

Telling Tales: Canadians and Asylum Seekers, Then and Now  
Christopher G. Anderson

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Most of us think that history is the past. It's not. History is the stories we tell about the past. That's all it is. Stories. Such a definition might make the enterprise of history seem neutral. Benign.

Which, of course, it isn't.

– Thomas King, *The Inconvenient Indian* (2012), 2-3

Abstract: If History, as Thomas King suggests, is not the past but the tales we choose to tell about the past, then the choices we make in telling such tales matter. For some time now, Canada has been telling two types of tales with respect to asylum seekers, some about a Canadian tradition of generosity, and others about that generosity's abuse. These tales have provided the back story to a series of policies that have made it more difficult for asylum seekers to seek and find protection in Canada, and have been woven into the fabric of a larger narrative about what it means to be Canadian. There are, however, other tales that could be told. Some are old, stretching back to the passage of the *1885 Chinese Immigration Act* and the *1910 Immigration Act*, while others are more recent, surrounding the passage of the *1967 Immigration Appeal Board Act* and the 1985 Plaut report on *Refugee Determination in Canada*. In their telling, these other tales revolve around themes of equality and fairness, which are obscured when the focus is limited to generosity and its abuse. The recent imposition of a visa requirement on visitors from Mexico to prevent asylum seekers from reaching Canada is examined in light of each of these sets of tales. In the process, very different ideas about what it means to be Canadian and how they might be realised in part through our response to asylum seekers become possible.

## I. Telling Tales

This afternoon, I want to talk about history and some of the tales told in its name.<sup>1</sup> I want to talk about what they can reveal about the past, the present and perhaps even the future. I also want to talk about how such tales both inform our sense of who we are and who we could – and maybe even should – be. And finally, I want to talk about our roles as students and researchers in these different processes.

There are numerous tales widely told nowadays with regard to asylum seekers but I will focus on two in particular: one about a Canadian tradition of generosity, and another about that generosity's abuse.<sup>2</sup> These tales have provided the back story to a series of policies making it more difficult for asylum seekers to seek and find protection in Canada, and are being woven into the fabric of a larger narrative about what it means to be Canadian. There are, however, other tales that could be told – some old and some more recent – that revolve around equality and fairness, themes that are obscured when the narrative is centred on generosity and its abuse. In telling these alternate tales, different ideas about what it means to be Canadian, and how best they might be realised, become possible.

Before going any further, I have a few admissions to make. First, although I will be talking about the past and stories, I am neither an historian nor a literary critic but a political scientist who studies Canadian history and political discourse, especially as it pertains to such interrelated themes as citizenship, immigration and refugees. I am interested, then, in the borders of Canada, both those that can be found on a map and those that can be used to define Canadian identity. I am going to focus most specifically on asylum seekers but will draw on tales of citizenship and immigration as well.

Second, I accept that we live in a world of 'us' and 'them' divisions that have both legal and substantive foundations. For example, legal citizenship is predicated on the demarcation of insiders and outsiders, and this – as political philosopher Joseph Carens has shown – produces unfairness, at least on a plane of moral reasoning.<sup>3</sup> Such legal differentiation is reinforced by substantive citizenship, which involves “the rights, entitlements, obligations, duties, and other legal, social, and political practices that [are held to] constitute the individual as an active, participatory, and functional political subject within a nation-state.”<sup>4</sup> The terms on which such difference is founded, and the actual relationship between insiders and outsiders that is fostered,

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<sup>1</sup> Thanks are due to Stephanie Bangarth and Nassisse Solomon of the Collaborative Graduate Program in Migration and Ethnic Relations at Western for extending the invitation to speak and for making it such an enjoyable experience, and to the students that I met alongside those who attended the talk.

<sup>2</sup> The term “abuse” is inherently problematic as it is based on presumptions of legitimacy and appropriateness with respect to state control policies, casting aspersions on the integrity of the migrant while leaving that of the state intact. In this, it is similar to the notion of an “illegal migrant” (see, for example, Nicholas P. De Genova, “Migrant ‘Illegality’ and Deportability in Everyday Life,” *Annual Review of Anthropology* 31 (2002), 419-47. The term “abuse” is used in this paper to signify an object of discourse analysis rather than a legitimate or appropriate category for understanding cross-border migration. My thanks go to the student at the talk whose questions pressed me to think this through more rigorously.

<sup>3</sup> “Citizenship in Western liberal democracies is the modern equivalent of feudal privilege – an inherited status that greatly enhances one’s life chances. Like feudal birthright privileges, restrictive citizenship is hard to justify when one thinks about it closely.” Joseph Carens, “Aliens and Citizens: The Case for Open Borders,” *The Review of Politics* 49:2 (1987), 252.

<sup>4</sup> Audrey Macklin, “Exile on Main Street: Popular Discourse and Legal Manoeuvres around Citizenship,” in Law Commission of Canada, *Law and Citizenship* (Vancouver: University of British Columbia Press, 2006), 23.

however, are not predetermined. That citizenship (or for that matter a national border) is inherently unfair and discriminatory, in other words, does not justify any particular unfair or discriminatory practice, which must instead be measured against appropriate benchmarks. Some of these benchmarks are derived from the tales we tell about ourselves and others.

Third, I therefore take it for granted that the tales we tell about history matter, that they are inescapable but malleable facets of political life. However, history is not – following Thomas King – neutral, and neither is it benign. Our understanding and use of history can widen or narrow the range of ideas and options that we debate and pursue. It can be used to justify or contest different courses of action. As political scientist Janine Brodie puts it, “historically-invested discourses help define the terrain of politics, the objects of governance, and the case of recognized political actors.”<sup>5</sup>

Finally, since such tales thus liberate and constrain us, inform where we think we have come from and indicate places we could go, I propose along with historian Yves Frenette that history can serve

to cultivate informed citizens prepared to ask tough questions regardless of their political affiliation or that of their government; to foster openness to other people, regardless of the era in which they lived or the continent they might inhabit; and to highlight the complexity of historical phenomena and the actors that drive them.<sup>6</sup>

This, as I will suggest at the end of the talk, places a particular onus on us as students and researchers to take great care concerning the tales we tell in our work.

So how will I go about my task today? First, I place the two tales commonly told about asylum seekers within the context of a battle occurring in Canada over the (mis)use of history. These tales are neither original nor particular to Canada but they are increasingly repeated and – and this is especially important – officially sanctioned. Second, I consider other important but overlooked tales from the past that revolve around fairness and equality. Third, I then examine the government’s 2009 decision to impose a visa requirement on Mexican visitors to Canada in light of these two sets of tales. Finally, I close with some brief comments on the importance of telling tales in our work as students and researchers of migration and ethnic relations.

## II. Two Tales Told

In *The Unfinished Canadian*, author Andrew Cohen observes that Canadians “are the product of memory, geography, complexity, [and] uncertainty,” and that we “have still not become that united, self-assured nation” that we could (and in his view need to) become.<sup>7</sup> The unsettled nature of “being Canadian” is a commonly noted theme, as is the central role of the state in Canadian identity formation. For example, columnist Richard Gwynn maintains that Canada is more state-nation than nation-state in this respect – *L’État C’est Nous*, he writes.<sup>8</sup> A little more

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<sup>5</sup> Janine Brodie, “Citizenship and Solidarity: Reflections on the Canadian Way,” *Citizenship Studies* 6:4 (2002a), 382.

<sup>6</sup> Yves Frenette, “Conscripting Canada’s Past: The Harper Government and the Politics of Memory,” *Canadian Journal of History* 49 (2014), 51.

<sup>7</sup> Andrew Cohen, *The Unfinished Canadian: The People We Are* (Toronto: McClelland and Stewart, 2008), 27.

<sup>8</sup> Richard Gwynn, *Nationalism without Walls: The Unbearable Lightness of Being Canadian* (Toronto: McClelland & Stewart, 1995), Chapter 1.

generously, political scientist Alan C. Cairns provides a greater role for society when he speaks of an Embedded State, wherein “[t]he interaction between the multiple power structures of the modern Canadian state and the heterogeneous interests of an open society is a complicated multi-partnered dance in which the role of leaders and followers shuffle back and forth over time and across issues.”<sup>9</sup> He agrees, however, that Canadian national identity is relatively unsettled and, as a result, receptive to pressures for change, especially those originating from the state but also broader social and economic forces.

Indeed, a robust Canadian citizenship regime literature has traced how a pan-Canadian nationalism – forged during the post-Second World War period through federally-funded social programs anchored in shared risk and universality, in conjunction with the construction of a national symbolic and physical infrastructure – has been challenged by the adoption and institutionalisation of continentalism and neoliberalism within the state from the 1980s onwards (see Box 1). Although this pan-Canadian nationalism was unevenly accepted and realised (for example, both aboriginal peoples and the Québécois actively resisted its imposition), it nonetheless promoted and reflected a commitment to social justice, equality and fairness in Canadian political life to an unprecedented degree.

Box 1: Canadian Citizenship Regime Evolution <sup>10</sup>			
	Period 1 (1860s-1940s)	Period 2 (1940s-1980s)	Period 3 (1980s-present)
State Responsibilities	Nightwatchman State (exclusive)	Welfare State (inclusive)	Neoliberal/Security State (targeted)
Inclusion/Exclusion	Limited political rights	↑ Political, Social, Economic Rights (Marshall) (shared risk)	↓ Political, Social, Economic Rights ↑ Economic Rights (property) (individualised risk)
Governance	Limited (local) democracy	↑ Individual/Community representation; ↑ National politics	↓ Individual/Community representation; ↑ National politics ↑ Continental/Global
Belonging	Loyal British subjects	Pan-Canadian nationalism (state-nation)	?

