Through the Eyes of Convention Refugee Claimants:
The social organization of a refugee determination system

by

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Abstract

The social organization of Canada's inland refugee determination system is explored in this institutional ethnographic study. First listening to refugee claimants' experience from their vantagepoint on the margins of society, the research then explicates the complementary social relations of the refugee determination system in order to examine the contributing social organization and underlying ideology of the politico-administrative system.

Three adult, English-speaking single Nigerian men, seeking Convention refugee status or permanent resident status, were interviewed. Phenomenological methods were utilized to analyze the data. An initial explication of the social relations of the system was conducted through the observation of refugee determination hearings and interviews with knowledgeable informants. Through these interviews and textual analysis, ideology at the politico-administrative level was explored.

The findings reveal a contradiction between refugees' expectations based on Canada's international reputation in refugee protection and support of democratic rights, and their reception in Canada. Refugee claimants spoke of their dual experience as characterized by exclusion and marginalization from Canadian society at the very time that they needed to reconstruct their sense of self and adapt; of being held suspect as 'criminals' and 'illegals' by the refugee determination system until proven 'genuine'. Inclusion depended on success in the
socially, culturally, and politically constructed Canadian refugee determination system; a process that was foreign to them. Comprehension and successful participation in this process depended in part on the support, resources, and information they accessed during their initial settlement period.

The organization of the refugee determination system with a focus on the Immigration and Refugee Board (IRB) revealed complex independent decision-making in a highly decentralized, but hierarchical and non-transparent administrative system. Inconsistencies in decision making and in the degree to which refugees had the opportunity to relate their experience in refugee determination hearings were articulated and observed. Aspects of the system such as selection of members, institutional culture, independence of the IRB, and discourse on refugees in the Canadian media and society were indicators of how the social relations of the system were organized by an underlying ideology. Implications for the profession of social work and for social change were examined.
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Introduction

The phenomenon of forced migration is the proverbial canary in the mine corridor; it is an indicator of the state of democracy and civil rights within states, both refugee producing and refugee receiving; of interstate harmony and co-operation; of global concern for human rights and the environment; and of the impact of corporate global economic expansion. Since the late 1980s, as the dynamics of globalization in the economic sphere have gained momentum and the geo-political organization of the world has undergone a major transformation, international migration has been seen as a pervasive force that affects and is affected by those processes of change. Both the increasing economic disparities between industrially developed countries and those that are less developed and the lack of stability of states that are still in the early stages of nation-building process, have fostered flows of international migrants escaping danger, persecution or economic conditions at home or attracted by better opportunities abroad (Zlotnik, 2001).

In current times refugee concerns are pressing and often controversial as the dividing line between Convention refugees and those who must migrate for economic reasons becomes more blurred. Rarely, however, is there critical presentation of these issues from the vantage point of those most directly affected, refugees themselves. As is consistent with structural social work theory, understanding of social problems and viable solutions to those problems emerge from social analysis from the position of those most deeply implicated (Carniol, 1995; Mullaly, 1993). The present qualitative study draws on the critical theory of institutional ethnography to examine the research question: What is the experience of those seeking inland Convention refugee status in Canadian in relation to the refugee determination system?

Refugees were defined in the 1951 Geneva Convention Relating to the Status of Refugees and its 1967 Protocol as those people who, for reasons of race, religion, nationality, political opinions or belonging to a particular social group, have a well-founded fear of persecution in their
homeland and require protection (Weis, 1995). These instruments created a legal definition of a refugee, formulated in terms of the persecuted individual and defined in relation to the state, that was agreed upon internationally (Zetter, 1999). Canada ratified the Convention and the 1967 Protocol and the Convention definition of a refugee was incorporated into domestic law under Section 2(1) of the former Immigration Act, providing the basis for recognition of refugee status and the subsequent granting of permanent residence (Inter-American Commission on Human Rights, 2000).

Accordingly, since 1969, Canada has been obligated to provide protection and administrative assistance to refugees \(^2\) (Goodwin-Gill & Kumin, 2000). This duty to protect has led to the development of a refugee determination system in Canada.

As a preliminary step in investigating the social organization of the institutional processes of the refugee determination process, this thesis investigates the experience of those seeking refugee status in Canada. As a secondary purpose, it attempts to shed light on how this experience relates to the effects of the premigration context and the everyday events of the postmigration adaptation period for participants. The study then examines the social organization of the refugee determination system keeping the perspective of refugee claimants and subsequently explores the ideology of the politico-administrative regime that affects that social organization.

The concept for this research emerged when the researcher attended the twelfth meeting of the Canadian Network for the Health of Survivors of Torture and Organized Violence \(^3\) in May of 2000. Concerns were expressed about the degree of re-traumatization refugee claimants who had survived torture \(^4\) were experiencing as a result of being held in a state of legal limbo. Also a volunteer therapist with the Vancouver Association for the Survivors of Torture (VAST) \(^5\), the researcher's aim in this study was threefold: 1. to lend a voice to refugees by examining the effects of policy through their eyes, 2. to contribute to efforts to effect social change in the refugee determination process, and 3. to raise public awareness concerning refugee claimants seeking protection in Canada. As the daughter of a civilian prisoner of war survivor of WW11, the researcher
also identified with the refugee struggle to re-establish the course of one’s life after its forced and traumatic disruption.6

In this thesis the researcher presents the argument that the International legal framework defining asylum as incorporated into domestic legislation and the related Canadian refugee determination system socially organize the everyday experience of people seeking refugee status. Refugees spoke of this experience as characterized by exclusion and marginalization, which hindered settlement and being considered ‘criminal’ or ‘illegal’ until proven ‘genuine’. Drawing from data from interviews with Nigerian men seeking Convention refugee status, the researcher outlines how the lack of easily accessible services, orientation to the refugee determination system, legal status or identification documentation, and lack of opportunity to readily participate in Canadian society, contribute to this marginalization. The result is a compounding of the effects of these refugee’s pre-migration experience.

The international legal discourse is based on the principles of protecting state sovereignty and relationships between states and, in its state centeredness, does not set the experience, needs or desire of refugees as its core concern. The researcher explores how this manifests in the social organization of the Canadian refugee determination system. In this era of economic globalization, existing international agreements, as essential as they are in establishing the groundwork for international human rights, are limited and out-dated in the present day reality of refugee-producing situations (Lacroix, 2000; Zetter, 1999). Indeed, they were never established to address current refugee flows and, in effect, a restructuring of eligibility for asylum is in process as governments in developed nations redefine their responsibilities and introduce new discretionary powers (Zetter, 1999). These limitations are glaring in the current global situation where millions of refugees are waiting in temporary arrangements without national identity or rights as citizens.7 In the wealthier industrial nations of the North, this sets Convention refugees, economic refugees and immigrants against each other in a struggle for who is the most deserving for admittance across borders.
Increasingly the concern of nations of the North, in a changing political climate and a growing atmosphere of public ambivalence and phobia, is not the provision of asylum or the restoration of security in the homelands that refugees fled but the securing of their own national boundaries (Beisner, 1999). Despite admission levels that are generous by international standards, Canada is no exception.⁸

In this initial exploration of the social organization of the refugee determination system, the researcher suggests that the availability of an inland refugee determination system with its inconsistencies and contradictions maintains a minimum provision, although recognized as model by world standards, for forced migrants who reach Canada’s borders to claim refugee status. In this way Canada deflects criticism from restrictive immigration and refugee policy measures that are in tune with the present economic and political climate.

Literature Review

A scarcity of research exists in the Canadian literature on the impact of refugee policy or the administration of that policy on refugee claimant experience. Internationally, the preponderance of studies of forced migrants have focussed on the mental health of refugees as relates to their pre-migration experience from a psychiatric or psychological perspective.⁹ That the area of forced migration is fast becoming an area of prime concern is evident by recent studies in Europe, one funded by the Home Office in the U.K. Although a critical view is warranted regarding the motivation for funding such studies in times when industrialized nations are honing their tools in restrictive migration policies, the findings of these studies are worth noting in relation to the present study.

The first looks at effectiveness of restrictive immigration policy measures. Thielemann (2002), examining the direction of asylum flows to determine the patterns of asylum applications across different possible destination countries, identified five categories of ‘pull-factors’ or forces of attraction in the literature on migration: economic, historic, political, geographic and
policy. A systematic long-term comparative perspective that examined prominent push-pull factors through pooled cross-section time series analysis of 20 Organisation for Economic Cooperation and Development (OECD) countries for the period 1985-1999, this study concluded that “the importance and effectiveness of policy measures aimed to have a deterrent effect on asylum applications to a particular country appear to be much smaller than has often been assumed” (Thielemann, 2002, p. 22). Historical ties and migrant networks, economic performance and asylum seekers’ perceptions about the relative ‘liberalness’ of a particular country of destination, come out as much stronger explanatory factors for the evolution of relative asylum burdens. Finding that the effectiveness of unilateral measures decreases when other countries introduce similar measures, he concludes that international co-operation on restrictive policy responses alone is unlikely to provide a long-term solution for the problem of inequitable distribution of burdens across Europe (Thielemann, 2002).

The second, a British study by Robinson & Segrott (2002), examined the decision-making of asylum seekers. After qualitative interviews with 65 asylum seekers, their findings suggest that the asylum seekers are focused on the imperative to depart rather than on their destination. They found the range of available destinations is mostly limited either due to resources or to the intervention of agents as decision-makers. Within their range of decision-making asylum seekers were found to be guided more by agents, the presence or absence of family and friends, language, and perceived cultural affinities than by knowledge of asylum policies or rational evaluation of the available welfare benefits. They found that most respondents wanted to work and support themselves during the determination of their asylum claim rather than be dependent on the state.

