming immigrants who wish to start a new life here" (Government of Canada, 2012c) is positioned as attracting human smugglers and making the country "a target for human smuggling operations" (Government of Canada, 2012c). Human smuggling is depicted as "big business, generating significant profits for sophisticated criminal organizations and others who engage in this crime and abuse immigration systems designed to help those in genuine need" (Government of Canada, 2012d). The need to "deter abuse of the system" (Government of Canada, 2012e) and "better protect the integrity of Canada's refugee system" (Government of Canada, 2013) is made a prominent government priority that is most effectively achieved through deterrence. As human smuggling is anticipated to continue with increasing complexity, Canada itself is depicted as increasingly vulnerable and already under attack:

One smuggling vessel that reached Canada from Southeast Asia, the *Ocean Lady*, had a history of smuggling cocaine, explosives, and weapons as cargo. The fact that two human smuggling vessels reached Canada in recent years is proof of the reach and capability of these human smuggling organizations. It is clear that human smugglers are targeting Canada. (Government of Canada, 2012f)

The Minister of Public Safety has the power to designate "a group of individuals who entered or attempted to enter Canada in a manner that runs contrary to Canada's immigration laws" as an irregular arrival (Government of Canada, 2012g). Those migrating as part of a group of irregular arrivals are constructed as suspicious and warranting surveillance. Both irregular arrivals and those involved in organized human smuggling are assumed to be abusing the Canadian refugee system. In order to discern those truly in need of Canada's protection, it is suggested that immediate action must be taken to send a clear message that Canada's immigration system will not be taken advantage of. In "Cracking down on human smugglers who abuse Canada's immigration system" (Government of Canada, 2012c) it is stated that "We must have laws and measures in place that will dissuade individuals from coming to Canada by way of an illegal human smuggling venture as opposed to well established means of seeking immigration status or refugee protection in Canada". In "Designating Human Smuggling Events" (Government of Canada, 2012g) it is also clarified that these measures are to "Ensure those who apply to come to Canada legitimately and play by the rules are not penalized by those who try to jump the queue." The issue of human smuggling is featured prominently to demonstrate the need to protect the system through deterrence. In the following section, we examine the suggestion that national security has been undermined prior to the amendments proposed in the PCISA.

### **Threat to national security**

Our findings show that policy changes suggest that Canadian national security was jeopardized due to shortcomings in the previous system. In reference to irregular arrivals it is claimed that "In instances of this nature where identity is unconfirmed, authorities cannot identify potential security and criminal threats, including human smugglers and traffickers, terrorists, or individuals who have

committed crimes against humanity” (Government of Canada, 2012h). This assertion is used to argue for stricter detention rules to enhance security. Following the changes introduced through the Balanced Refugee Reform Act, the PCISA significantly expands enforcement provisions and the scope of definitions of human smuggling. By giving the Citizenship and Immigration Minister and the Minister of Public Safety greater authority over asylum seekers, it is intimated that past security measures were insufficient in protecting Canadians. The challenge in identifying the true identity of refugees is forefronted as a major problem: “It is an unacceptable risk to release into Canadian communities individuals whose identities have not been determined and who could potentially be inadmissible on the grounds of criminality or national security” (Government of Canada, 2012h).

The PCISA also suggested that the Minister of Citizenship and Immigration lacked adequate power to cope with refugee protection claims, irregular arrivals, smuggling and relations to foreign governments. The language of war and terrorism is frequently used to describe the proposed actions, particularly the necessity of increased powers to manage large groups of irregular arrivals:

Human smuggling undermines Canada’s security. Large scale arrivals make it particularly difficult to properly investigate whether those who arrive, including the smugglers themselves, pose risks to Canada on the basis of either criminality or national security. (Government of Canada, 2012f)

The lack of effective mechanisms to deal with groups of irregular arrivals is implied as well as the lack of capacity to combat human smuggling.

Processing refugee protection claims is characterized as too slow, with prolonged stays characterized as threatening the system’s integrity. It is explained that to protect the system and “In order for the system to be effective, faster decisions must be complemented by faster removals” (Government of Canada, 2013). Difficulties with determining asylum seekers’ identities is problematized to invoke fear of dangers related to criminality and terrorism, while the proposed solutions address the threats posed by forced migrants.