Since the 1980s, however, a shift has occurred towards greater risk individualisation in Canada consistent with a neoliberal approach to market-society-state relations and a retraction of state

<sup>9</sup> Alan C. Cairns, “The Embedded State: State-Society Relations in Canada,” in D.E. Williams (ed.), *Reconfigurations: Canadian Citizenship & Constitutional Change* (Toronto: McClelland & Stewart Inc., 1995), 35.

<sup>10</sup> Drawn from Jane Jenson, “Fated to Live in Interesting Times: Canada’s Changing Citizenship Regimes,” *Canadian Journal of Political Science* 30:4 (1997), 627-44, Jane Jenson and Susan D. Phillips, “Redesigning the Canadian Citizenship Regime: Remaking the Institutions of Representation,” in C. Crouch, K. Eder, and D. Tambini (eds.), *Citizenship, Markets, and the State* (Oxford: Oxford University Press, 2001), 69-89, Brodie (2001a), *op. cit.*, Janine Brodie, “Three Stories of Canadian Citizenship,” in R. Adamoski, D. Chunn and R. Menzies (eds.), *Constructing Canadian Citizenship: Historical Readings* (Peterborough: Broadview Press, 2002b), 43-68, and Alexandra Dobrowolsky, “(In)Security and Citizenship: Security, Im/migration and Shrinking Citizenship Regimes,” *Theoretical Inquiries in Law* 8:2 (2007), 629-61.

engagement with both individual and collective representations and needs. As a result, political scientist Jane Jenson wrote in the late 1990s, Canadians “face[d] profound choices about what kind of citizens we wish[ed] to be.”<sup>11</sup> These transformative forces have since become conjoined with processes of securitization, whereby an “emphasis on questions of national security edges out other considerations, notably questions of human rights and compassionate considerations.”<sup>12</sup> During the past three decades, then, the economic, political and social heft of Canadian citizenship has been reconfigured significantly. However, “although old ideas about Canadian society have been eroded, they have yet to be replaced with an alternate vision that captures the collective imagination”<sup>13</sup> – that is, they have yet to be replaced with a shared sense of belonging that matches this new reality.

Recently, the Canadian government has acted to fill this gap by promoting terms of belonging that align comfortably with prominent neoliberal and securitisation trends. This reconceptualisation of Canadian identity matters, and matters politically, because it privileges certain “histories, narratives, mythologies, symbols, and stories,”<sup>14</sup> and can thus be used to privilege certain political projects over others – a strategy that is well understood within the Conservative party.<sup>15</sup>

Perhaps most prominently, this strategy has involved the transformation of Canada from peacekeeper (at least in the collective imagination) to Warrior Nation.<sup>16</sup> Indeed, martial values have been promoted as being at the heart of Canadian identity, reflected in former Defence Minister Peter Mackay’s declaration that soldiers are Canada’s “best citizens.”<sup>17</sup> Similarly, the link between war and nation-building was central to the government’s extensive commemoration of the War of 1812 centenary, in which “the willingness to fight, to prove oneself superior to the American invaders, the glory of the ultimate sacrifice,” were pitched as ideal characteristics of being Canadian.<sup>18</sup> Beyond Canada’s foreign and military policies<sup>19</sup> such themes are privileged in the government’s citizenship policies, most prominently with its new citizenship guide, *Discover Canada*. Speaking on its release in 2009, Citizenship and Immigration Canada (CIC) Minister

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<sup>11</sup> Jenson (1997) *op. cit.*, 644.

<sup>12</sup> Dobrowolsky (2007), *op. cit.*, 653.

<sup>13</sup> Brodie (2002a) *op. cit.*, 388.

<sup>14</sup> Laura Tonon and Tracey Raney, “Building a Conservative Nation: An Examination of Canada’s New Citizenship Guide, ‘Discover Canada,’” *International Journal of Canadian Studies* 47 (2013), 202.

<sup>15</sup> As but one example, see Tom Flanagan, quoted in Jennifer Ditchburn, “Tories bang the drum for 1812 and patriotism,” *Waterloo Region Record* (October 13, 2011), C15.

<sup>16</sup> See Ian McKay and Jamie Swift, *Warrior Nation: Rebranding Canada in an Age of Anxiety* (Toronto: Between the Lines Press, 2012), Noah Richler, *What We Talk About When We Talk About War* (Fredericton, NB: Goose Lane Editions, 2012), and A.L. McCready, *Yellow Ribbons: The Militarization of National Identity in Canada* (Black Point, NS: Fernwood Publishing, 2013).

<sup>17</sup> “You think how fortunate we are that we still have people in our country of such inner strength and fortitude and character. They’re willing to risk everything they have to defend our country’s interests and, in the case of Afghanistan and Haiti, to defend people who really have nothing. There is absolutely no greater sacrifice. And I think – and I have often said publicly – our soldiers are our best citizens.” Peter Mackay, quoted in Donna Jacobs, “‘Our soldiers are our best citizens’: MacKay,” *The Ottawa Citizen* (June 16, 2008), x.

<sup>18</sup> Claire Turenne Sjolander, “Through the looking glass: Canadian identity and the War of 1812,” *International Journal* 69:2 (2014), 164; see also, Karim M. Tiro, “Now You See It, Now You Don’t: The War Of 1812 in Canada and the United States in 2012,” *The Public Historian* 35:1 (2013), 87-97.

<sup>19</sup> See Heather A. Smith and Claire Turenne Sjolander (eds.), *Canada in the World: Internationalism in Canadian Foreign Policy* (Toronto: Oxford University Press, 2013), and Roland Paris, “Are Canadians still liberal internationalists? Foreign policy and public opinion in the Harper era,” *International Journal* 69:3 (2014), 274-307.

Jason Kenney declared that the document provides “a real overview of Canada’s history, of our traditions and of our values.”<sup>20</sup> Critics, however, see in it an attempt at “grafting neo-conservative values that emphasize tradition, Christianity, Britishness, and national security” onto an existing neoliberal and securitised orientation.<sup>21</sup> In contrast, pan-Canadian themes previously understood to resonate with and reflect Canadian values, such as peacekeeping, universal access to health care and the *Charter of Rights and Freedoms*, are scarcely mentioned in the document.<sup>22</sup>

These new ideas about what it means to be Canadian are reinforced by a sharper differentiation between insiders (‘us’) and outsiders (‘them’). For example, in late 2014, the government introduced a *Zero Tolerance for Barbaric Cultural Practices Act* to address issues such as polygamy, forced marriages and “honour killings.” The intention, the government says, is to send “a clear message to individuals coming to this country that harmful and violent cultural practices are unacceptable in Canada. These practices are incompatible with Canadian values and will not be tolerated.”<sup>23</sup> This statement is problematic on many levels but I will focus on two here. First, by assigning “barbaric cultural practices” to ‘them’, forms of violence within Canadian society (towards, for example, aboriginal women) are rendered individual aberrations rather than reflections of our own values (or, if considered a meaningful category in this context, culture). Second, since the ‘them’ referenced primarily consists of religious/racialized minorities in the Canadian context, the potential for exclusion is reinforced for both Canadians and non-Canadians alike.<sup>24</sup> Alongside such barriers to substantive citizenship, the government has increased restrictions on access to legal citizenship, often with similarly unevenly distributed effects.<sup>25</sup>

Such an “othering” process can also be seen at work in the framing of Canadian policies towards asylum seekers, with a number of tales being told. One tale, especially prominent in the

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<sup>20</sup> CIC, “Speaking Notes for The Hon. Jason Kenney, P.C., M.P. Minister of Citizenship, Immigration and Multiculturalism at the launch of the new Citizenship Study Guide, *Discover Canada*” (November 12, 2009), accessed online at <http://www.cic.gc.ca/english/department/media/speeches/2009/2009-11-12a.asp>.

<sup>21</sup> Tonon and Raney (2013) *op. cit.*, 214. Even Adam Chapnick, who otherwise argues that the guide is not such a departure from older Canadian traditions, concludes that it “portrays a country that will resonate with card-carrying Conservatives more than recent preceding publications.” See his “A ‘Conservative’ National Story? The Evolution of Citizenship and Immigration Canada’s *Discover Canada*,” *American Review of Canadian Studies* 41:1 (2011), 22.

<sup>22</sup> For a detailed examination of the discursive and substantive shifts between *Discover Canada* and its [Liberal] predecessor, see <http://www.wmtc.ca/2010/04/discover-canada-harper-governments.html>.

<sup>23</sup> Government of Canada, “Protecting Canadians from Barbaric Cultural Practices” (November 5, 2014), accessed online at <http://news.gc.ca/web/article-en.do?nid=900399>.

<sup>24</sup> A similar point has been made in reference to recent Value Codes produced in some Quebec municipalities; see Daiva Stasliulis, “Worrier Nation: Quebec’s Value Codes for Immigrants,” *Politikon* 40:1 (2013), 183-209. On other ways in which substantive citizenship has become more exclusive, see Lois Harder and Lyubov Zhyznomirska, “Claims of belonging: Recent tales of trouble in Canadian citizenship,” *Ethnicities* 12:3 (2012), 293-316, Peter Nyers, “Dueling designs: The politics of rescuing dual citizens,” *Citizenship Studies* 14:1 (2010), 47-60, and Elke Winter, “(Im)possible citizens: Canada’s ‘citizenship bonanza’ and its boundaries,” *Citizenship Studies* 18:1 (2012), 46-62.

<sup>25</sup> On the various barriers to legal citizenship that have been enacted in recent years, see Naomi Alboim and Karen Cohl, “Recent and Proposed Changes to Citizenship Policy,” *Policy Brief* (Toronto: Maytree, 2013), Craig Forcese, “A Tale of Two Citizenships: Citizenship Revocation for ‘Traitors and Terrorists,’” *Queen’s Law Journal* 39:2 (2014), 551-85, and Elke Winter, *Becoming Canadian: Making Sense of Recent Changes to Citizenship Rules IRPP Study* 44 (2014).

immediate post-9/11 period, closely associates asylum seekers with threats to national security.<sup>26</sup> I want to focus on two other tales, however.