In the Canadian literature, focusing on Quebec, Barsky’s (1994) investigation into the decision-making of asylum involved interviews with 56 asylum seekers and key informants.
Barsky similarly concluded that refugees had little choice over their destination because of existing barriers. Within those limitations the following were reasons for choosing Canada/Quebec: the political climate, levels of racism, good ethnic relations, a strong economy, opportunities for social mobility, welfare benefits, social policies, human rights, and Canada being an ‘Anglo’ country. Barsky (2000) additionally suggested that asylum seekers sometimes travel to relatively distant countries that have few connections to their country of origin for the following reasons: 1. Nearby countries have a low acceptance rate for refugees. 2. Neighbouring countries may be dangerous. 3. Those fleeing government-instigated persecution may not wish to seek refuge in a country that has good political relationships with their country of origin for fear of deportation. 4. Co-ethnic communities in potential countries of destinations are often a positive attraction but can also be a source of fear of further persecution.

In recent years an emerging body of research has examined the affect of the psychosocial factors of exile and domestic refugee policy on asylum seekers. Within a stage-of-migration framework (Drachman, 1992; Desjardins, Eisenberg, Good & Kleinman, 1995), which delineates various stages in migration, undergoing the process of refugee determination has not figured prominently in the settlement process. It is the contention of this researcher that the examination of the refugee determination process from the location of the claimant, provides a new vantagepoint into the dynamics of the changing context of forced migration. As national borders become increasingly politicized, this researcher contends that the forced migrant’s experience with the refugee determination process will have increasing significance in the phases of forced migration process. The purpose of this research is to explore the social relations of the institution of refugee determination as opposed to providing insight into the personal construction of events and meanings; however, research from this latter perspective is much needed and is emerging.

Examining the impact of policy can, in addition to contributing to the development of alternate policy that considers the individuals involved, produce a new evidence base from which to
engage with refugees and involve them in determining their social service needs. One prime example of such an achievement is a longitudinal study by Rousseau, Bertot, Mekki-Berrada, Measham and Drapeau (2001) which examines the impact of family separation, defined as a direct consequence of immigration and refugee policy, on refugee claimants. It concludes that family separation can lead to depression and have other traumatic psychological effects on refugee claimants. Although focussed on one aspect of the impact of immigration and refugee policy, family separation and mental health of refugee claimants, this study opens the door to further studies on the impact of policy on refugee claimants.

Within the field of social work, research has predominantly focussed on refugee resettlement and issues of practice; absent from the literature is an investigation of the impact of immigration and refugee policy on forced migrants. Two exceptions are the qualitative studies of social workers, Marie Lacroix (2000) and Anna Pelosi (1996). Lacroix (2000) in her doctoral thesis, employs a materialist theoretical model to analyse the impact of immigration and refugee policy on claimants in Canada as it relates to three major areas of their lives: work, family, and state. She makes the argument that there is a distinct experience of refugeeness, independent of cultural and political background, that is a socially constructed subjectivity produced by immigration and refugee policy. Characterised by uprootedness and the crossing of borders, she focuses on international and Canadian immigration and refugee policy as the determinants of this main discourse.

Pelosi (1996), through interviews, observation of refugee hearings, and the analysis of negative decisions rendered by the Immigration and Refugee Board (IRB), explores the effects of intercultural communication on the outcome of the refugee determination hearing in her Master's thesis. She concludes that the political, social, and cultural context in which the IRB functions; the Board's institutional culture, which mirrors the social discourse on refugees; and the way individuals ascribe meaning to information in a culturally-defined manner all have an impact on the outcome of the hearing
and on the refugee protection. The current study seeks to further build upon the findings of these studies, drawing on the approach of institutional ethnography.

Relevance for social work

In his book, *Human Rights and Social Work*, Jim Ife identifies that ideas of global citizenship and their implication for social work have barely been acknowledged in the social work literature. He contends that if social work is to be relevant in the era of globalization and if a human rights base to social work practice is to be realised, this is a major area of development for the social work of the future (Ife, 2001). He writes:

One way of understanding social work is to see it as the process of helping people to articulate their rights and to have those rights realised and protected. This means that social work must have a universal, international perspective, and that it is not enough to be concerned only with the local and the immediate context in which social work is located. (Ife, 2001, p. 72).

For Ife, human rights represents

a discourse that readily moves between the global and the local, and can provide a basis for creative practice that links them in an empowering way. This makes it of particular value for social workers struggling to practise in the new environment of globalisation and the weakening of the state structures within which social work has traditionally been located. The capacity of social workers to link the local and the global in creative practice holds the key to the future of the social work profession (Ife, 2001, p. 203).

This thesis explores refugees' experience in relation to the Canadian refugee determination system. As previously stated, examining the impact of policy can, in addition to contributing to the development of alternate policy that considers the individuals involved, produce a new evidence base from which to engage with refugees and involve them in determining their social service needs. But beyond this, involvement in refugees' right to protection and movement across borders necessitates exactly the type of linking of which Ife speaks between issues on a local and global level internationally.

On a local and domestic level, this investigation begins to expose the contradiction between refugees' needs and expectations of commitment to protection in liberal democracies and the
exclusionary policies of those countries. It begins to expose the contradictions in an international refugee regime that does not try to respond or adapt to meet the changing root causes of refugee movements. It begins to expose states and transnational companies in their self-interest in times of changing of a global economic and geo-political order. It exposes a void in international coordination to respond and hold those forces causing and contributing to forced migration accountable.

Social work as a profession is conspicuously absent from agencies and organizations concerned with refugee issues in British Columbia. Immigration and refugee issues are likewise conspicuously absent in the education of social workers. Ensuring the ‘right to protection’ is a challenge to become involved outside of the current confines of the mainstream social work profession whether on a local level in support, service, advocacy, community organizing and/or public education and awareness to counter racist profiling and negative discourse concerning refugees; on a domestic policy level in confronting restrictive immigration and refugee policies that further endanger refugee lives and make borders inaccessible and in challenging the lack of transparency in the formulation and administration of policy; or on an international level to question and seek mechanisms to hold the forces contributing to movements of forced migration accountable. Involvement in ensuring the protection of refugee rights provides social workers with the opportunity to link the local and the global in ways that necessitate creative practice and bring about change in the social work profession.

One of the routes by which the ideas of critical and structural social work practice reached the North American continent was through the forced migration of prominent educators and innovators in the social work profession, including Alice Saloman, Marie Juchacz, Hedwig Wachenheim, Herta Kraus, and Gisela Konopka, European Jews who escaped Nazi occupation. Many of these women were restricted from practising their profession in the country that provided them protection, the USA, and some died forgotten and in poverty. The emphasis in
social work in Germany before the Nazi period was on public social responsibility (Wieler, 1995). The protection of refugee rights presents social workers with the challenge of taking up the struggle for public social responsibility in a way that necessitates an examination of the interconnection of social, political, and economic concerns on a global and local level.

1 The initial research for this thesis began in the spring of 2001, before the passing of Bill C-11. Readers should be aware that the processes involved in the refugee determination system may have changed under this new Act and with the heightened security measures since the attack on the World Trade Centre in the fall of 2001.

2 Canadian government figures to the Inter-American Commission on Human Rights in 1997 indicated that Canada accepts between 20,000 and 30,000 Convention refugees and other displaced persons each year. 24,214 refugees became permanent residents of Canada in 1997, Of those refugees who are accepted, approximately half are selected abroad for resettlement in Canada, and the other half are asylum seekers who make inland refugee claims that are adjudicated by the Immigration and Refugee Board (IRB) (Inter-American Commission on Human Rights, 2000).

3 This is an national network for Centres working with survivors of torture in Canada. Member organizations include: Canadian Centre for Victims of Torture (CCVT), Réseau d'intervention auprès des personnes ayant subi la violence organisée (RIVO), and Vancouver Association for the Survivors of Torture (VAST).

4 The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment refers to: "an act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person", for a purpose such as obtaining information or a confession, punishment, intimidation or coercion, "or for any reason based on discrimination of any kind". The Convention is concerned with torture by government agents of people acting with official sanction. It also establishes the responsibility of the state for an act of torture inflicted "with the consent or acquiescence of a public official". For example, failure to provide protection against violent racist attacks may amount to consent or acquiescence in torture.

The Inter-American Convention to Prevent and Punish Torture defines torture more broadly than the UN Convention. It includes as torture "the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish".

Human rights treaties define torture in broad terms. The task of interpreting the definitions in practice - and ensuring they are applied consistently - falls to various inter-governmental bodies, which monitor states' compliance with the relevant international treaties. These monitoring bodies, as well as national courts, continually make decisions, which refine and develop the interpretation of what constitutes torture. So international human rights treaties are "living instruments", evolving and developing over time (Retrieved April 5, 2003 from www.amnesty.org.uk/torture/definition.shtml).

5 See Appendix A – Mission Statement of VAST.

6 My mother was born in the former Dutch East Indies and her family lived there at the outbreak of WW11. Following the Japanese invasion, they were imprisoned for the remainder of the war. Post liberation, due to the independence movement that lead to the forming of the state of Indonesia, the Dutch, my family included, had to relocate. Those who returned to the Netherlands, although Dutch citizens, were regarded as privileged since they had lived in the 'colonies'. The Dutch population had suffered during the war. The economy was poor and those seeking
refuge in their mother country were not always welcomed. Later as an immigrant to Canada, my mother was treated by the Canadian mental health system which ignored her war time experiences and pathologized her condition.