## **Proposed solutions**

### **New migrant categories**

The PCISA created an increasingly stratified Canadian refugee system by setting out clear parameters around how and when claims should be handled, primarily based on the country claimants are seeking protection from and where they make their claim once in Canada. Major changes were made for the classification of “designated foreign nationals” and claimants from DCOs. The reforms group both “irregular arrivals” and “designated irregular arrivals” as designated foreign nationals and impose mandatory arrest and detention without a warrant. The detention of all designated foreign nationals is:

To ensure government authorities have sufficient time to: Conduct thorough and focused investigations and examinations of the facts; positively confirm the identity of any individual who attempts to remain in Canada; and identify potential security and criminal threats to the Canadian public. (Government of Canada, 2012h)

Mandatory detention of those without sufficient documentation to support their identity is justified as a means to protect against threats to security. Once a person’s identity can be confirmed, or a decision regarding detention is made, law enforcement can now “Impose conditions of release, and remove those who are inadmissible to Canada” (Government of Canada, 2012h). Mandatory detention is seen as a necessary measure to defend Canada against crimes of human smuggling, threats to security and those that seek to take advantage of Canada’s refugee system, thereby

challenging values of fairness, by “jumping the queue” (Government of Canada, 2012g). It is also clarified that designated irregular arrivals, even with a positive decision for refugee status, will be barred from obtaining permanent resident status and sponsoring family members for five years.

DCO claimants are also viewed with suspicion and as warranting surveillance, with the implication that because they come from countries generally considered safe, they are not in legitimate need of protection and are likely seeking to abuse Canada’s welfare systems. DCO claimants are further differentiated by those who make a claim at inland immigration offices and those who file a claim at a port of entry, with separate application timelines accorded for each group. Building on the Balanced Refugee Reform Act, the PCISA takes stronger action to make Canada less attractive to migrants from DCOs by significantly reducing access to health services and work permits:

To further reduce the attraction of coming to Canada to make an unfounded claim, it is also proposed that DCO claimants would be ineligible to apply for a work permit and associated benefits until their claim is approved by the IRB or their claim has been in the system for more than 180 days and no decision has been made. (Government of Canada, 2012b)

By introducing these measures, the Government clearly differentiates between those who make an asylum claim as a Convention refugee or at a port of entry against DCO claimants and those who arrive as part of a group of designated irregular arrivals. In making these distinctions, the Government is able to enact the consequences that flow from these classifications as a means of protecting the system and its efficiency, which will be discussed below.

### **Enhancing the efficiency of the system**

The creation of categories effectively differentiates the treatment of asylum claims between and within groups, particularly with respect to “further accelerate the processing of refugee claims” (Government of Canada, 2012a), access to appeals, and removal procedures. The new PCISA timelines are described as modernizing the system by implementing enforcement mechanisms throughout the entire claim process from application to the final decision. Reductions in wait times are cited to demonstrate the success of the proposed changes: “With these new measures, the time to finalize a refugee claim would drop from the current average of 1038 days to 45 days for claimants from designated countries of origin or 216 days for all other claimants” (Government of Canada, 2012a). For hearings for asylum claimants, wait times are also used as evidence of the effectiveness of proposed measures: “Wait times for hearings of asylum claimants will shorten from the current average of 18 months to 30 to 45 days after referral of the claim to the IRB. . .for claimants from designated countries of origin (DCOs), depending on where the claim is made, and 60 days for other claimants” (Government of Canada, 2013). Without providing details of successful versus failed claims, the IRB’s reduced backlog of refugee claims is also highlighted, “Over the past 18 months, the IRB has reduced its backlog of refugee claims from over 60 000 to just under 42 000. And the government remains committed to reducing this backlog further” (Government of Canada, 2012a).

Emphasis was put on the need to immediately remove failed claimants so the refugee system could be effective in deterring abuse. Faster removals are prioritized alongside faster decisions in order to ensure a cohesive system that together will also, “Save tax payers millions of dollars on social assistance programs, health care, and other taxpayer-funded services” (Government of Canada, 2013). To ensure removals occur promptly, access to appeals or an automatic stay of removal is restricted for “DCO claimants, those determined by the Refugee Protection Division (RPD) to have a manifestly unfounded claim based on an exception to the Safe Third Country Agreement; and those who arrive as part of a designated arrival” (Government of Canada, 2013). While failed claimants from these groups can still appeal a negative decision through the Federal



Court, the elimination of the automatic stay of removal allows law enforcement to remove them from Canada while their claim is pending. The Assisted Voluntary Return and Reintegration pilot program was also established in the Greater Toronto Area to “Remove low-risk failed refugee claimants more quickly” (Government of Canada, 2012a). Taken together, these new measures comprehensively act as powerful deterrents for specific groups of asylum claimants during the refugee determination process, while greater powers of enforcement are granted to authorities.