Canada is a signatory (since 1969) of the United Nations *1951 Convention relating to the Status of Refugees*, and as such commits itself to uphold Article 33(1), the principle of *non-refoulement*:

No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

In order to determine whether someone falls within the *Convention* definition of a refugee, and whether – as a result – the state has a responsibility to meet its Article 33(1) obligations, the government created an inland refugee status determination process, now housed within the Immigration and Refugee Board (IRB). It is not possible to describe this process, with its evolving standards of access and fairness since the early 1970s, here.<sup>27</sup> For present purposes, the principle point to keep in mind is that claimants need to be able to tell their own stories, for – as the Supreme Court of Canada ruled in the 1985 *Singh* case – “these are matters of such fundamental importance that procedural fairness would invariably require an oral hearing... fundamental justice requires that credibility be determined on the basis of an oral hearing.”<sup>28</sup> However, even under the best circumstances, as former IRB Chairperson Peter Showler relates in his short story collection, *Refugee Sandwich*, creating the space for asylum seekers to tell their own stories and for them to be heard is fraught with difficulties, as “all parties to the process are sandwiched between the demands of fairness and efficiency, between the differences in cultures, between wealth and poverty, between the fearful chaos of the refugee experience and the logical and unrealistic expectations of law and government.”<sup>29</sup> And it is rendered even more difficult when tales are told that encourage predispositions towards suspicion, fear and resentment.

Ever since Canada first began to think seriously about asylum seekers in the early 1970s, concerns have been voiced that people can – and do – use the inland system to avoid regular immigration channels. From that time and into the twenty-first century, tales have often been told – by the media, parliamentarians, immigration officials and some academics – of Canadian generosity and its abuse by those seeking asylum (see Box 2).<sup>30</sup> These tales did not go unopposed, of course, with challenges coming from human rights advocates, immigrant and

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<sup>26</sup> For two early studies, see Sharryn Aiken, “Manufacturing ‘Terrorists’: Refugee, National Security, and Canadian Law,” *Refugee* 19 (2001), 54-73, and Audrey Macklin, “Borderline Security,” in R. Daniels, P. Macklem and K. Roach (eds.) *The Security of Freedom: Essays on Canada’s Anti-Terrorism Bill* (Toronto: University of Toronto Press, 2001), 383-404.

<sup>27</sup> On the origins of the system through to the late 1980s, see Christopher G. Anderson, “Restricting Rights, Losing Control: The Politics of Control over Asylum Seekers in Liberal-Democratic States – Lessons from the Canadian Case, 1950-1989,” *Canadian Journal of Political Science* 43:4 (2010), 937-59, and Gerald E. Dirks, *Controversy and Complexity: Canadian Immigration Policy during the 1980s* (Montreal and Kingston: McGill-Queen’s University Press, 1995).

<sup>28</sup> Supreme Court of Canada, *Singh v. Minister of Employment and Immigration*, [1985] 1 S.C.R., 213-14.

<sup>29</sup> Peter Showler, *Refugee Sandwich: Stories of Exile and Asylum* (Montreal and Kingston: McGill-Queen’s University Press, 2006), xvii.

<sup>30</sup> For select analyses of such negative discourse, see Gillian Creese, “The Politics of Refugees in Canada,” in V. Satzewich (ed.), *Deconstructing a Nation: Immigration, Multiculturalism, and Racism in 90s Canada* (Halifax: Fernwood, 1992), 123-45; Alex Neve and Tiisetso Russell, “Hysteria and Discrimination: Canada’s Harsh Response to Refugees and Migrants Who Arrive by Sea,” *University of New Brunswick Law Journal* 62:1 (2011), 37-46, and Petra Molnar Diop, “The ‘Bogus’ Refugee: Roma Asylum Claimants and Discourses of Fraud in Canada’s Bill C-31,” *Refugee* 30:1 (2014), 67-80.

refugee support groups, the media, academia, the United Nations High Commissioner for Refugees (UNHCR), the political opposition and – importantly – within the governing party of the day. Opposition from this last group prevented these tales from becoming an official narrative and limited the extent to which they were institutionalised in Canadian policy and law. As a result, although the Canadian inland system contained a wide range of restrictive measures at the end of the last century, the UNHCR nonetheless maintained that the Canadian system, “with its resources, expertise and humanitarian focus, [was] recognized internationally as a model to be emulated.”<sup>31</sup>

**Box 2: Canadian Government responses to the boat arrival of 174 Sikh asylum seekers in 1987<sup>32</sup>**

“...the vast majority [of refugee claimants, who] steal their way in to Canada, confident that although they have broken our laws, we, the people of Canada, will not break our own laws. Not only has the generosity of Canadians been abused, but the generosity of our entire system of justice has been abused...”

“[O]ur first priority as a country is to help genuine refugees who are confined to camps overseas.”

“It is unfair that an individual who is not a legitimate refugee can jump to the head of the line. That undermines a legitimate immigration policy.”

“Not everyone in the world requires our protection. Five billion people should not be allowed to make a claim here.”

“[W]e must also speak for Canada. We must speak for the kind of country we want, the kind of country we want to protect for those refugees who come here. If we allow our laws to be flouted and our system of immigration to be circumvented, if we allow those who do not share our ethics to erode the sense of justice in Canada, we will not have the kind of Canada that will be an enticement to refugees.”

An important shift has since taken place, however, as tales of Canadian generosity and its abuse have now been adopted and institutionalised as an official policy validation narrative. If you examine speeches and comments made by Minister Kenney and his successor Christopher Alexander since 2006, in introducing numerous restrictions making it harder for asylum seekers to seek and find protection in Canada,<sup>33</sup> you can see these tales being told with a singularity of mind and purpose.<sup>34</sup> Minister Kenney’s comments when he introduced the government’s 2010 *Balanced Refugee Reform Act* provide a representative example of the policy validation role that these tales now play:

Canada has a long and proud history of providing protection to the vulnerable. This protection extends both to resettling refugees from abroad and to those who seek asylum at our borders, and who go on to successfully be granted refugee status. The legislation that I brought to the House today reinforces this commitment. This legislation also addresses the fact that our generosity is too often abused by false asylum claimants who come here and

<sup>31</sup> UNHCR, “Comments on Not Just Numbers: A Canadian Framework for Future Immigration” (Ottawa, 1998), 1.

<sup>32</sup> The first two quotes are of Immigration Minister Benoit Bouchard (August 11, 1987), 7911-12, the next two are of Secretary of State Gerry Weiner (August 14, 1987), 8072, and the last is of Parliamentary Secretary (Immigration) Benno Friesen (August 13, 1987), 8022-23, all found in Canada, *House of Commons Debates [HCD]*.

<sup>33</sup> For an analysis of recent restrictive measures implemented, see Erfrat Arbel and Alletta Brenner, *Bordering on Failure: Canada-U.S. Border Policy and the Politics of Refugee Exclusion* (Cambridge [MA]: Harvard Immigration and Refugee Law Clinical Program, Harvard Law School, 2013).

<sup>34</sup> Moreover, there is hardly any message deviation from either the front or back benches of the government, a reflection of the Prime Minister’s success at message control within the government more generally; see, Lawrence Martin, *Harperland: The Politics of Control* (Toronto: Viking Canada, 2010).

do not need our protection. They're misusing the asylum system to jump the immigration queue rather than waiting their turn like everyone else...

They try to enter the country through the back door and they take advantage of our asylum system to avoid waiting in line like everyone should for their application to be processed.

58 percent of asylum claims processed by the Immigration and Refugee Board are subsequently rejected by the board, abandoned or withdrawn by claimants. You only have to search the World Wide Web to find sites that promote making fraudulent asylum claims as an easy way to get into Canada and remain here for years.<sup>35</sup>

Minister Kenney goes on to introduce themes of criminality and the waste of tax-payers' money, and cites public opinion polls to provide popular validation to his proposed policies.

In the tales being told about generosity and its abuse, the situation is presented in quite stark and particular terms. This is what renders them so powerful – they deny the complexity and variance that, as the Showler quote earlier underscores, is inherent in the determination of refugee status. The 58 percent of claimants referenced by Kenney are not allowed to tell their own stories in this debate because tales are already being told about them. And lest they have any doubts, Canadians are informed that they have always been and continue to be generous. As Minister Alexander has said: “Our country’s strong tradition of refugee protection stretches back several centuries, even predating Confederation, and it’s because of that tradition that we’ve done these reforms and have been determined every step of the way to make them a success.”<sup>36</sup>

However, these are not the only tales we could tell – and they may not be the best or most important either.

### III. Tales We Could Tell

One response to the this new official narrative could be to identify times when we have assumed the worst about refugees, been ungenerous to those seeking protection from persecution and then acknowledged that we were wrong. Most obviously, we could recount Canada’s rejection of Armenian and Jewish refugees during the first half of the twentieth century along these lines.<sup>37</sup> Indeed, the government itself has adopted this approach to distance how we are now (generous) from how we were in the past.<sup>38</sup> There are, however, other tales we could tell that speak less to

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<sup>35</sup> CIC, “Speaking notes – Remarks by the Honourable Jason Kenney, P.C., M.P. Minister of Citizenship, Immigration and Multiculturalism an balanced refugee reform” (March 30, 2010), accessed online at <http://www.cic.gc.ca/english/department/media/speeches/2010/2010-03-30.asp>.

<sup>36</sup> CIC, “Speaking notes for Chris Alexander, Canada’s Citizenship and Immigration Minister at the News Conference Regarding Canada’s Asylum System” (January 22, 2014), accessed online at <http://news.gc.ca/web/article-en.do?nid=831769>.