7 As Lacroix, M. (2000) p. 14 points out that among the estimated 170 million displaced persons in the world today, 30 million are refugees. While these numbers may conflict with the UNHCR's statistics on the number of refugees in the world today, certain humanitarian agencies involved in human rights work consider internally displaced people and asylum-seekers in various countries as part of their definition. The 2000 UNHCR statistics show the world refugee population to be 14 million. This reflects discrepancies in the definition of what constitutes a refugee, the restrictive nature of the Geneva Convention's definition and its failure to reflect the reality of refugee-producing situations in the current international context. For further discussion see Zetter, R. (1999). International perspectives on refugee assistance, p. 47.

8 In 1997, Canada accepted 40% of all finalized claims for Convention Refugee status, arguably one of the most generous levels of acceptance in the world. In March of 1998, the UN High Commissioner for Refugees issued the statement “the Canadian system with its resources, expertise and humanitarian focus, is recognized as a model to be emulated” ((Inter-American Commission on Human Rights, 2000).

Chapter 1  The Theoretical Framework

Introduction

The forces which shape the refugee experience range from global trends in policy, politics and philosophy, through more local social and cultural processes, to personal characteristics and capacities. Such categorizations are neither robust nor exclusive but do serve to emphasize the breadth of analysis, from macro to micro level, required when considering factors influencing the experience of forced migration. Conceptualization of factors operative at global, social and person levels also facilitates understanding of the interaction and interrelationship between forces at the differing levels of analysis (Ager, 1999, p. 13).

Ager’s statement illustrates the need to refer to different bodies of theoretical knowledge to inform this institutional ethnographic research into refugee claimant’s experience in relation to the Canadian refugee determination process; specifically, international migration theory, international political economic theory, and immigration policy theory. The theory of institutional ethnography (Smith, 1987) as a research strategy provided the contextual framework for the study. Terminology specific to this methodology is used in the current study as originally used by Dorothy Smith (1987). Also, in keeping with this methodology, other theories were examined only after the ‘problematics’ of the everyday experiences of Convention refugee claimants had been identified and the ‘social relations’ producing these experiences explored. This bracketing (Moustakas, 1984; see Chapter 4 Research Methodology) of theory and abstracting practices allowed for the social phenomena to remain embedded in the social organization of that everyday world for the purpose of analysis (Smith, 1987).

Institutional ethnography, a feminist sociological approach and the methodology of this research, examines ‘ruling relations’ and the institutions organizing and regulating society from a particular standpoint of the marginalized (Smith, 1987). This approach will be examined from a theoretical perspective. In addition, there are three theoretical concepts fundamental to the understanding of forced migration in this study: 1. the concept that property grants citizenship; 2. the notion of exclusion/inclusion in liberal democracies; and 3. the idea of politicization of
borders in a globalizing economy. These concepts will be examined to provide a general socio-political-economic theoretical framework for the research.

In examining the forces shaping the experience of forced migration, theories of immigration control are central. Of the field of immigration policy, one analyst writes: “A rapidly expanding literature explores the immigration policies of individual receiving countries. But immigration policy theory is not well defined and lacks, for the most part, debates between various schools of thought on the subject” (Meyers, 2000, p. 1245). These theories must, however, be viewed in dynamic relation to globalization and a growing security agenda (Chimini, 1998; Faist, 2002). It is beyond the scope of this thesis to offer a detailed examination of all these theories. The main theories applicable to this study of the organization of the Canadian refugee determination system will be summarized.

**Institutional Ethnography**

Institutional ethnography is a strategy of feminist inquiry that originated with sociologist Dorothy Smith (1987). Within the critical theory paradigm of research in social science, Smith’s focus is on the process of objectification in sociological investigation and the relation it assumes and promotes between research and ‘ruling regimes’ (O’Neill, 1998; Smith, 1987). Smith states, “The professional and administrative structures as well as the practices of professional and academic discourse interlock to prevent knowledge leaking out to form the social consciousness of those who do not participate in the relations of ruling” (p. 219). As Smith further explains:

To construct sociology as inquiry into the social from a standpoint in people’s everyday experience means reconstructing its method of thinking…. [Such] a sociology…must be put together differently from the traditional objectifying sociologies. Committed to exploring the society from within people’s experience of it, rather than objectifying them or explaining their behaviour, it would investigate how that society organizes and shapes the everyday world of experience. Its project is to explicate the actual social relations in which people’s lives are embedded and to make these visible to them/ourselves (Smith, 1999, p. 74).

Critical theorists argue that the social relations that form everyday reality are shaped through ideologies to reflect the values and interests of dominant or ruling elites (O’Neill, 1998).
“Critical studies examine how largely hidden social processes disadvantage people on the basis of class, gender, ethnicity, and other differences, and aim to identify strategies for emancipatory change” (Ibid., p. 129). Although the social organization of Smith’s method starts from the location and standpoint of women, “its ontology and epistemology intends a science of society which does not depend on the standard categories of feminist methodology. It seeks to explicate people’s experience from their standpoint, rather than from a theoretical position, a process which Smith has criticized as ‘ideological practice’” (G. Smith, 1995, p. 20). A sociology from women’s standpoint proposes “an inquiry beginning in the local particularities of everyday experience that would explore how [objectified social] relations are accomplished as local practices.” (Smith, 1999, p. 73).

Feminist and other non-mainstream critics have argued that research can be skewed by the ‘lens’ of the beholder, observing only what is relevant from that perspective and in so doing often overlooking exactly what is relevant from the position of the ‘other’ (DeVault, 1999). In Smith’s words, “The subject/knower of inquiry is not a transcendent subject but situated in the actualities of her own living, in relations with others as they are.” (Smith, 1999, p. 72). Smith’s methodology draws from the field work tradition of ethnography which involves observation time in the field, looking closely and unobtrusively with a view to developing a deeper understanding of “what is actually happening in particular local settings” (DeVault, 1999, p. 47), beginning with “a consciousness located in a particular local site” (Smith, 1999, p. 74). Investigation from the lived experience of the ‘outsider’ or ‘other’, an experience of which the investigator has knowledge, can “challenge prevailing ideologies and illuminate the contexts for marginal lives” (DeVault, 1999, p. 47.). Ethnography often takes the viewpoint of groups of people on the margins of society, whose perspective might otherwise be considered irrelevant to the realities of mainstream society, as an entry point into the inquiry into social relations shaped
by ruling regimes (Smith, 1987). The aim is “to discover the social as it comes into view from an
experiencing of life that is not already defined within the ruling relations.” (Smith, 1999, p. 74).

A complex of objectified social relations organize and regulate people’s lives in
contemporary society.

...these objectified relations have emerged as increasingly independent and increasingly
pervasive as organizers of people’s everyday/everynight activities. The intersection of
everyday local settings and the abstracted, extra-local ruling relations is mediated by the
materiality of printed and electronic texts. The texts integral to the social organization of
these forms are complemented by technologies or disciplined practices that precede
standardized local states of affairs or events corresponding to the standardized texts.” (Smith,
1999, p. 73).

This sense of social relations “understands people’s activities as co-ordinated in actual
temporally concerted sequences or courses of action” (Smith, 1987, p.183). Detectable in the
organization of the everyday world of the ‘outsider’ is the presence of social relations that are
external to that everyday experience since “the local organization is determined by the social
relations of an immensely complex division of labor knitting local lives and local settings to
national and international social, economic, and political processes” (p.154). In this way the
notion of social relation provides a means for analyzing “the local practices- the locus of the
experience of the subject- as articulated to and determined by the generalized and generalizing
relations of economy and ruling apparatus” (p. 167). This then is Smith’s notion of the everyday
world as ‘problematic’; the “social relations external to the everyday are present in its
organization” (p. 188). Therefore, “The everyday world is not fully understandable within its
own scope. It is organized by social relations not fully apparent in it nor contained in it.” (p. 92).

In the analysis of social relations in a particular setting, institutional ethnography is
informed by Marx’s concept of historical materialism (Smith, 1987; 1999). Marxists argue that
in order to reach an adequate understanding of society, analysis must begin with the nature of the
prevailing economic system. In Marxist thinking, society consists of an economic base or
infrastructure out of which arises the superstructure and other institutions and social processes of
society (such as the legal, political, familial, and religious spheres). The relation between these infra and superstructures is dialectic: the superstructure arises out of the economic base but, once created, acts in turn to reproduce it (Comack, 1999, p. 36). The notion of ruling relations is comparable to the concept of superstructure which Smith (1999) holds in complex societies exists as a complex of externalized and objectified social relations through which people's everyday/everynight activities are organized and which co-ordinate contemporary society. “Ruling relations identify an historical development of forms of social consciousness that can no longer be adequately conceived as arising in the life conditions of actual individuals” (p.78). As Smith (1987) articulates:

We are addressing a more general property of the social relations of capitalism and, specifically, of corporate or monopoly capitalism, for it is in capitalism that the socially organized forms, in and through which individuals depend upon one another, become externalized as a differentiated system of relations (p. 95).

Smith compares the concept of ruling relations to Marx’s ‘specialization and differentiation of relations of dependence’ in his thinking on “the emergence of the economy as relations that have taken on an independent existence over against those whose work brings them into being and ‘drives’ them” (Smith, 1999, p. 76). Marx wrote:

When we look at social relations which create an undeveloped system of exchange, of exchange values and of money ... then it is clear from the outset that the individuals in such a society, although their relations appear to be more personal, enter into connection with one another only as individuals imprisoned with a certain definition, as feudal lord and vassal, landlord and serf ... or as members of an estate etc. In the ... developed system of exchange ... the ties of personal dependence, of distinctions of blood, education, etc, are in fact exploded, ripped up ... So far from constituting the removal of a "state of dependence," these external relationships represent its disintegration into a general form, or better they are the elaboration of the general basis of personal states of dependence. Here too individuals come into relation with one another only in a determined role. These material states of dependence, as opposed to the personal states, are also characterized by the fact that individuals are now controlled by abstractions, whereas earlier they depended on one another. (Marx, 1973, pp. 163-4 as cited in Smith, 1999, pp. 76-77).