### Expanded powers to government

To effectively investigate and prosecute human smugglers, enhanced powers were given to law enforcement, specifically the Canadian Border Services Agency (CBSA). Through expanding enforcement powers and the definition of human smuggling, the CBSA’s “removal capacity” was substantially increased “in order to reduce the number of active cases of failed asylum claimants” (Government of Canada, 2013). Provisions included in the PCISA also give the CBSA the power to:

Issue a warrant for the arrest and detention of a permanent resident or foreign national who the officer has reasonable grounds to believe is inadmissible and is a danger to the public or is unlikely to appear for examination, for an admissibility hearing, for removal from Canada or at a proceeding that could lead to the making of a removal order by the Minister. (Canada, 2012)

In response to the threat of human smuggling, the definition of the offence was broadened to include the various ways the crime occurs and to “make it easier to prove that the offence was committed” (Government of Canada, 2012d). Under the previous system, convicting a human smuggler required evidence that the accused knew individuals smuggled did not have legal documents to enter Canada. Amendments included in the PCISA have fundamentally altered the offence:

To prohibit the organized entry of persons into Canada in contravention of any requirements of IRPA (Immigration and Refugee Protection Act). For example, this would include the act of bringing people into Canada in a way that avoids their presenting themselves for examination as required by the *Act*. (Government of Canada, 2012d)

Increased authority, particularly for designating groups, was given to the Ministers of Citizenship and Immigration, and Public Safety. The PCISA gives Ministers the power to designate the arrival of any group of persons as an irregular arrival with all the force that comes with the designation, including mandatory detention. The government argued that empowering Ministers to “crack down on human smugglers” (Government of Canada, 2012c) was necessary for “Ensuring the safety and security of our streets and communities” (Government of Canada, 2012h).

Since the introduction of DCOs through the Balanced Refugee Reform Act, the PCISA also makes a significant change in the process of designating countries by no longer requiring consultation with an expert panel. Under the PCISA, countries with rejection rates over a specified threshold are triggered for review by other government departments, with the final decision made by the Minister of Citizenship and Immigration.

The power to revoke “protected person” status<sup>2</sup> is also given through amendments in the PCISA by way of proving “cessation” or “vacation” (Government of Canada, 2012e). Cessation of protected person status can now be considered if individuals return to the country they were fleeing or if the “conditions sufficiently improve in their country of origin” (Government of Canada, 2012e). Protected person status can also be lost through vacation if it is discovered that an “individual has directly or indirectly misrepresented or withheld material facts” (Government of Canada, 2012e) at the time their refugee claim was originally submitted. If cessation or vacation is proven, individuals

facing the revocation of refugee status will be denied access to the Refugee Appeal Division. These findings demonstrate how shifts in the definitions and terms regarding offences, processes, and statuses are complemented by expanded powers to the CBSA and Ministerial authorities to enforce the amended regulations. The conflation of these two trends has powerful consequences for forced migrants.

## DISCUSSION

Researchers examining representations of forced migrants in policy and the media and have found a range of themes (Gale, 2004; Gilbert, 2013). Esses, Medianu, and Lawson (2013) identified dehumanizing depictions of immigrants as spreading disease, refugees as bogus, and terrorists disguised as refugees entering the country. Using a WPR approach to critical discourse analysis, our study identified discursively constructed problematizations of asylum seekers and proposed solutions in Bill C-31 and its associated Backgrounders. We found that asylum seekers are framed as threats to the economy, the integrity of the refugee system, and national security. Proposed solutions include creating new migrant categories characterized by varying rights and privileges, enhancing efficiency within the refugee system, and expanding governmental powers. We suggest that these particular constructions support dominant neoliberal governance strategies in a post September 11th context.

Neoliberalism places an emphasis upon economic citizenship and the productive capacity of citizens. Those unable to fulfil responsibilities of self-determination may likewise be deemed failed citizens or a drain on the social system. Citizens are framed as having a duty to contribute to the broader society, and social inclusion is achieved mainly through paid employment at the expense of potential cultural contributions and “other forms of work, including caring and voluntary work” (Sales, 2002: 459). Although economic priorities have long dominated Canadian immigration policy, since the inception of its points-based system, in the 1960s, which introduced a human capital approach for immigrant selection (Akbari and MacDonald, 2014), our findings highlight how neoliberal rationality is particularly taken up in reforms to the refugee system.

In addition to a focus on economics, the texts analysed exhibit an “individualization” of the problems identified that also align with neoliberal rationality. The dominant discourse of asylum seekers as a threat to economy (i.e. as a burden on the refugee system and a drain on health and social welfare resources) and security (i.e. as criminals and terrorists) frame asylum seekers as the site of the problem and hence the site targeted for a solution. This enables asylum seekers to be labelled as fraudulent or dangerous and supports an approach to monitoring the legitimacy of individual asylum seekers while obscuring global conditions causing their plight. This individualization of the asylum “problem” aligns with neoliberalism in that it enables governments to absolve themselves of responsibility for addressing issues that engender the need for asylum.