<sup>37</sup> See Isabel Kaprielian-Churchill, *Like Our Mountains: A History of Armenians in Canada* (Kingston and Montreal: McGill-Queen’s University Press, 2005); and Irving Abella and Harold Troper, *None Is Too Many: Canada and the Jews of Europe 1933-1948* [Third Edition] (Toronto: Lester Publishing Limited, 1991), respectively.

<sup>38</sup> For example, Kenney proposed that Canada’s rejection of Jews at the time “is difficult given Canada’s global reputation as a champion of human dignity, and indeed as one of the strongest countries in the world in the past several decades with respect to refugee resettlement, to imagine.” See CIC, “Speaking notes for The Honourable Jason Kenney, P.C., M.P. Minister of Citizenship, Immigration and Multiculturalism, and Dr. Mario Silva, 2013-14 Chair of the International Holocaust Remembrance Alliance” (March 5, 2013), accessed online at <http://www.cic.gc.ca/English/department/media/speeches/2013/2013-03-05.asp>. Kenney also handled the government’s recognition of the Armenian genocide.

what was done and more to how it was done and why. These tales matter because they encourage us to consider how to respond to asylum seekers as human beings, with all the complexity and variance that this involves, by invoking complex and variable traditions of fairness and equality with deep roots in Canadian history.<sup>39</sup>

*1885 Chinese Immigration Act*: I will start with the *1885 Chinese Immigration Act*, a story that many of you have probably heard before. Although Chinese migrant labour was used extensively in the construction of the Canadian Pacific Railway, once the Last Spike had been driven in, the federal government quickly turned to restrict the arrival of Chinese migration.<sup>40</sup> The proposed law would impose (with some few exceptions) a \$50 Capitation (or “Head”) Tax on all Chinese migrants and limit the number of Chinese passengers per vessel tonnage to 50 (the restriction for other immigrants per vessel tonnage was two under the *1869 Immigration Act*). The law constituted, the Ontario Court of Appeal observed in its 2002 ruling on the Chinese Head Tax Reparations case, the first in a series of discriminatory actions by the federal government that “represents one of the more notable stains on our minority rights tapestry.”<sup>41</sup> Racism was exhibited not just in the fact that the law only applied to those of the “Chinese race” but also in the tales told about “John Chinaman” in support of such measures.<sup>42</sup> This is the story generally found in textbooks and academic studies.

There is, however, more to this tale worth telling.<sup>43</sup> When the government apologised in 2006 for the imposition of the Head Tax, offering public recognition of the injustice, symbolic payments for individuals who had paid the tax and funding for educational initiatives to inform the public about this history, the Prime Minister observed that “our failure to truly acknowledge these historical injustices has led many in the community from seeing themselves as fully Canadian.”<sup>44</sup> He rightly concluded, in other words, that unfair and discriminatory actions undermine social cohesion. He then went further:

No country is perfect. Like all countries, Canada has made mistakes in its past, and we realize that. Canadians, however, are a good and just people, acting when we’ve committed wrong. And even though the head tax – a product of a profoundly different time – lies far in our past, we feel compelled to right this historic wrong for the simple reason that it is the decent thing to do, a characteristic to be found at the core of the Canadian soul.<sup>45</sup>

In other words, we did not know better then but do now, and because we now know better we acknowledge and atone for the injustice. This is done because we are – in our collective Canadian soul – decent. But what if we did know better back then, and what if we are still capable of causing injustice now? Do we really, in other words, live in such “a profoundly different time”?

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<sup>39</sup> The first three examples are drawn from Christopher G. Anderson, *Canadian Liberalism and the Politics of Canadian Border Control, 1867-1967* (Vancouver: University of British Columbia Press, 2013).

<sup>40</sup> See James Morton, *In the Sea of Sterile Mountains: The Chinese in British Columbia* (Vancouver: J.J. Douglas Ltd., 1973).

<sup>41</sup> *Mack v. Attorney General of Canada* (2002), 60 O.R. (3d) 737 (C.A.).

<sup>42</sup> See Peter W. Ward, *White Canada Forever: Popular Attitudes and Public Policy Toward Orientals in British Columbia* [Second Edition] (Montreal and Kingston: McGill-Queen’s University Press, 1990).

<sup>43</sup> Drawn from Christopher G. Anderson, “The Senate and the Fight against the 1885 Chinese Immigration Act,” *Canadian Parliamentary Review* 30:2 (2007), 21-26.

<sup>44</sup> “Address by the Prime Minister on the Chinese Head Tax Redress” (22 June, 2006), accessed online at <http://www.pm.gc.ca/eng/news/2006/06/22/address-prime-minister-chinese-head-tax-redress>.

<sup>45</sup> *Ibid.*

The 1885 legislation was passed by the House of Commons with hardly a word of opposition<sup>46</sup> but this cannot be said of the subsequent debates in the Senate. During 1885-87, opponents not only sought to turn back the legislation but would have succeeded had it not been for some fancy procedural footwork on the government's part. As you can see in Box 3, numerous senators opposed the legislation on the grounds of both fairness and equality. Now, we should not remain blind to the fact that critics often expressed their ideas in racist terms, and were motivated by, for example, a desire to import cheap labour or to convert the Chinese to Christianity – we do not need to hold that they were saints.<sup>47</sup> Nonetheless, they often spoke compellingly and cogently in support of fairness and equality, values understood to lie at the heart of British liberalism (an essential part of being Canadian during the country's first century), and that still shape debates over immigration, refugees and asylum seekers.

### Box 3: Opposing the 1885 Chinese Immigration Act in the Senate<sup>48</sup>

“...the Parliament of Canada should [not] make any distinction of race at all; that the Chinese, Negroes, Indians and Whites should be on the same footing; that no exceptions should be made in favour of one or against another race.”

“I think it is entirely inconsistent with the very fundamental principle of the British constitution that legislation of this kind should find a place on the statute book... [It is] a law so utterly inconsistent with the well understood rights which every human being has when he steps on British soil.”

“In a free country, Chinamen as well as persons of other nationalities have their rights and privileges, so long as they conform to the laws of the land.”

“We, who pride ourselves on the freedom of our institutions ... that we should become slave-drivers, and prohibit strangers from coming to our hospitable shore because they are of a different colour and have a different language and habits from ourselves ... is a thing I cannot understand.”

Rather than a break with the past, then, it is possible to see significant continuity. Perhaps we did know better but privileged some stories about who we were over others. The *1885 Chinese Immigration Act* can be viewed, in fact, as the first in series of deliberate limitations on fairness and equality, imposed to keep out those deemed to be undesirable or non-preferred. The government was learning that its restrictive control objectives necessitated greater unfairness and inequality (a lesson that continues to inform policy making in this field), a perfect example of which can be seen in our next tale, about the passage of the *1910 Immigration Act*.

*1910 Immigration Act*: The government soon expanded its restrictive approach, introducing laws and policies to authorise the use of race, ethnicity and culture, among others, as grounds for exclusion. It began, however, to experience set-backs as a result of judicial rulings, especially in British Columbia. The courts, in other words, provided political space for alternate narratives of fairness and equality. Among Immigration officials, these rulings fostered a strong antipathy towards the judiciary, and in 1909 the government introduced what would become Section 33 of

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<sup>46</sup> A few Members of Parliament did protest earlier in the year, however, when the government restricted the voting rights of Chinese immigrants.

<sup>47</sup> On this issue, see Audrey Macklin, “Can We Do Wrong to Strangers,” and John McLaren, “The Head Tax Case and the Rule of Law: The Historical Thread of Judicial Resistance to ‘Legalized’ Discrimination,” in D. Dyzenhaus and M. Moran (eds.), *Calling Power to Account: Law, Reparations, and the Chinese Canadian Head Tax Case* (Toronto: University of Toronto Press, 2005), 60-112.

<sup>48</sup> The quotes are of Senators Lawrence G. Power (July 13, 1885), 1280, Alexander Vidal (July 13, 1885), 1297, William J. Macdonald (January 30, 1885), 6, and James Dever (July 13, 1885), 1298, all from Canada, *Senate Debates*.

the *1910 Immigration Act* to bar, effectively, the courts from reviewing departmental decisions related to immigration:

No court, and no judge or officer thereof, shall have jurisdiction to review, quash, reverse or otherwise interfere with any proceeding, decision or order of the Minister or of any Board of Inquiry, or officer in charge, had, made, or given under the authority and in accordance with the provisions of this Act relating to the detention or deportation of any rejected immigrant, passenger or other person, upon any ground whatsoever.

This barrier would remain in place for almost 60 years, until immigration was again made more fully subject to judicial scrutiny in 1967.

At the time, Immigration Minister Frank Oliver argued that “until a man has actually and legally entered Canada, he is not entitled to claim the protection of the courts.”<sup>49</sup> Government actions, he later proposed in the House, had to be protected to ensure that the people’s will was respected:

[I]n the face of the menace of Asian immigration, that the administration of the Government of Canada should be fully empowered, and should be absolutely responsible for protection against that menace, and that if the courts or any processes of law are allowed to interfere with the proper exercise of that authority in expressing the mind and the will of the people of Canada, then we are facing a condition that will require readjustment, and serious readjustment.<sup>50</sup>

When non-citizens used the courts to challenge such unfairness and discrimination, he complained, Canada was made “a laughing-stock to the world.”<sup>51</sup>

The legislation, while applicable to all non-citizens, was certainly aimed at East Asians, who were “portrayed as the most litigious of Vancouver’s Asian minorities” in the local press, and who had been successful in contesting the state’s authority in a number of court cases.<sup>52</sup> The justice of Canada’s restrictive response was famously tested after 376 East Indians arrived aboard the *Komagata Maru* in 1914, when the Supreme Court of British Columbia ruled that the government’s right to admit or exclude “immigrants of any or every race or nationality, on any terms she pleases, is complete.”<sup>53</sup> The *Komagata Maru* and its passengers were forced to leave soon thereafter. The Canadian government recently issued an official apology for this action but, as with the case of Chinese migrants, focused on only part of the tale. First, it once again used history to celebrate rather than question who we are: “The painful memory of the *Komagata Maru* inspires us all to continue to build on our nation’s reputation as a land that embraces tolerance above intolerance, diversity above discrimination, and openness above exclusion.”<sup>54</sup> Second, it focused firmly on the victimhood of the East Indian community:

The *Komagata Maru* incident is one of the most poignant moments in Canadian history and illustrates the extreme racism that once existed in Canada. Upon arriving in British Columbia, early East Indians encountered hate, ostracism and negative stereotyping that

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<sup>49</sup> Canada, *HCD* (January 19, 1910), 2135.