The referred to abstractions are the relations of exchange between people mediated by money and commodities or the economy. As Smith (1987; 1999) explains, relations of
dependence differ in different modes of production. Marx located the organization of individual relations in a system of ‘autonomous social relations’, which appear in relations of market exchange as relations between things – the products of labor socially organized as commodities. “The market in its capitalist form is a specialized organization of relations of dependence driven by exchange value. People’s dependence on one another’s work as members of society becomes unidimensional and abstract as it is objectified in the exchange of money and commodities” (Smith, 1999, p.78). In this way, Marx’s analysis locates the conditions and organizing relations that determine people’s lives and experience outside of their everyday world and beyond the power of individuals to control (Smith, 1987, p. 95). The aim of institutional ethnography then is “to explicate institutional relations determining everyday worlds and hence how the local organization of the latter may be explored to uncover their ordinarily invisible determinations in relations that generalize and are generalized” (Smith, 1987, p. 160).

Smith advocated the further step of taking an “outsider’s critique”, “rooted in but extending beyond a local setting” (DeVault, 1999, p. 48), so that in taking a view from the margin, a researcher would look “from the margins inward - toward centers of power and administration – searching to explicate the contingencies of ruling that shape local settings” (Smith, 1987, p. 183). When using the terms ‘institutional’ and ‘institution’, Smith is “identifying a complex of relations forming part of the ruling apparatus, organized around a distinctive function – education, health care, law, and the like.” (Smith, 1987, p. 160). ‘Institution’ is the intersection and co-ordination of more than one relational mode of the ruling apparatus so that typically:

state agencies are tied in with professional forms of organization, and both are interpenetrated by relations of discourse of more than one order. We might imagine institutions as nodes ... in the relations of the ruling apparatus to class, co-ordinating multiple strands of action into a functional complex. Integral to the coordinating process are ideologies systematically developed to provided categories and concepts expressing the relation of local courses of action to the institutional function, ... enabling interchange
between different specialized parts of the complex and a common conceptual organization coordinating its diverse sites.” (Ibid., p. 160).

Professional training and discourse in particular have a function in integrating institutional ideologies and guiding or directing people in the “recycl[ing of] the actualities of their experience into the forms in which it is recognizable within institutional discourse” (Smith, 1987, p. 162). This is the process by which “the work and practical reasoning of individuals and the locally accomplished order that is their product become an expression of the non-local relations of the professional and bureaucratic discourse of the ruling apparatus” (p. 162). Smith argues that ‘texts’ shape social relations so as to be consistent with dominant ideologies, thereby excluding issues related to race, economic status, gender, sexual orientation and other differences from discourse (O’Neill, 1998, p. 132).

The functions of knowledge, judgment, and will are transferred progressively from individuals to the governing processes of capitalist enterprise to the practices of bureaucratic administration, to the extended social relations of textually mediated discourse, and to the productive and market processes of capitalism that incorporate what was formerly the exercises of skill into the use-value of the product. As the externalized terrain of social relations expands, that of the local and particular diminishes. The latter is increasingly regulated, penetrated, and organized by the former….The functions organizing work and relationships are progressively leached out of local settings. (Smith, 187, pp. 5-6)

In contemporary societies, power is generated and held in the form of textually mediated relations. Printed and electronic texts, which can be replicated, are fundamental to the ruling relations, since they can activate identical forms of meaning in multiple local settings. Regulatory texts can include legislation, policies, procedures, and forms.

It is the materiality of the text itself that connects the local setting at the moment of reading into the non-local relations that it bears. Its technology, its system of distribution, and its economy are foundational to the peculiar property of abstraction that provides for forms of social relations that have no particular place or time in which they happen. (Smith, 1999, p. 79).

However, the objectification of discourse is brought to life through the local practices of actual people. “We must remember that we, the actual readers/writers/speakers/hearers, who disappear in the relations of intertextuality, are also those who participate, generate, provide the
dynamic of the ruling relations” (Smith, 1987, p. 80). Smith specifies that even how people talk about their experiences in relation to the institution being studied reflects the shaping of exclusive organizational practices, a factor that is key to her research strategy (O’Neill, 1998, p. 132).

Although determined by textually mediated discourse and its social organization, Smith nonetheless attributes human beings with the capacity for agency and influencing institutional change. In response to the poststructuralist/postmodern critique of the unitary subject of modernity, Smith proposes an alternative, which preserves people’s active presence and views knowledge as a definite form of social act in which an object world is constituted by participants as a world in common. Such a theory focuses in a dual fashion on how divergence is co-ordinated and how the forms of co-ordination (social relations) generate divergence. (Smith, 1996, p.183). Smith reviews Mead’s (1992) concepts of the individuated subject as present and fully social. Self becomes the mechanism through which individuals are able to bring their consciousness and actions into a co-ordinated relation to ongoing processes of social action with others (Smith, 1996, p.183).

Institutional ethnography provides subjects with a means of grasping the social relations organizing the worlds of their experience. It offers a means for marginalized peoples to recognize the features of the oppression they share with others and of different oppressions rooted in the same fabric of relations (Smith, 1987). It has “implications for social and political strategies of resistance and transformation”, providing a knowledge from which to “engage much more clearly in the contestation of the textually mediated regulations”(Kinsman, 1995, p. 92) and promote “the development of more inclusive and emancipatory organizational policies and practices” (O’Neill, 1998, p. 140). In this period of late capitalism, an examination of the social relations from the starting point of refugees may shed light on the changes induced in a post-industrial changing world order.
Globalization theory and the political economy

In a world political economy that has become more complex and diversified, so too has migration. Early patterns of movement, such as the transatlantic slave trade, or the international labour migration in the first phase of industrialization, could be coherently charted on a map. However, the pattern of migration associated with globalization, while perpetuating many of the structured inequalities that were characteristic of earlier movements, has been further complicated (Papastergiadis, 2000). The routes of global migration involve a “decoupling of the historical paths” (Ibid., p. 25). The complexity of current migration issues stems from the interaction of migration with a range of other economic, political, social and cultural forces and processes.

At a time of such rapid and profound change in the world political economy, it is this interaction of migration with other changing processes around it... which is most crucial to explore in order to understand and appreciate the key challenges in this area, including those facing refugee protection” (Collinson, 1999, p. 1).

Theoretically there has been much debate about the state and its role and future in the globalized economy. Theoretical persuasions greatly influence positions taken on this issue. Approaches within international political economy, which do not see an ‘all or none’ role for the state, are valuable in the analysis of globalization.

The relationship between globalisation and the state is regarded ‘in terms of subtle interplay of continuity and change’. Underlying continuity ‘is discerned in so far as the state and interstate relations persist at the core of governance arrangements in the contemporary globalising world’. Yet ‘there is notable change in the character of the state: its capacities; its constituencies; its policy-making processes; its policy contents; and so on’ (Scholte, 1997, p.428 as cited in Collinson, p. 3).

Globalization theory recognizes there has been a significant power shift from states to markets; markets in which the production, marketing, financial structures and processes are now for a world market as opposed to only a local or national market. The shift of power is into the hands of actors whose power and responsibilities transcend territorial boundaries, including transnational companies (TNCs) and the institutions of
financial markets (Collinson, 1999). Rapid technological change, particularly new communication technology, makes a detachment from territory possible.

Deterritorialisation ... is what sets globalisation processes apart crucially from the parallel (but state-centered) processes of ‘internationalisation’ or ‘interdependence’... or ‘liberalisation’(denoting the opening of borders between countries). ‘Global’ phenomena do not cross or open borders so much as transcend them, extending across widely dispersed locations simultaneously and moving between places...more or less instantaneously: territorial distance and territorial borders hold limited significance in these circumstance: the globe becomes a single ‘place’ in its own right (Collinson, 1999, p. 4).

As TNCs, which account for at least a third of the world’s private productive assets, operate in markets for the most part unconstrained by national borders, there is increasingly a conflict “between global capitalism’s mobility in the search for profit ...and the state’s attempts to guarantee employment and investment” (Horsman & Andrew, 1994, p.210). A decrease in territorial sovereignty results as wealthier states of the North answer increasingly to this “new economic constituency of the global market economy”, loosing “effective capacity and authority in key areas of economic and political governance, such as macroeconomic management” which directly affects the lives of their constituencies (Collinson, 1999, p. 14). At the same time, a growing inequality between the rich and prosperous and the poor and marginalized is being created within these societies by the expansion of the global market economy. Globalization for countries of the North has effected a growing crisis of democracy and legitimacy (Collinson, 1999).

The state “has become less a medium for holding a territorial line of defense of its ‘inside’ against its ‘outside’; as an arena of collaboration and competition between territorial and supraterritorial interests” (Scholte, 1997, p.445 cited in Collinson, 1999, p. 6). Global spaces “of the kind formed through telecommunications, transworld finance, and the like interrelate with territorial spaces, where locality, distance and borders still matter very much” (Scholte, 1997, p. 432 as cited in Collinson, p. 6). Just as globalising dynamics have become more powerful so “the boundary-strengthening dynamics of localisation have become increasingly significant, not least
because some people and cultures feel threatened by the incursions of globalization” (Rosenau, 1997, p. 82 as cited in Collinson, 1999, p. 5). But against this “backdrop of eroding state authority and a wider sense of loss of control, it is increasingly those migration flows that are seen to evade national or regional border controls and flout government entry policies that provoke concern” (Collinson, 1999, p. 14).