While we have presented three dominant problematizations and solutions, it is worth noting that these are not each singularly related to another. For instance, the expansion of government powers can be used to “solve” more than one problem. Empowering the Minister with the ability to designate irregular arrivals provides increased capacity to deal with migrants constructed as undesirable whether for economic or security reasons. The manner in which discourse problematizes asylum – the seekers themselves as well as the system that deals with their claims – is tied to the solutions that are also discursively constructed. Framing of asylum seekers as threatening justifies actions to protect the economy, the refugee determination system and national security, rather than the migrants. Othering on the basis of such threats risks a broader trend in policy and practice to justify surveillance practices and enable non-recognition of particular rights, among other actions.

The types of policy changes that have been made by the Government through the PCISA, are not unique to the Canadian context. Our findings highlight several practices undertaken to limit the

arrival of asylum seekers as well as minimize associated costs that were similarly identified by Gibney and Hansen (2003) in their analysis of asylum policy trends in Western countries. These include the use of carrier sanctions and pre-inspection regimes, limitations on employment and welfare, restrictions on residency, mandatory detentions, an accelerated determination process, restricted granting of permanent residency, as well as removals and deportations. Our findings also reflect actions taken in Britain's 1999 Immigration and Asylum Act, which increased the Home Secretary's powers, and expanded search, arrest and detention powers (Sales, 2002, 2005). Canada has created a list of "safe" countries like Britain that similarly limited rights to appeal and access to social supports, created different processes and timelines for different categories of claimants, and expedited deportations (Sales, 2005).

The various "designations" that can be made (e.g. of foreign nationals, irregular arrivals, countries of origin) as a result of the PCISA create entire groups that are treated with the same approach, rather than focussing on each claimant's individual circumstances. This reflects how the discourse of terror has been adopted in ways that reflect neoliberal individualization of problems (Coleman, 2007; Lafer, 2004). These characteristics mirror changes made within the United States that began prior to the events of September 11th and have increasingly incorporated a terror discourse since then. For instance, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 made it easier to detain immigrants and to expedite their removal (Hines, 2006). The USA Patriot Act of 2001 and REAL I.D. Act of 2005 have subsequently further tightened refugee law in the United States (Acer, 2005; Cianciarulo, 2006; Hines, 2006). Changes made through these Acts have been criticized for framing all refugee claimants as potential threats, rather than targeting those matching terrorist profiles (Cianciarulo, 2006). Acer (2005) argued that a security discourse has been used to weaken humanitarian incentives and legal obligations to help refugee populations "not so much because of the imperatives of security, but primarily because of the misuse and opportunistic abuse of the language of 'security'" (1396). In this way individual decision making for asylum seekers has increasingly been altered by more blanket approaches (Acer, 2005).

As explicated through our findings, the Canadian Government is making it more difficult for refugee claimants to seek asylum. As in Europe, the strengthening of borders can lead to increased reliance upon smugglers to enter; which is likely why efforts to deter smuggling were included alongside reforms to the refugee determination process in the PCISA. Sales (2002) suggests that the negative construction of asylum seekers through legislation creates a social category in both policy and discourse that is separate from more desirable Convention refugees and has implications for their social integration and safety. The implications of these discursive constructions and their material effects must be further studied given that Grove and Zwi (2006) have suggested that othering can contribute to "prolonged exclusion from health, welfare and social services" (1933). Beyond the direct negative effects that may be experienced by asylum seekers, we must also consider ways that their marginalization is also problematic for society at large. The language of threat can incite anti-immigrant sentiment and xenophobic attitudes more broadly. Indeed, such rhetoric may galvanize societal divides that go beyond immigration. If the Government of Canada is serious about protecting its "proud history and tradition of welcoming immigrants who wish to start a new life here" (Government of Canada 2012c), it must critically consider how the combination of more tightly controlled borders, increased deportations and restrictive refugee determination processes created through these recent policy changes have limited asylum seeking as an option for many forced migrants, pushing them into ever more precarious positions.

## NOTES

1. The United Nations 1951 Convention relating to the Status of Refugees defines refugees as those 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 to, or owing to such fear, is unwilling to avail himself of the protection of that country.” ([www.unhcr.org/pages/49c3646c125.html](http://www.unhcr.org/pages/49c3646c125.html))

2. As defined by the Government of Canada (2015) a protected person is “a person on whom refugee protection is conferred under A95(1) and whose claim has not subsequently been deemed to be rejected under A108(3) or A109(3), or whose refugee protection application is deemed to be rejected under A114(4) [A95 (2)].” <http://www.cic.gc.ca/english/resources/tools/perm/definitions.asp?letterNum=16>

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