<sup>50</sup> Canada, *HCD* (March 2, 1914), 1224.

<sup>51</sup> *Ibid.*

<sup>52</sup> Doreen M. Indra, “South Asian stereotypes in the Vancouver Press.” *B.C. Studies* 2:2 (1979), 166-87.

<sup>53</sup> *Re Munshi Singh*. 1915, 20 *BCR*, 255.

<sup>54</sup> Conservative MP Nina Grewal, in Canada, *HCD* (May 15, 2008), 1805.

resulted in discriminatory immigration restrictions, social and economic deprivation, and political disenfranchisement.

Discrimination was legislated, legal and official. Injustices, humiliation, prejudice and exploitation were rampant. The *Komagata Maru* incident was not an error but rather an intended, deliberate action of the divisive, exclusionist and racist policies of the provincial and federal governments of the day.<sup>55</sup>

With this apology, the government proposed, “future generations and new Canadians will be able to raise their head in pride as their dignity is restored.”<sup>56</sup>

What is overlooked in this retelling is the fact that in the face of such exclusion, East Indians were not passive victims but mobilised in support of core values of British liberalism – fairness and equality. As Sunder Singh, an Oxford University graduate who helped to establish a Canada-India Committee in Toronto, reminded the Empire Club of Canada in 1912:

All we are asking of you is justice and fair play, because the Sikhs have believed in fair play, and have believed all the time that they will get justice; that ultimately they will get justice from the British people... [Y]our laws cannot be one thing for one set and a different thing for the rest of us.<sup>57</sup>

Apart from engaging the courts, the East Indian community undertook a wide range of political activities, such as “spending money and time, sending petitions and deputations, holding meetings and passing resolutions,” as well as undertaking direct action tactics to circumvent Canadian immigration laws.<sup>58</sup> By challenging the government’s limitations on fairness and equality, the community was helping to articulate the meaning of being Canadian. In telling their own tales, in short, East Indians were reminding Canadians of theirs.

By the First World War, Canada had constructed an effective border control system founded on unfairness and inequality. In doing so, it had to work against deeply rooted ideas about the nature of British liberalism. There was nothing inevitable about this; indeed, critics spoke eloquently and passionately against this approach. The state, and many but not all Canadians, could not be convinced, however. As we scroll forward to the end of Second World War, we can thus read numerous stories of injustice produced and perpetuated through this approach, with respect to both non-Europeans and Europeans. Apart from the cases of Armenian and Jewish refugees noted earlier, concerted efforts were made to exclude (and remove) those deemed to be, singularly or in some combination, poor, ill, amoral, criminal or on the political left.<sup>59</sup> While Chinese and East Indian migrants faced increasing barriers to and within Canada, such discrimination found its most extreme expression, perhaps, in policies not only to relocate and detain thousands of Japanese-Canadians (many of whom were Canadian-born) during the Second

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<sup>55</sup> Grewal, in *ibid.*, 1800.

<sup>56</sup> *Ibid.*, 1805.

<sup>57</sup> Sunder Singh, “The Sikhs in Canada,” in D.J. Goggin (ed.), *Empire Club of Canada* (Toronto: Warwick Bro’s & Rutter, Limited, 1913), 112-14.

<sup>58</sup> For various examples, see Norman Buchignani, Doreen M. Indra and Ram Srivastava, *Continuous Journey: A Social History of South Asians in Canada* (Toronto: McClelland and Stewart, Ltd., 1985), Chapter 2.

<sup>59</sup> See, for example, Donald Avery, *‘Dangerous Foreigners’ European Immigrant Workers and Labour Radicalism in Canada, 1896-1932* (Toronto: McClelland and Stewart, 1979), and Barbara Roberts, *Whence They Came: Deportation from Canada 1900-1935* (Ottawa: University of Ottawa Press, 1988).

World War, but in subsequent efforts to “repatriate” them to Japan and revoke their Canadian citizenship.<sup>60</sup>

All the while, support for the values of fairness and equality continued to be voiced in public debate, often most vigorously by the ‘undesirables’ and ‘non-preferred’ themselves. Such stories have long remained scattered throughout the Canadian immigration history literature but are increasingly being recovered through the work of scholars such as your own Stephanie Bangarth.<sup>61</sup> This rights-centred narrative eventually returned to the fore after the Second World War, as fairness and equality became touchstones in political and policy debates surrounding immigration and refugees.<sup>62</sup> For our purposes today, I want to tell two more tales about the past that reveal how ideas of fairness and equality were brought to bear on questions of Canada’s responsibilities towards asylum seekers.

*1967 Immigration Appeal Board Act*: As noted earlier, the *1910 Immigration Act* effectively removed judicial oversight from the actions of the Immigration department, and this was only restored with the passage of the *1967 Immigration Appeal Board Act*. By the mid-1960s, the consensus over the need to treat non-citizens as rights-bearing individuals within Canadian immigration and refugee law and policy was well-established, at least in Parliament, where scarcely a voice was raised against the application of the principles of fairness and equality to immigration policy. Thus, when the government released a *White Paper on Immigration* in 1966, its bold declaration that Canadian policy should “as a matter of principle ... involve no discrimination by reason of race, colour or religion” raised no significant opposition.<sup>63</sup> This consensus was equally apparent during debates over the creation of an Immigration Appeal Board (IAB), as seen when Immigration Minister Jean Marchand informed the House that “to the best of our ability immigration must be administered in accordance with the basic principles of justice and humanity which Canadians demand in their national endeavours.”<sup>64</sup>

These principles were also to be extended to asylum seekers, with the *White Paper* signalling the government’s intention to sign the *1951 Convention* and to create an inland system “with authority to decide whether an individual applying for asylum is entitled to refugee status.”<sup>65</sup> This would allow Canada, one immigration official observed, to “determin[e] these individual cases more precisely and more fairly.”<sup>66</sup> Although such an organisation – the IRB – was not

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<sup>60</sup> See, for example, Ken Adachi, *The Enemy That Never Was* (Toronto: McClelland and Stewart, 1976), Patricia E. Roy, *The Oriental Question: Consolidating a White Man’s Province, 1914-41* (Vancouver: University of British Columbia Press, 2003), and Ward (1990), *op. cit.*

<sup>61</sup> In particular, see “‘We Are Not Asking You to Open Wide the Gates for Chinese Immigration’: The Committee for the Repeal of the Chinese Immigration Act and Early Human Rights Activism in Canada,” *Canadian Historical Review* 84:3 (2003), 305-22, and *Voices Raise in Protest: Defending North American Citizens of Japanese Ancestry, 1942-49* (Vancouver: University of British Columbia Press, 2008). More generally, see Christopher G. Anderson, “Review Essay: Immigration, Immigrants, and the Rights of Canadian Citizens in Historical Perspective,” *International Journal of Canadian Studies* 43 (2011), 207-19.

<sup>62</sup> On the broader movement towards a rights-based approach to Canadian politics, see Ross Lambertson, *Repression and Resistance: Canadian Human Rights Activists 1930-1960* (Toronto: University of Toronto Press, 2005), and Christopher MacLennan, *Toward the Charter: Canadians and the Demand for a National Bill of Rights, 1929-1960* (Montreal and Kingston: McGill-Queen’s University Press, 2003).

<sup>63</sup> Department of Manpower and Immigration, *White Paper on Immigration* (Ottawa, 1966), 6.

<sup>64</sup> Canada, *HCD* (June 3, 1966, 5940).

<sup>65</sup> Department of Manpower and Immigration (1966), *op. cit.*, 23.

<sup>66</sup> E.P. Beasley (Director, Policy and Planning Directorate), in Canada, *Minutes of Proceedings and Evidence of the Special Joint Committee of the Senate and the House of Commons on Immigration*, No. 4 (1966), 149.

established until 1989, the IAB was empowered to review deportation orders against those seeking refuge and “to bring the humanitarian and other non-legal aspects of a particular case fully into consideration” in rendering its decisions.<sup>67</sup>

Such ideas were now held to embody essential Canadian values. As MP Andrew Brewin observed at the end of the *1967 IAB Act* debates:

Fundamental rights are not for the majority alone. They are not for the popular. They are not for the accepted. Fundamental rights are for minorities, for unpopular minorities. They are for harried, would-be immigrants who are seeking admission to this country. It is important in the interests of Canada, not just of the immigrants, that our immigration procedures should be fair and in accordance with the best of our traditions.<sup>68</sup>

In keeping with the post-Second World War creation of pan-Canadian nationalism, the principles of fairness and equality were no longer discussed as aspects of British liberalism but deemed to reflect distinctly Canadian traditions. This included a commitment to the post-war international human rights regime, a dimension that became more clearly articulated as Canada determined how to respond better to the growing number of asylum seekers arriving in the 1980s.