**Globalization and migration**

Transnational migration needs to be located in the context of the complex dialectic relationship between powerful globalising forces and equally powerful local and regionalising forces in different countries and regions of the world. Perhaps more than any other issue, transnational migration services to highlight the inherent tensions between territoriality and globalisation in contemporary world politics, and thus between old ‘certainties’ and new uncertainties” (Collinson, 1999, p. 13).

Immigration control “can be seen as a symbol … of the continuing importance of territoriality and associated governance structures”(Ibid., p.15). Since the state has lost a great deal of power and authority to other actors in the world system but has kept its core sovereign authority over the transnational movement of people, it is likely that immigration control will continue to be used by governments to demonstrate their sovereignty when it is threatened in other areas (Collinson, 1999).

With many people both excluded from the benefits of globalisation, and increasingly exposed to its exigencies, globalisation can provoke more powerful nationalist, regionalist or localist sentiments which rest on an explicit rejection of global and other ‘outside’ forces, and call nostalgically for a return to ‘old’ values, including ‘national’ government promotion and protection of the ‘national interest’… Anti-immigrant (including anti-asylum-seeker) sentiment is frequently the key conduit through which these movements are expressed and articulated. If the central concern is not only one of control, but also identity, then negative sentiment is likely to be directed at immigration flows that are perceived as threatening to local or national identity (Collinson, 1999, p. 15).

Although governments may channel these anti-immigrant/anti-asylum sentiments for political purposes, transnational migration is identified as a threat not so much because of issues of race, religion or culture but because of government’s concerns with issues of control (Collinson, 1999). Northern states have used policy measures, the most extreme of which...
debatably comply with the 1951 Convention or international human rights obligations, to try to convert movements of asylum seekers into manageable flows that do not fluctuate dramatically upwards over time (Gibney, 2002). The public in liberal democratic states increasingly reacts with suspicious or even open hostility to sudden increases in levels of asylum seekers. Costs associated with refugees and the refugee determination process including long determination processing times, backlogs in the system, appeal rights, limits on deportation, medical care, subsistence and legal costs are seen as too high (Dirks, 1995; Gibney, 2002).

Policy measures aimed at migration control have both expanded and increased in sophistication over the last decade. Legitimated publicly by the need to preserve the refugee determination system for the ‘deserving’, ‘real’ refugees, these policy measures have fallen indiscriminately on all refugees, those to whom the Convention applies and economic refugees alike (Creese, 1992; Gibney, 2002). In the control of borders, those governments and institutions with adequate wealth and supporting infrastructure have been able to buy and make use of new technology to facilitate even closer monitoring and control over the movements of people (Collinson, 1999). Border control has also been focused beyond the physical confines of state borders by readmission agreements with surrounding states, by visa requirements, and by penalties on carriers transporting undocumented or inadequately documented travellers, in efforts to keep unwanted potential migrants from claiming status at borders. More and more “genuine” refugees present in seemingly “illegal” and unorthodox ways, as asylum seekers are driven to take greater and greater risks to enter Northern countries, are increasingly reliant on smugglers to enter, and perhaps also abandon the refugee determination system for life underground (Bhabha, 2002; Gibney, 2002).

The problem is not only the migration flows but also “the large and significant ‘sideways’ shift in power away from governments towards a range of private and non-governmental actors that include organized crime networks. The growth in the power of transnational crime is very
much a feature of the globalising world political economy" (Collinson, 1999, p. 16). This control rationale among governments also explains why the immigration control regime has almost entirely taken over governance of refugee protection in the North.

That this has been possible owes a great deal to a serious and progressive erosion of public support for asylum seekers in the North. This is explained to a large extent by the progressive blurring of the perceived distinction between immigrants and asylum-seekers and the criminalisation of asylum inflows, which in turn are associated with the now familiar problems of mixed-motive migration, perceptions of widespread abuse of asylum systems (reinforced and manipulated by politicians and the media), the detention of asylum-seekers, and the growing involvement of organized crime in migrant trafficking (Collinson, 1999, p. 16).

**Theories of International Immigration Policy**

Immigration control policy is concerned with the admission and selection of permanent immigrants, temporary migrant workers, the acceptance of refugees or asylum seekers, as well as attempts or lack of attempt to restrict irregular migration. Theories must account for state decisions, not only regarding how many immigrants to accept, when, of which type and of which ethnic origin as, but also, for decisions concerning Convention refugee determination and border access. One of the strengths of a theory lies in its ability to explain concurrent immigration policies both across states and within regions.

**Marxism and Neo-Marxism**

Marxist and Neo-Marxist theories argue that economic factors and a class-based political process determine immigration policies. They maintain that migrants provide the reserve labour, as part of capitalist development and the international division of labour that provides a means to exert a downward pressure on wages and an increase profit for owners. Immigration is considered a structural part of capitalism, which has been encouraged in the long-term between
countries of uneven capitalist development. In the short-term fluctuations in the economic cycle and unemployment rates will affect the demand for immigration.

Choices in immigration will vary depending whose interests are served; capitalists owning industry with lower rates of profit preferring irregular migrants, who are more vulnerable on the job market, over the regularization of migration. Immigration is a structural tendency characteristic of the phase of monopoly capitalism. Advanced capitalist economies regulate immigrant labour, temporarily limiting immigration or even expelling immigrants at times of economic decline. Such restrictions prevent recessions from becoming crises of capitalism. These crises are produced primarily by inflation, which is itself the result of capital surpluses and financial movements (Meyers, 2000).

Migration is the ideal remedy for the crises of capitalism for three reasons: 1. It is very productive in the expansionary phase; 2. It is excludable without difficulty in the recessionary phase, so it reduces inflationary tension in expansionary periods and cushions the decline in demand in recessionary periods. (Meyers, 2000, p. 1249).

The strength of Marxist theory is its prediction of the short-term correlation between economic cycle and immigration policies. It is limited in explaining discriminatory immigration policies along lines of racial and ethnic origin, except as related to division of the labour force. Its economic focus also lessens its applicability to refugee policies and immigration policies influenced by foreign policy considerations or policies related to wars and to political pressures (Meyers, 2000).

*The National Identity Approach*

Each country's unique history, conception of citizenship and nationality, social conflicts and debate over national identity shape its immigration policies. This approach focuses on the ideology and identity of the state that result from a unique historical process, while down playing the importance of external factors on migration (Meyers, 2000). However some theorists do combine structural-economic and ideological analyses, recognizing that "the really interesting
problem of immigration politics is the interaction between the economic and the cultural, between the material and the discursive.” (Pak, 1994 as cited in Meyers, 2000).

According to the ‘national identity’ approach, variations in immigration and citizenship policies between countries of destination are attributable to specific characteristics differentiating between: 1. settler societies that historically have accepted large-scale immigration and ethnic states which tend to reject immigration 2. ethnically homogenous and heterogeneous countries which many vary in tolerance of cultural diversity, and 3. countries with citizenship laws based on jus sanguinis (citizenship by parentage) versus jus soli (citizenship by place of birth) principles which may cause preference for temporary migrant workers over permanent immigrants of differing ethnic origin (Meyers, 2000).

This theoretical approach acknowledges that history and traditional ways of thinking of a society “influence the development of state policies and explore the traditions and cultural idioms that frame and shape judgements of what is politically imperative” (Meyers, 2000, p. 1255). It explains some countries’ preference for permanent or temporary labour migration and some countries’ reputation as refugee receiving countries. Beyond this, it explains how major racial, ethnic and religious tensions within a society affect the attitudes of interests groups toward the composition of immigration and toward refugee acceptance (Meyers, 2000). In Canada this is illustrated by Quebec’s insistence on direct involvement in determining immigration into that province (Dirks, 1995). With a low birth rate, Quebec has shown an openness to French speaking immigration but has been less favourable to the acceptance of refugees, identifying this as a federal policy area distinguished by loss of provincial control over selection (Lacroix, personal communication). What the national identity approach fails to explain is the fact that countries with varying histories have adopted similar immigration policies at the same time, as during the Cold war, the preference for refugees from communist countries. (Meyers, 2000).
The Institutional Approach

The institutional approach focuses on the role of the state in forming immigration policy. Many Canadians researchers, including Dirks, Abella and Troper, Whitaker, Hawkins, Simmons, and Keohane, whose ideas will be reviewed in chapter three on the Canadian context, write within this approach. Theorists within the institutional approach argue that bureaucrats have significantly influenced Canada's immigration and refugee policies (Meyers, 2000). A strict adherence to this approach would maintain that political institutions can be autonomous and form public policy following the interests of the state, remaining unaffected by societal or interest pressure groups. In practice, theorists vary according to the degree of autonomy and cohesion they attribute to the state. For example, Whitaker in his analysis of policy in the Cold War era views the state as essentially autonomous, whereas Simmons and Keohane argue that while the state has a significantly independent agenda, various societal elements such as labour, capital, ethnic groups, humanitarian organizations, refugee and immigration umbrella groups such as the Canadian Council for Refugee (CCR), and provincial politics also can have a bearing on Canadian immigration policy (Meyers, 2000).

Studies of institutional policymaking reveal the intricacies of the process that shapes immigration policy. It is especially informative concerning policies applicable to refugees and migrant workers, which were developed largely outside of the public domain. The approach is less suited to policy that takes place predominantly in the public arena where pressures external to the state can have considerable bearing on policymaking. In addition, the approach tends to focus on specific countries rather than taking a comparative methodology. It is therefore another theory unable to explain that various countries have and are adopting similar immigration policies at the same time (Meyers, 2000).

Realism and Neorealism
As a predominant theoretical approach in the field of international relations, realism proposes that: 1. States are the principal or most important actors in international relations and represent the essential unit of analysis. 2. The state is a unitary agent, facing an integrated unit, the outside world. 3. The state is fundamentally a rational actor and 4. National security issues have priority on the international agenda (Meyers, 2000). Security and strategic issues are referred to as ‘high politics’; economic and social issues as ‘low politics’ with a lesser degree of importance. Actual or potential interstate conflicts have both encouraged and discouraged migration in particular historical circumstances (Meyers, 2000).

Realism has significant application to the understanding of refugee policy. Many refugee flows result from interstate as well as intrastate conflict or from national foreign policies. The primary example of this being the Cold War period when many Western liberal democracies favoured refugees from communist countries as a demonstration of their anti-Communist and anti-Soviet ideological commitment (Meyers, 2000). Loescher (1986), writing on refugee policy in the U.S.A., concluded that for the four decades before the 1980’s, foreign policy interests played the key role in determining which refugees were permitted asylum in that country.

Since the end of the Cold War era, the world is experiencing a transition from one international system to another, the shape of which is still being defined. The factors that will determine the international system will depend on a new balance of power between political actors (Archibugi, 1998). With the entering of a new era of interstate relationships following the al-Qa’ida bombing of the New York World Trade Center on Sept. 11, 2001, the subsequent U.S. lead war on terrorism in Afghanistan and the illegal invasion of Iraq, the world is seeing an unprecedented emphasis on national security issues. A security agenda has become a primary focus for border control particularly in the countries of the North and on the North American continent, playing a much-heightened role in affecting migration to these countries. This “security” and “antiterrorist” agenda provide convenient frameworks under which to justify and
cement yet further restrictive measures in refugee policy (Faist, 2002; Talk Back, 2003).

Hathaway referring to the Schengen processes in Europe and the Informal Consultations in the Western world advises:

The critical importance of this emerging intergovernmental approach to the development of migration control policy cannot be overstated. Because central policies are increasingly formulated outside the domestic political process, and indeed outside the bounds of even international or supranational legal accountability, a careful probing of the form and substance of transnational bureaucratic policy making is essential to a meaningful appraisal of immigration control in the developed world (Hathaway, 1994, p.51).

**Property confers citizenship**

Underlying liberal civil society is a fundamental duality, which structures not only group oppositions but categories such as ideological frameworks (Burman, 1996). That duality is rooted in the nature of citizenship. “Property confers citizenship, in that one has a body and labour power to sell, but the expression of that citizenship is mediated by the power of the employer who owns the means of production” (Burman, 1996, p. 35). From this duality emerge two incompatible ideas of economic citizenship:

- citizenship as the right to work, or the obligation of the state to ensure for its citizens the minimum conditions of their economic existence and citizenship as the right to property, affirmed against the feared violation of economic citizenship by confiscatory nationalizations (Gordon, 1991, as cited in Burman, 1996, p. 35).

This duality has taken form in struggles such the Commune of 1871 in France where the excluded population attempted to form a civil society that guaranteed its right to economic and social citizenship (Burman, 1996). Canada as a state opted for a residual, liberal-capitalist model in the critically formative years between 1940 and 1945, bending toward the fundamental business interests in the economy (Burman, 1996). The notion that property confers citizenship is clear in Canada’s criteria for immigration. Highly skilled workers, particularly those trained in technologies, are encouraged to immigrate and borders are open for them to relocate easily as needed by companies. Permanent residence in Canada is possible under the "Investor Class" or
"Entrepreneur class" of the Immigration and Refugee Protection Act for individuals with $400,000 Canadian for investment or $200,000 Canadian to start a business (Immigration and Refugee Protection Act, 2002).

Within a globalizing market economy no rights of economic and social existence are ensured as part of a global citizenship. The sentiment of those populations excluded from the right to economic and social citizenship historically is echoed in a perspective on refugee movements emerging from the South. As Chimni (1998a, 1998b, 1999, 2000, 2002) articulates, the issue of displacement must be placed in the context of inequality, of the economic and political systems that perpetuate inequality, and the need to go back to ‘root causes’ of forced migration, while retaining an adequate protection system, and adapting that system to the new refugee situation.

Drawing on theories which "view the economic problems of developing countries, including conditions that create conflict and lead to refugee exodus, as the function of structural inequality within the international system" (Acharya and Dewitt, 1997) and recognize "the connection between refugees and relief, aid and development as an integral part of the problem of development of the countries of first asylum" (Gorman & Kibreab, 1997), Chimni formulated his reformist distributive-development model. This model calls for a serious addressing the root causes of migration while also placing the principle of responsibility sharing at the centre of its immigration and asylum policies. A more complex account of root causes of migration recognizes the structural inequality, which characterizes North-South relations, and the workings of the world economy with the prescription of a neo-liberal economic programme, such as structural adjustment programmes (SAP), playing a significant role in the creating of conditions that have unleashed ethnic violence. The break out of violence where SAP is implemented being mitigated by factors such as the role of colonial policies in creating and congealing
antagonistic ethnic identities, the resilience of the economy, the character of the post-colonial state, and the strength of democratic institutions (Chimni, 2002).

The same rapid technological and financial changes and the rapid integration of national economies into the global market economy, resulting in a decrease in state authority, is producing a growing inequality in structural power between larger and weaker states and affecting their capacity to exercise control over their futures (Collinson, 1999). In addition, as the “reach, power and mobility of capital has increased, that of labour has declined” (Collinson, 1999, p. 4). Most technological developments in agriculture, production, and the provision of services, and in the creation of new products and processes have involved an increased input of capital and a decrease in the relative input of labour (Ibid., 1999, p.5). Undocumented worker immigration into North America and Western Europe continues largely because of important pockets of demand for cheap and ‘flexible’ labour. This demand is created in part by the expansion of low-paid and part-time and/or insecure service jobs in the increasing segmented labour-markets of the North, a by-product of globalization (Sassen, 1998). The only significant category of workers who have any power and mobility within their structures are the TNC’s most highly skilled technical and managerial personnel (Collinson, 1999). Most workers remain very firmly tied a territorial world, governed by the state system, with restricted border controls on movement.

As international production becomes less and less reliant on labour, so the bargaining power of those countries offering cheap, unskilled labour is reduced further” (Collinson, 1999,p.5). These states have to depend on membership or close association with regional economic blocs for their economic and political survival. Countries are under pressure to compromise and co-operate with Northern countries in controlling transnational migration flows in exchange for wider protection and assistance.
Asylum is valuable in itself and in promoting other interests, such as humane governance, solidarity between states and international stability. As such, common commitment to the institution of asylum is in the interests of rich and poor countries alike (Chimni, 2002; Gibney, 2002). The downward standard-setting example of migrant and refugee receiving countries of the North further erodes international commitment to an already eroding refugee regime. The current policies aimed at deterrence and prevention discourage co-operative efforts among states to address the long-term economic and political causes of migrant and asylum seeker movements. Policies that deflect or contain refugees also contribute to regional instability and to even greater inequalities in the burden/responsibility for asylum between states (Chimni, 2002; Gibney, 2002).

**Exclusion/inclusion in liberal democracies**

Canada has adopted a residual, liberal-capitalist model and, as a liberal democracy, one of the questions that the state must decide related to citizenship is where to draw the line on whom to include within and whom to exclude from that democracy (Cole, 2000). This is particularly evident in our globalizing economy when, as has happened since the mid-1970’s, the faltering of the international economy prompted a shift to neo-conservatism in liberal democracies (Burman, 1996). With this shift “the new right is moving the welfare state away from the notion of citizenship (equality of entitlement) to one of class (inequality of entitlement)”, creating a climate of growing exclusion (Ibid., 1996, p. 45).

The question of where to draw the line of exclusion in a liberal democracy is of particular consequence to refugees. The Geneva Convention, itself a product of forces of liberalism, granted refugees the right of inclusion within western democratic states that were signatories. As will be outlined in chapter two on the international context, persecution as defined within this liberal context formulated the category of ‘deserving’. However, in the 1980’s the refugee movements expanded in type and number. What had been primarily political refugees became
refugees fleeing persecution of various forms with new route causes. At the same time, as the
doors of the west closed to immigration, the ‘undeserving’ appeared in the form of ‘economic
refugees’ trying to make their way into the wealthy countries of the north through one of the few
legal routes available – gaining refugee status. Migration for economic reasons was accentuated
by the effects of economic restructuring programs and a corresponding shift away from
development programs in countries of the south (Chimini, 1998b, 2002). Beginning in the early
1980s a number of traditional immigration policy measures were either re-tooled or others
initiated to prevent all migrants alike from reaching the borders of refugee receiving countries.
The politicization of borders had begun. The line was being drawn on refugees. While few
refugee claimants were granted refugee status once inside a border (50% acceptance rate in the
1990’s for an ‘exemplar’ country like Canada), the entry of asylum seekers correlated with the
likelihood of their stay. To some, the liberal and inclusionary nature of the liberal democratic
polity itself became a core factor contributing to the necessity for exclusionary measures of
border control (Gibney, 2002), reinforcing the new right’s movement of the welfare state away
from the notion of equality of entitlement (citizenship) to one of inequality of entitlement (class).

With globalization and the economic restructuring of the industrially developed
countries, governments are becoming adept at refining their responsibilities in relation to the
Geneva Convention. Across Europe and North American, governments have instituted measures
to control entry to their country and “thus circumvent the spirit of the United Nations Convention
while formally complying with the policy” (Creese, 1992, p. 126). “In effect, a process of
restructuring eligibility is well under way” (Zetter, 1999, p. 49).