*1985 Plaut Report*: For a short time, it seemed as though a robust narrative connecting fairness and equality with Canada’s response to asylum seekers might take hold. In 1980, for example, Immigration Minister Lloyd Axworthy called on the country to “guide itself in this matter not by the minimal requirements of our international obligations but by the higher traditional Canadian standards of fairness and justice.”<sup>69</sup> Joe Stern, then Chair of the Refugee Status Advisory Committee (the IRB’s predecessor), was equally emphatic:

The highest measures of the moral character of our country should be our willingness to allow individuals who have no claim on us, save that they are victims of persecution, to make a claim on us for protection and our readiness to meet that responsibility and offer that protection.<sup>70</sup>

The system, however, continued to deny important features of fairness and equality, especially with respect to allowing refugees to tell their own stories.<sup>71</sup> After years of incremental and uneven change, the government asked Rabbi W. Gunther Plaut to assess the inland system and make recommendations for its reform. Plaut, a trained lawyer and refugee from Nazi Germany who became a prominent Jewish leader and human rights advocate in Canada,<sup>72</sup> submitted his report in 1984. Although generally forgotten today, his work calls for an explicit commitment to

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<sup>67</sup> John C. Munro, in Canada, *HCD* (February 20, 1967, 13268). On the IAB system and early variations in Canadian asylum policy, see William Janzen and Ian A. Hunter, “The Interpretation of Section 15 of the Immigration Appeal Board Act,” *Alberta Law Review* 11 (1973), 260-78, and A.E. Gotlieb, “Canada and the Refugee Question in International Law,” *The Canadian Yearbook of International Law* 13 (1975), 3-24.

<sup>68</sup> Canada, *HCD* (March 1, 1967, 13636).

<sup>69</sup> Canada, *Standing Committee on Labour, Manpower and Immigration* (1980-83), No. 22, 5.

<sup>70</sup> Joe Stern, “Refugees’ Rights and International Obligation,” in A.E. Nash (ed.), *Human Rights and the Protection of Refugees under International Law* (Halifax: Institute for Research on Public Policy, 1988), 45.

<sup>71</sup> See Christopher J. Wydrzynski, “Refugees and the Immigration Act,” *McGill Law Journal* 25:2 (1979), 154-92, and Christopher L. Avery, “Refugee Status Decision-Making: The Systems of Ten Countries,” *Stanford Journal of International Law* 19:2 (1983), 235-356, as well as two government-commissioned reports, Task Force on Immigration Practices and Procedures, *The Refugee Status Determination Process* (Ottawa, 1981), and Ed Ratushny, *A New Refugee Status Determination Process For Canada* (Ottawa, 1984).

<sup>72</sup> W. Gunther Plaut, *Unfinished Business: An Autobiography* (Toronto: Lester & Orpen Dennys Publishers, 1983).

fairness and equality for asylum seekers, rooted in both Canadian traditions stemming from British liberalism as well as international human rights instruments.

While traditions of providing refuge can be found throughout human history, Plaut observed, the consolidation of nation-states produced a sharper differentiation between insiders and outsiders on legal-political and socio-cultural grounds. In doing so, it privileged self-perceived interests of state over those of refugees and asylum seekers. The strangers as embodied in the asylum seekers “who come to our shores,” he wrote, “are [therefore] considered not so much persons in need of protection as potential lawbreakers who must be confronted with enforcement procedures,”<sup>73</sup> a response he often found to be “related to the twin factors of xenophobia and ethnocentrism.”<sup>74</sup>

According to Plaut, however, there were legal and moral reasons why Canada’s response ought to be refugee- rather than state-centred. On a legal plane, in becoming a signatory to the *1951 Convention*, Canada “voluntarily limited its sovereignty,” so that “[d]eclaring a claimant to be a refugee is ... not a privilege we grant, but rather a right we acknowledge.”<sup>75</sup> On a moral plane, two competing claims exist: the state’s claim to protect the interests of the receiving society and the refugee’s claim to protection from persecution, neither of which he found to be absolute.<sup>76</sup> While the legal principle of non-refoulement was central, he maintained that it must ultimately be secured through a moral commitment to privilege and thereby realise the objective of the *Convention* – refugee protection – over a more inward-looking conception of state interests.

When he reviewed the course of Canadian history in this respect, Plaut was encouraged: “As a nation we have been moving to accord ever greater recognition to the refugee as a person who is deserving of careful consideration.”<sup>77</sup> Whereas immigration policy is rooted in state sovereignty, and therefore in processes of selection, asylum policy has as its first concern the protection of the refugee. If this is subsumed to interests of state narrowly construed, then the principle of non-refoulement will not be honoured, he argued. Thus, the inland system must “be seen and designed as an act of welcome. It must be forever responsive to our humanitarian impulses and obligations and wary of any encroachment that would seek to impose other considerations and concerns upon it.”<sup>78</sup> The aim of Canadian refugee law and policy should be, then, “to fulfill Canada’s international legal obligations with respect to refugees and to uphold its humanitarian tradition with respect to the displaced and the persecuted.”<sup>79</sup> If Canada instead designed the system around a presumption of abuse, he maintained, protection would unavoidably be undermined because we would, in effect, be telling tales about asylum seekers rather than letting them tell their own stories.

Thus, in telling tales of generosity and abuse, in adopting this perspective as an official policy validation narrative and institutionalising it within Canadian law and policy, other tales centring on Canadian traditions of fairness and equality – with deep roots in Canadian history and tradition – have been sidelined, with especially serious consequences for asylum seekers. This, as

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<sup>73</sup> W. Gunther Plaut, “Refuge or Asylum: The Canadian Perspective,” in *Eight Decades: The Selected Writings of W. Gunther Plaut* (Toronto: Dundurn Press, 2008), 345.

<sup>74</sup> W. Gunther Plaut, *Asylum: A Moral Dilemma* (Toronto: York Lanes Press, 1995), 67.

<sup>75</sup> W. Gunther Plaut, *Refugee Determination in Canada: Proposals For A New System* (Ottawa, 1985), 16, 17.

<sup>76</sup> “Any moral rule has its limitation, and the rights of the individual are needs limited by the rights of the collective” (Plaut, 1995, *op. cit.*, 63).

<sup>77</sup> Plaut, 1985, *op. cit.*, 15.

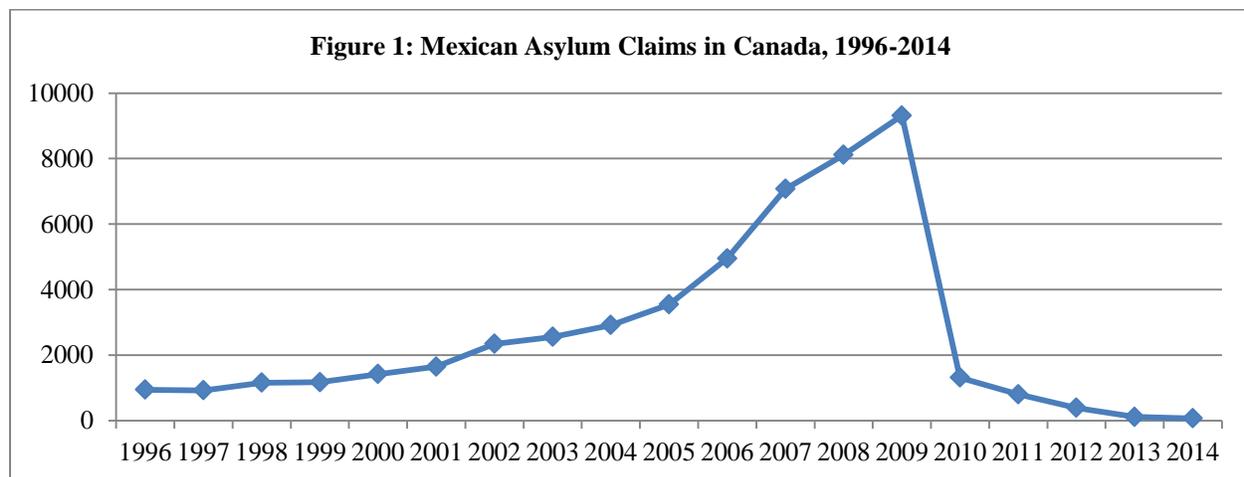
<sup>78</sup> *Ibid.*

<sup>79</sup> *Ibid.*

will now be seen, is precisely what happened when the Canadian government imposed a visa requirement on visitors from Mexico on July 13, 2009.

#### IV. Telling Tales Today

According to Minister Kenney, this action was necessary due to the high number of refugee claims being made by Mexican citizens in Canada: “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,” he said.<sup>80</sup> The number of Mexican claims before the IRB had certainly grown, from 1,174 in 1999 to 8,069 in 2008, and some 5,500 claims had reportedly already been made in the first half of 2009 (see Figure 1). By 2005, Mexico had become the top country for refugee claims in Canada, with around 3,500 individuals seeking asylum on such grounds as “claims of domestic abuse, state failure to ensure protection, persecution due to sexual preference, and threats from security forces and organized crime.”<sup>81</sup> The effects of the visa decision were immediate and dramatic: compared with 1,287 during the three months prior to the visa imposition, 35 claims were made at Canadian ports of entry during the next three months or so.<sup>82</sup> By 2012, Mexico was off Canada’s asylum claims top ten list for the first time since 1996.



Sources: Culled from various government sources, on file with author; 2014 figure through September.

From the time of the visa imposition forward, officials clearly and singularly tied the number of claimants to the tale that bogus, fraudulent and/or illegitimate asylum seekers were using the system to gain access to Canada and abusing Canadian generosity.<sup>83</sup> For example, Kenny’s July 13 press announcement stated:

<sup>80</sup> CIC, “Canada imposes a visa on Mexico,” *News Release* (Ottawa, July 13, 2009).

<sup>81</sup> Celeste Mackenzie, “Mexico now Canada’s largest source of refugee claimants,” *Telegraph-Journal* [Saint John, N.B.] (July 11, 2006), A7.