Chapter 2    Refugee law and policy in the International Context

Ruling social frames of consciousness are actively organized within the worlds of official
discourse and ruling relations. In regulatory texts, the standpoint of those who rule is presented
(Kinsman, 1995). In this chapter a historical approach is taken to examine how the ruling relations reflected in International law and policy socially organize the refugee experience. Contributing elements to the international regime are the conventions, rules and norms, and decision-making procedure, which have guided international reaction to refugee movements (Lacroix, 1999; Skran, 1995). Through an examination of this history, the ruling relations can be traced in refugee policy from its “roots in humanitarian concern for those fleeing war, conflict and persecution to its current focus on political, social, and economic priorities” (Lacroix, 1999, p.75). “The experience of refugees can be understood only within the context of institutions and norms created to deal with the issue of forced migration” (Adelman, 1999, p.84).

**Pre-Convention**

Whereas all ages have witnessed people forced to move from their homes, refugees are a creation of the modern world. They are not just forced migrants but are part and parcel of the development of the nation-state (Adelman, 1999, p.89).

Between World War I and II, population exchange and to a lesser extent border adjustments were the major models for addressing the refugee problem, in attempts to establish membership in seemingly homogenous nations that would secure loyalty to the nation (Adelman, 1999). Identification of refugees was often constrained to a particular national or ethnic group which had to be internationally agreed upon in the aftermath of specific instances of conflict (Zetter, 1999). For those who lacked a territorial base to which to return, this system of sorting peoples into nation-states did not work, the Roma people in Europe being an example. This system, in effect, endorsed the right of nation-states to refuse asylum within their nation to those fleeing persecution (Adelman, 1999, p.91). Western countries granted asylum to only a small portion of Jews persecuted by the German Nazis in World War II. In a general sense the Geneva Convention of 1951 was a reaction to the failure of the allied countries in the war to respond to the persecution and genocide of the Jews in Germany (Adelman, 1999; Zetter, 1999).
portion of Jews persecuted by the German Nazis in World War II. In a general sense the Geneva Convention of 1951 was a reaction to the failure of the allied countries in the war to respond to the persecution and genocide of the Jews in occupied Europe (Adelman, 1999; Zetter, 1999).

The method of population exchange and redistribution to deal with forced migration continued for a period in the first years following World War II. This was exemplified by international arrangements made in relation to Jewish and Palestinian refugees. At stake in the post-war UN debates was whether European Jews were to be considered displaced persons or refugees. As displaced persons, they would be returned to their countries of origin; as refugees they would be entitled to seek resettlement in other countries and territories. The majority of states within the UN, with the exception of the UK and Arab states, voted for refugee designation. Most of the population did not return to the countries they had fled. When refused entry by most nations of the world, Palestine became the option for a majority of Jews (Adelman, 1999).

Following this pre-war method, the United Nations Relief and Works Agency (UNRWA) for Palestine Refugees in the Near East was created in 1950 to establish economic integration for the Arab refugees who fled the sectors of Palestine that came under Jewish Zionist control. This method of ethnic sorting created an Israel where the majority of Jews came out of fear of persecution in Arab lands; however, the formation of such a state was resisted as a solution by Palestinians and Arabs who identified the Jews as a left over from European colonialism rather than a local rival nation (Adelman, 1999). As seen from history there have been longstanding problems with this approach to population exchange and border adjustment, especially when orchestrated by the ruling powers.

Evolution of the Convention

During this same period following WWI, a legal framework and institutional structure first started coalescing in response to the needs of those displaced in war. The principles of
(Lacroix, 1999; Skran, 1995). The League of Nations held conventions in 1933 and 1938. These were “significant as first international efforts to elaborate a body of treaty law to afford protection to refugees” (Loescher, 1993, p.138). They constituted a first step in the “formation of more permanent international laws and institutions” (Ibid., p. 138), notably including the first legal document to address the concept of non-refoulement, “the prohibition of forcible return of a refugee to a country of persecution” (Skran, 1995, p.72).

In 1943 and 1947, in response to the more than 30 million displaced people in Europe at the termination of WWII, the international organizations of the United Nations Relief Agency (UNRRA) and the International Refugee Organization (IRO) came into existence (Lacroix, 1999; Salomon, 1991). The mandate of the IRO was to work exclusively with the refugees from WWII for a period of four years, which indicated both the Eurocentric focus of the mandate and the view of the time that the refugee problem was a temporary phenomenon. This was understandable since until the mid-1940s most displaced people, victims of the World Wars or of fascist regimes, were to be found in Europe. However, by the end of IRO’s term, refugees still remained in camps in Austria and Germany, refusing to repatriate, and Eastern bloc refugees formed a steady flow into Western Europe, indicating the long-term nature of the problem. (Independent Commission of International Humanitarian Issues [ICHI], 1986; Lacroix, 1999).

Toward the end of the IRO’s term, the UN took the initiative to form a new international refugee organization. At issue, primarily between the Europeans and the Americans, in the process of the formation of this organization were the questions: to what groups of persons was a new agency to extend international protection; how the operations were to be financed; and what was the lifespan of the new office to be? With the establishment of the IRO, the persecution criteria had been established for the first time with specification of the causes of persecution or fear of persecution in order to be accepted as a refugee. While political causes were considered very important in this context, economic causes were not mentioned (Salomon, 1991).
The Convention

With a staff of 33 people and a budget of $300,000, the United Nations High Commission for Refugees (UNHCR) was established in December of 1950 to address long term solutions to the refugee problem (Champassak, 2000; Salomon, 1991). The Geneva Convention, meant to consolidate and revise the status of persons without protection, happened soon after, in 1951 (Hathaway, 1990; Lacroix, 1999). Continuing to reflect the essentially European focus of the signatories and the concerns and experiences of European states in the aftermath of World War II, the Convention imposed a dateline by referring to those events prior to January 1, 1951 and imposed territorial limitations by referring to events geographically situated in Europe (Goodwin-Gill, 1996; Zetter, 1999). Included in this ‘European focus’ was the USA, as the major funder of UNHCR since its formation and as the dominant force behind the operation of the Convention and the agency (Zetter, 1999). On a practical level, the Convention dealt with the challenge of repatriation or resettlement of over 11 million people displaced during the war in Europe and outside of their countries of origin. Interestingly, the Convention was not applied to large population displacements such as the aforementioned 3.8 million Palestinians refugees in 1948 nor the millions displaced by the partition of India and Pakistan in 1947 (Zetter, 1999).

The universalization of a new refugee regime replaced the pre-World War system of national sorting and boundary adjustments. Once established by international law, international obligations, however inadequate, were no longer reactive or ad hoc (Zetter, 1999). This emergent system focussed on the sanctity of borders and the provision of international protection to those individuals fleeing regimes that failed to provide them with protection.

The twentieth century became the century of refugees, not because it was extraordinary in forcing people to flee, but because of the division of the globe into nation-states in which states were assigned the role of protectors of rights, but also that of exclusive protectors of their own citizens. When the globe was totally divided into states, those fleeing persecution in one state had nowhere to go but to another state, and required the permission of the other state to enter it (Adelman, 1999, p. 90).
This shift from the stress on the nation to the individual was epitomized by the creation of the international regime to deal with the refugee problem (Adelman, 1999). "Refugees represented a failure of the state system, a 'problem' to be 'solved'" (Aleinikoff, 1995, p. 257).

Two principles defining the status of refugees and their entitlements are central to the Geneva Convention and international legal instruments (Aleinikoff, 1995; Zetter, 1999). The first principle, in accordance with Article 1 of the 1951 Convention, maintains that the claim to refugee status applies to

   any person who, owing to a well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political group or political opinion, is outside his [sic] country of nationality and is unable ... or unwilling to avail himself [sic] of the protection of that country (Weis, 1995, p. 9).

As previously mentioned, initially the definition covered refugees produced by the conflict in Europe before January 1951. As the concept of the nation-state was globalized with postwar decolonization and new refugee movements developed in the 1960s, the 1967 Protocol was passed in which the Convention definition of a refugee became universal and limitations that had been imposed were revoked (Adelman, 1999; Lacroix, 1999). This definition of a refugee has otherwise not been changed since the Convention and is still the reference point for all interpretations (Aleinikoff, 1995; Zetter, 1999).

Although this definition has endured, the definition applies to "a narrow band of unambiguous victims", the "de minimis definition to which states could agree" (Vincent, 1989 cited in Zetter, 1999, p. 48). This definition excludes all those who could justifiably claim status on humanitarian rather than legal grounds and all those forced to flee for the many complex and multiple reasons contributing to forced migration that fall outside the scope of the Convention definition. Refugees are not accorded the same legal rights if they have not been displaced across an international border or, even if they have, if they have not been able to substantiate an 'individual' claim to refugee status (Zetter, 1999).
The second principle, the principle of *non-refoulement* (Article 33) pertains to the obligation of a host country to protect a refugee from forcible repatriation (Aleinikoff, 1995; Zetter, 1999). It, along with the Convention’s individualistic conception of the refugee, are at the heart of the developed world’s model of response to refugees. In keeping with the Convention, “spontaneous asylum seekers who can demonstrate that they are refugees under the terms of the United Nations Convention cannot simply be turned away from countries that are signatories to the convention” (Creese, 1992, p. 125). In this system, the influx of refugees to developed countries is relatively small, highly regulated and financed by the host country. Modes and mechanisms of integration into the country of the host society are emphasized and have assumed permanency of settlement. Support services and limited material provision are given within the framework of the national welfare state (Zetter, 1999).

The Convention, however, “allows states considerable discretion in determining the status of refugees and the right to asylum, and in interpreting their responsibilities and obligations set out in the Convention” (Zetter, 1999, p. 49). The fundamental international law norm is that states have complete control over the entrance of aliens into their territory (Adelman, 1999; Aleinikoff, 1995; Zetter, 1999). Refugee status is based on the idea of loss of membership but refugee law does not guarantee attainment of membership elsewhere (Aleinikoff, 1995). This contributes to the current situation where millions of refugees are waiting, in temporary arrangements; where Convention refugees and economic refugees are set against each other in a struggle of the most deserving.