<sup>82</sup> According to Conservative MP Terence Young, in Canada, *HCD* (December 2, 2009), 1840.

<sup>83</sup> In 2013, once the Canadian system had been made more restrictive and Mexico had been declared a safe country of origin, the government shifted its argument to criminality and security concerns, and claimed that these had always been involved in its visa imposition decision; see Stewart Bell and Tobi Cohen, “Czechs to get visa reprieve, but Mexicans out of luck; ‘Serious concerns’ on security not yet addressed,” *National Post* (October 17, 2013), A1.

The visa process will allow us to assess who is coming to Canada as a legitimate visitor and who might be trying to use the refugee system to jump the immigration queue. It is not fair for those who have been waiting patiently to come to Canada, sometimes for years, when others succeed in bypassing our immigration system... By taking this important step towards reducing the burden on our refugee system, we will be better equipped to process genuine refugee claims faster.<sup>84</sup>

The government made much of the fact that the acceptance rate for Mexican claimants in 2008 was 11 percent, and routinely suggested that the remaining 89 percent were abusing the system. Danielle Norris, a CIC spokesperson, asserted that 90 per cent of the more than 9,000 claims made since 2005 had been “rejected as illegitimate,”<sup>85</sup> while Conservative MP John Weston (who headed the Canada-Mexico Parliamentary Friendship Group) called those who did not receive *Convention* status “fraudulent.”<sup>86</sup> To reinforce this idea, Kenney told a tale of how he had spent some time observing Mexicans making refugee claims at the Calgary airport: “It’s like a word-of-mouth trend,” he said. “The people I saw making claims fit the pattern of folks who appear to be intending to stay and work in Canada for a certain period of time and then go back.”<sup>87</sup>

For the most part, the Canadian media and economic interest groups focused on the negative effects of the visa imposition on tourism and trade, as both took a hit in the aftermath of the decision. They overwhelmingly accepted the official narrative provided by the government, that the move was aimed at people who did not deserve our attention: “The visa requirement succeeded in choking off the torrent of bogus claimants, but it was such a blunt instrument that the law of unintended [economic] consequences kicked in,” columnist John Ivison wrote.<sup>88</sup> For columnist Jeffrey Simpson, the real problem was Canada’s commitment to allowing asylum seekers to tell their own stories, as secured by the 1985 *Singh* decision.<sup>89</sup> The claimants did not need a hearing, he maintained, because they were not refugees: “The people who came claiming refugee status were economic migrants, people seeking better lives. When they heard how easy it was to enter Canada and get caught up in the refugee-determination system, they told friends and the surge was on.”<sup>90</sup> Many academics reiterated these assertions in addressing the effects on Canada-Mexico relations.<sup>91</sup>

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<sup>84</sup> Quoted in CIC, “Canada imposes a visa on Mexico,” *News Release* (Ottawa, July 13, 2009).

<sup>85</sup> Kyle Mullin, “New visa requirements damaging Canada’s reputation, student says,” *Telegraph-Journal* (July 23, 2009), A3.

<sup>86</sup> Todd Coyne, “Visas and violence take toll on Canada-Mexico tourism,” *The North Shore Outlook* (February 02, 2012), 1.

<sup>87</sup> Kelly “Visa rules threaten student exchange programs,” *Calgary Herald* (July 16, 2009), B1.

<sup>88</sup> John Ivison, “Kenney needs results on Mexico file,” *National Post* (May 28, 2010), A4.

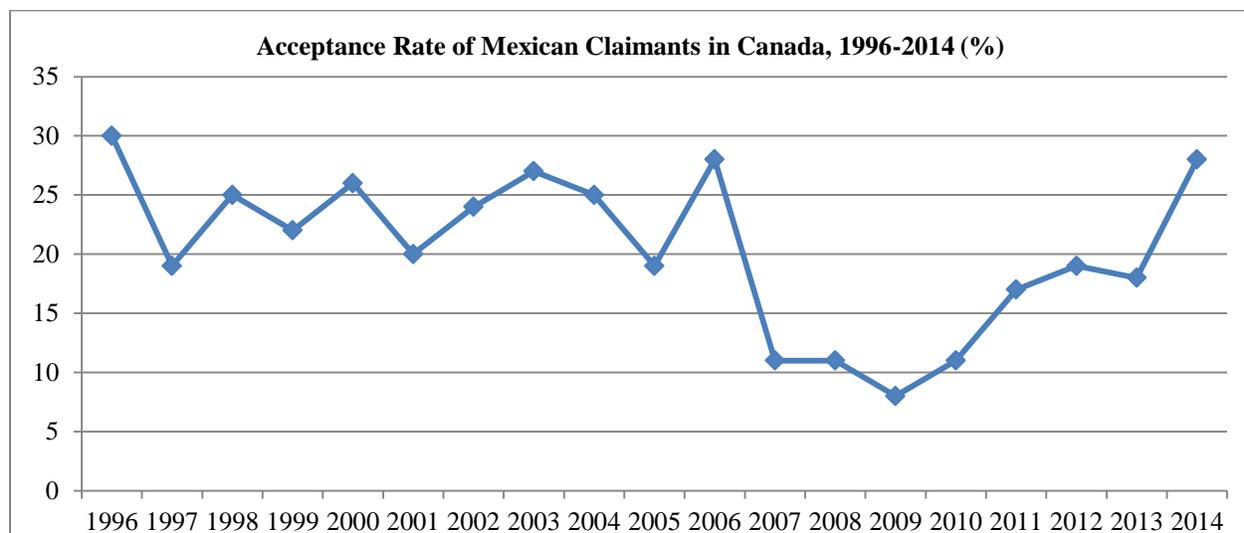
<sup>89</sup> Jeffrey Simpson, “Blame the refugee system,” *The Globe and Mail* (July 14, 2009), x.

<sup>90</sup> Jeffrey Simpson, “Canadian visas send the wrong message to Mexico,” *The Globe and Mail* (November 13, 2013), x.

<sup>91</sup> See, for example, Kim Richard Nossal, “Canadian Policy Towards Mexico: Pastor’s Puzzle Reconsidered,” *North American Dialogue Series*, No. 13 (February 22, 2010), Olgo Abizaïd and Graeme Douglas, “The Canada-Mexico Relationship: Looking Back and Ahead,” in A. Bugailiskis and Andrés Rozental (eds.), *Canada Among Nations 2011-201 – Canada and Mexico’s Unfinished Agenda* (Montreal and Kingston: McGill-Queen’s University Press, 2012), 13-24, Arturo Santa-Cruz, “Canada-Mexico Relations: Interdependence, Shared Values...and the Limits of Cooperation,” *American Review of Canadian Studies* 42:3 (2012), 401-17, and Duncan Wood, “Canada-Mexico Relations: Moving Beyond 65 Years of Stunted Growth,” in P. McKenna (ed.), *Canada Looks South: In Search of an America’s Policy* (Toronto: University of Toronto Press, 2012), 117-48.

In keeping with the policy validation role of its generosity/abuse narrative, the government linked the removal of the visa directly to the need for increased restrictions on fairness and equality in the Canadian inland system. Thus, Kenney made clear that the visa was just an initial response, underscoring “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.”<sup>92</sup> This reform soon came in the form of the *2010 Balanced Refugee Reform Act* that introduced extensive new restrictions into the inland system.

The situation looked quite different, however, to those who interpreted events through a narrative focused instead on fairness and equality as important Canadian traditions. From this perspective, the imposition of a visa requirement prevented asylum seekers from telling their own stories by labeling Mexican claimants bogus, fraudulent and illegitimate. In telling such tales, the government portrayed the asylum seekers as people we can justly ignore because they have no legitimate claim to make on us: since ‘they’ are abusing ‘our’ generosity, we do not need to listen to their stories. This reluctance to listen was evident as early as 2007, when reports emerged that “Canadian authorities have been refusing entry to increasing numbers of Mexican citizens attempting to visit the country as tourists” in an effort to limit asylum claims.<sup>93</sup> It can similarly be seen when the acceptance rates cited by the government are examined a little more closely.



Sources: Culled from various government sources, on file with author; 2014 figure through September.

First, even if those rejected by the IRB were “fraudulent” or “illegitimate,” the number of claimants who were accepted remains quite large. For example, in 2008, over 600 Mexican nationals were granted refugee status, and during 1996-2014 the cumulative total stood at more than 7,500. Moreover, rejection rates only tell you so much, as it is well understood that those who do not meet the *Convention* definition may very well have had good reasons to fear for their lives and come to Canada – it does not mean that they are trying to abuse the system.<sup>94</sup> As well,

<sup>92</sup> Campbell Clark, “Minister calls for overhaul of Canada’s refugee system,” *The Globe and Mail* (July 14, 2009), [x](#).

<sup>93</sup> Alan Freeman, “Mexicans find a rough welcome mat in Canada,” *The Globe and Mail* (August 6, 2007), [x](#).

<sup>94</sup> This idea was expressed as early as 1985 by Joe Stern, who chaired the predecessor of the IRB and observed that there were “very few cases where we reject a claim because the person is an out and out liar... The vast majority ... are rejected because we have found all of the allegations credible but the allegations do not substantiate that they have a well-founded fear of persecution” under the *Convention*.” Quoted in Anderson (2010), *op. cit.*, 952.

although no firm figures are available, and despite the limited scope of judicial review on points of law provided in the Canadian inland system for failed claims at the IRB stage, the Federal Court had already at that time returned several Mexican asylum cases to the IRB for reconsideration, suggesting that due process was not always being observed adequately.<sup>95</sup> Finally, there is an extensive literature that identifies a host of problems within the IRB itself that undermine the ability of claimants to tell their own stories and to have them heard.<sup>96</sup> Thus, even before the visa imposition, Francisco Rico-Martinez of the FCJ Refugee Centre in Toronto, who had worked on many Mexican claimant cases, complained that “Canadian authorities judge Mexicans much harsher than claimants from other countries and put a greater onus on them to produce more thorough documentation.”<sup>97</sup>

Second, the IRB had implemented a number of procedural techniques that may have decreased the acceptance rate. In 2006, a fact-finding mission was sent to Mexico, which resulted in an issue paper that was written, according to US diplomatic cables released through Wikileaks, “to help adjudicators determine the validity of claims, and the approval rates have subsequently declined.”<sup>98</sup> This technique was used in the case of Roma refugees, with the report on conditions in the Czech Republic being cited in 90 percent of refusals of Roma claims from that country after it was issued in 2009.<sup>99</sup> The IRB also identified three “persuasive decisions” in October 2006 to guide adjudicators in determining Mexican claims,<sup>100</sup> all of which were negative decisions, one on the grounds that there was an internal flight alternative within Mexico and two on the grounds that the claimants could have sought the protection of Mexican state authorities. Although the precise role played in Mexican claim decisions is unclear, a similar technique was used with respect to Roma claimants in 2009 that – before it was struck down by the courts – produced a sharp decline in acceptance rates,<sup>101</sup> leading legal scholar Audrey Macklin to view such techniques as providing efficient and consistent means of “getting to no.”<sup>102</sup> After these tools were introduced, Mexican recognition rates dropped from 28 percent in 2006 to 11 percent in 2007.

Finally, there were and continue to be compelling human rights problems that lead people to leave Mexico. It has long been understood that “even economic migrants from Latin America are

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<sup>95</sup> Charlie Gillis, “Wealth Asylum.” *Maclean's* (December 5, 2012), 14.

<sup>96</sup> There is at present no single compendium for the range of critiques that are out there, which can be found both in a wide range of official (e.g., Auditor General, UNHCR), parliamentary (especially when legislation is under review at the committee stage), judicial, academic, non-governmental and media sources.

<sup>97</sup> Quoted in Mackenzie (2006), *op. cit.*

<sup>98</sup> [http://www.wikileaks.org/plusd/cables/08OTTAWA774\\_a.html](http://www.wikileaks.org/plusd/cables/08OTTAWA774_a.html). The report addressed such issues as the definition of persecution as well as the potential of state protection and internal flight alternatives that would preclude the need for protection; the report can be found at <http://www.refworld.org/docid/46d2ed512.html>.

<sup>99</sup> Cynthia Levine-Rasky, Julianna Beaudoin and Paul St Clair, “The exclusion of Roma claimants in Canadian refugee policy,” *Patterns of Prejudice* 48:1 (2014), 79.

<sup>100</sup> “Persuasive decisions are decisions that have been identified by a division head as being of persuasive value in developing the jurisprudence of a particular division. These decisions are well written, provide clear, complete and concise reasons with respect to the particular element that is considered to have persuasive value, and consider all of the relevant issues in a case. Accordingly, members are encouraged to rely upon persuasive decisions in the interests of consistency and effective decision-making.” <http://www.irb-cisr.gc.ca/Eng/BoaCom/references/pol/notes/Pages/NotePersuas2009.aspx>

<sup>101</sup> Levine-Rasky, Beaudoin and St Clair (2014), *op. cit.*, 78-79.

<sup>102</sup> Audrey Macklin, “Refugee Roulette in the Canadian Casino, in J. Ramji-Nogales, A.I. Shoenholtz, and P.G. Schrag (eds.), *Refugee Roulette: Disparities in Asylum Adjudication and Proposals for Reform* (New York: New York University Press, 2009), 158.

more likely to come to Canada during periods of generalized political turmoil and violence in their home countries.”<sup>103</sup> In the 1990s, there was an expectation that asylum claims would grow due to conditions in Mexico (continued widespread human rights abuses and an inability of the state to respond), the United States (increasingly restrictive policies towards undocumented migrants and asylum seekers) and Canada (visa-free travel for tourists).<sup>104</sup> In the face of an understood expectation of an increase in asylum claims, an important question turns on why the Canadian government did so little to address this issue before it drew on the blunt tool of the visa.<sup>105</sup> Moreover, the important question of why a visa requirement was deemed to be an appropriate tool needs to be addressed. Amidst continuing reports of widespread human rights abuses in Mexico,<sup>106</sup> the recent rise in acceptance rates for Mexican claimants – to 19 percent in 2012, and then to 28 percent in the first three-quarters of 2014 – suggests that the need for protection has not diminished.

Given the restrictive practices that have been put into place, however, such protection is less likely to be provided in Canada.

## V. Telling Tales Again

“I am glad the Prime Minister takes the ground that we have a right to do as we please here in Canada [concerning border control]. The question is: What is right for us to do” J.S. Woodsworth, in Canada, *HCD* (February 20, 1936, 389).

That Canada is turning away from an earlier (imperfect) commitment to asylum seekers is clear. For example, Abraham Abraham, the Canadian UNHCR representative, who as an international diplomat usually comments in quite reserved tones, publicly raised numerous concerns about the Mexican visa: “Restricting the arrival of people is in a way tantamount to excluding them from the possibility of being able to seek asylum. That to us is disturbing because the commitment of

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<sup>103</sup> Alan B. Simmons, “Latin American migration to Canada: new linkages in the hemispheric migration and refugee flow system,” *International Journal* 48:2 (1993), 283.

<sup>104</sup> See, for example, Alan B. Simmons, “Trends and Underlying Forces in Latin American Immigration to Canada,” in A.R.M. Ritter (ed.), *Prospects for Latin America and the Caribbean in the Year 2000* (Ottawa: Canadian Association of Latin American and Caribbean Studies, 1989), 403-17, and T. John Samuel, Rodolfo Gutierrez and Gabriela Vazquez, “International Migration Between Canada and Mexico: Retrospect and Prospects,” *Canadian Studies in Population* 22:1 (1995), 49-65. See also, Alex Neve, “Rights at the Borders: Human Rights and Migration in the Canada-Mexico Relationship,” in D. Drache (ed.), *Big Picture Realities: Canada and Mexico at the Crossroads* (Waterloo: Wilfrid Laurier Press, 2008), 73-86.

<sup>105</sup> Indeed, when it had the chance to take a leadership role more in keeping with the commitment to equality and fairness reviewed earlier, after a few hundred Mexican migrants had arrived from the United States to Windsor, Ontario, largely as a result of an unscrupulous Florida immigration consultant, the government instead employed a language of crisis and abuse; see Lise Gilbert, “The Discursive Production of a Mexican Refugee Crisis in Canadian Media and Policy,” *Journal of Ethnic and Migrant Studies* 39:5 (2013), 827-43. On the American decision not to prosecute those involved, after they had collected \$170,000 from some 450 Mexican migrants, see <http://www.naplesnews.com/news/local-news/prosecutors-criticized-not-pursuing-southwest-flor>.

<sup>106</sup> See <http://www.amnesty.org/en/region/mexico> and <http://www.hrw.org/americas/mexico>. Since the onset of the declared war against the drug cartels in late 2006, there have been more than 100,000 deaths and 22,000 disappearances in Mexico.

states to refugee protection is the core of the entire protection regime, and if that is diminished in any way, it can affect the protection of refugees at a much, much larger scale elsewhere.”<sup>107</sup>

The case of the Mexican visa is just one example, however. Numerous high-profile policies that have been enacted in the twenty-first century that place Canada’s commitment not only to the international refugee regime but to its own traditions of fairness and equality in doubt, such as the Safe Third Country Agreement with the United States and restrictions on refugee health care provisions. There are many other ways in which the government has restricted both the access that asylum seekers have to the Canadian inland system as well as the fairness with which they are treated within it.

Because many of these policies are framed within a generosity/abuse narrative, the need for other tales to be told, carefully and critically, is underscored. Some of these other tales, I have tried to show today, provide different understandings of the meaning of being Canadian and, as a result, different foundations for public policy.

This is why your research matters – because as students of migration and ethnic relations we can provide new (or revive older) ways of thinking about the past and present – and therefore we can open up pathways towards the future. Think, for example, of the power of Irving Abella and Harold Troper’s *None Is Too Many*, which told for the first time in full the tragic and shameful story of Canada’s refusal to admit Jewish refugees before, during and even after the Second World War. This work not only changed how we thought about Canada’s past but as well challenged both the public and decision-makers to think about how we should act in the present and future. It had a direct effect on Canada’s decision to resettle some 40,000 refugees from Southeast Asia during the late 1970s and early 1980s through an innovative programme that combined both a commitment to public and private sponsorship. Of course, while it is unrealistic to expect that all our work would have such a positive effect on refugee protection, there is all the reason to approach the task with the idea that it nonetheless could.

As I observed at the outset, with borders and citizenship come insiders and outsiders, but the terms on which these two groups are differentiated are not set in stone. If we want traditions of equality and fairness to frame and inform our policies towards others, then we have to make the case and advocate on its behalf against other traditions, such as restriction and exclusion, that dominate contemporary policy responses to asylum seekers and refugees, even as they are increasingly recognised as having underwritten past actions that now stand as emblems of public shame and regret. As Jane Jenson observed in thinking about the evolution of the Canadian citizenship regime, “Canadians and their governments choose how they will live together, and they continue to make significant and consequential choices about responsibility, community, governing and inclusion in their actions every day.”<sup>108</sup> The work that you undertake can be an important part of that process.

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<sup>107</sup> Quoted in Jeff Davis, “UN Refugee Agency Cries Foul on Mexican, Czech Visas,” *Embassy* (August 19, 2009), 1.

<sup>108</sup> Jane Jenson, “Social Citizenship in 21<sup>st</sup> Century Canada: Challenges and Options,” *The 2001 Timlin Lecture* (University of Saskatchewan, February 5, 2001), 4.