In the last analysis, who is a refugee is as much a matter of pragmatic political interpretation as one based on international law or supranational humanitarian imperatives. This is because the core of the Convention is predicated on the principles of protecting state sovereignty and relations between states (Zetter, 1999, p. 50).

The underlying belief at the time of the writing of the Convention was that conflicts were the result of uncontrolled irrational nationalism or international collectivist totalitarian ideology.
(Adelman, 1999). For a period after the 1950s, the global number of refugees declined and “the refugee problem assumed an almost exclusively East-West dimension” (Loescher, 1993, p.58).

The Convention reflected the transformation and Cold War division of post-war Europe into the Eastern and Western blocs. Although the extent to which those fleeing the newly formed communist states of Eastern Europe qualified as refugees under the Convention was questionable, nonetheless it was a timely instrument with which to emphasize the contrasts between political freedom and democracy in the West and state control under communism. For these reasons none of the communist states were signatories to the Convention (Zetter, 1999, p. 49).

The communications and exit points from communist countries were tightly controlled. Not only was asylum generally granted to those who arrived in the West but “each single émigré was a propaganda triumph for the West” (Westin, 1999, p. 33). During this period, refugees from developing countries were the exception.

The 1950s to 1970s, a period of post-war reconstruction, saw Western Europe accept large numbers of labourers from regions surrounding Europe and from former colonies. With immigration considered as a political and economic necessity, the period was characterized by easy immigration and the small number of refugees were treated within the general labour migration framework (ICIH, 1986; Lacroix, 1999; Westin, 1999). In the 1960’s and 70’s many of the migrant workers who came to France and Germany were escaping authoritarian regimes in Spain, Portugal, Greece and Turkey. They were admitted because the receiving countries needed labour. No one examined their need for protection. If they lacked documentation, they were treated as migrant workers (Castles, 2002). No specific integration policies existed. People were put to work mainly in unqualified jobs within the industrial and service sectors, usually with little preparation (Westin, 1999).

The 1973 Oil Crisis marked the end of post-war growth period and a turning point in European migration. Western Europe stopped labour recruitment and redefined themselves as ‘zero immigration countries’ (Castles, 2002). Labour migration stopped across Western Europe as industry began to move outside of Europe to areas of reduced labour cost. Rather than return
home, 'guest workers' choose to remain in Europe and sponsor the immigration of their families. This marked a turning point in states' responses to refugee movements as a framework of general control of immigration developed (Hathaway, 1994; Lacroix, 1999; Westin, 1999). For many people, claiming asylum became the only legal route to entering and settling in the industrialized world. This does not say that asylum seekers were not genuine but that those who fled their countries who had previously been admitted as workers now had to claim asylum (Castles, 2002).

At the same time, refugees from developing nations, first from Uganda (1972) then Chile (1973) and Vietnam (1975), started migrating to developed countries. While the numbers were relatively small, receiving countries could handle the migration and the asylum regulation and resettlement policies developed during the Cold War years continued to apply. Political refuge and family reunification were the gates open to migrants; the USA, Canada and Germany in Western Europe being frequent destinations (Lacroix, 1999; Westin, 1999).


With the globalization of the economy, a potential for migration from developing to developed countries gradually built up (Adelman, 1999; Westin, 1999). After the 1960s, new dynamics in the evolution of refugee flows emerged with the incidence of forced migration predominantly coming from developing nations. The international refugee regime was faced with new and different challenges: 1. There was a rapid rise of refugee populations (Adelman, 1999; Zetter, 1999). 2. Refugee movements were characterized by unpredictable, complex and varied causal factors. “The concept of individual persecution and status determination inadequately fitted these new conditions of mass exodus” (Zetter, 1999, p. 51). 3. While movements had rapid onset, “resolution often seemed intractable and exile was protracted” (Ibid., p. 51). 4. The “impoverishment and destitution of vast numbers of refugees presented unparalleled demands for humanitarian assistance” (Ibid., p. 51) and 5. “The burden of assistance fell on the very poor
countries in the developing world, those least able to sustain their own developmental aspirations” (Ibid., p. 51).

In these new circumstances, “the conceptualization of a refugee was found wanting” (Zetter, 1999, p. 51). Underlying many of these movements were superpower conflicts and intrastate conflicts as states acquired independence from colonial rule (ICHI, 1986; Westin, 1999; Zetter, 1999; Zolberg, 1989). Examinations of the root causes of forced migration recognize that forced migration can result from the policies and actions of governments, including political and economic intervention abroad. Yet, these governments are not held accountable for outcomes such as forced migration since the principle of sovereignty supersedes (Aleinikoff, 1995; Westin, 1999; Zetter, 1999).

The 1967 Protocol removed the limitations to the Convention and in practice the international community had already extended the mandate of UNHCR beyond the original limits. By 1975 the budget of UNHCR had grown to $70 million per year from the original $300,000 (Zetter, 1999). In 1969 and 1984, the Organization of African Unity (OAU) and the Organization of American States (OAS) expanded on the Convention definition to form a definition that better reflected the circumstances of refugees under these new conditions (Ibid., 1999). The broader more encompassing definitions contained in these regional instruments are neither binding nor internationally accepted. Nonetheless, they highlight important aspects of the refugee phenomenon and the reality of refugee crises confronting the international community, notably in the articulation of the needed focus on the “growing complexity of root causes”, the “collective concern at internal instability” and the relevance of “broader political, economic and historical explanations of why people become refugees” (Ibid., 1999, p. 52).

Asylum seekers during this period increasingly differed culturally and ethnically from their hosts in the North, and often lacked support from kin and groups from their own country (Lacroix, 1999). In the 1960s refugees from the developing world represented 5% of all
applications in Europe, in the 1970s, 80% (Tiberghien, 1994, p.42 in Lacroix, 1999). By the end of the 1980s all European countries started tightening up their asylum procedures (Westin, 1999). Exclusionist trends that had previously been directed to guest workers were extended to asylum-seekers and refugees in the 1980s and 1990s (ICIHI, 1986; Lacroix, 1999). The “official attitudes towards refugees and asylum-seekers became inextricably linked to the question of immigration control” (ICIH, 1986, p.35). Humanitarian reasons were no longer accepted as grounds for asylum in Europe (Loescher, 1993). “The aim of this change of practice and interpretation was primarily to reduce the influx of migrants from the developing world” (Westin, 1999, p.34).

During this period the discourse around the image of the asylum seeker started to change. Immigrants, rather than seen as an asset, became burdens and refugees came to be viewed as a threat (Lacroix, 1999). In the late 1980s, the establishment of the ‘Fortress Europe’ represented another major turning point in European migration policy (Lacroix, 1999; Westin, 1999).

**The Convention under Challenge – 1980s-2000s**

Although a decrease in the generation of forced migration was anticipated with the end of superpower conflict following the Cold War and with the break-up of the Soviet Union in the late 1980s, the flow of refugees actually accelerated (Lacroix, 1999). Migration on a North-South axis also continued (Zetter, 1999). In the early 1980s, even with many signatories to the Geneva Convention, refugees were a small part of the international refugee regime. “The surrender of absolute sovereignty had been slight and only token…. For example, less than 300 people arrived in Canada each year claiming refugee status. By the end of the 1980s the number had increased one hundredfold” (Adelman, 1999, p. 95).

In addition to the increase in the numbers of people seeking protection abroad, more refugees were reaching the borders of countries in the North, as travel became easier with globalization. At the same time, economic crises developed in the industrialized nation-states,
in Canada each year claiming refugee status. By the end of the 1980s the number had increased one hundredfold" (Adelman, 1999, p. 95).

In addition to the increase in the numbers of people seeking protection abroad, more refugees were reaching the borders of countries in the North, as travel became easier with globalization. At the same time, economic crises developed in the industrialized nation-states, paralleling the processes of globalization and automation, reducing the demand for unskilled labour (Adelman, 1999). Refugee protection was also being legalized within the domestic codes of industrially developed states and “the very rights regime that expressed the essence of modernity was extended to ensure that those refugees had the same rights as did a citizen”(Adelman, 1999, p. 95). In Canada in 1985, the Singh case established that the existing regime adjudicating refugee claims was illegal and the system was changed to allow the refugee claimant to appear before a tribunal to hear the claim, enhancing refugees’ ability to succeed in his or her claim (Ibid., 1999).

As a backlash to immigration grew under the pressure of higher unemployment and the unavailability of lower-wage service jobs, measures were introduced to restrict refugee claimant and illegal migrant’s access to the borders of countries in the North (Adelman, 1999; Lacroix, 1999; Westin, 1999). “Globalization...released forces which have contributed to the increased production of refugees as well as the increased reluctance of developed states to allow them to enter their territory” (Adelman, 1999, p.96).

The Convention served the interests of the developed nations well, first as a tool for post-war resettlement and then increasingly as a tool for restrictionism (Zetter, 1999). With globalization and the economic restructuring of the industrially developed countries, governments are becoming adept at refining their responsibilities in relation to the Geneva Convention. Across Europe and North America, governments have instituted measures to control entry to their country and “thus circumvent the spirit of the United Nations Convention
this period of intensive capitalist restructuring, the ability of national governments to control “who gains citizenship status figures prominently in attempts to reshape labour markets and attract capital investment. The existence of highly differentiated labour markets organized through the nation-state system...serves capitalists well in this period of restructuring” (Sharma, 2000).

While the right to claim asylum under international law continued to be generally respected by northern countries, they began to take measures to restrict entry of ‘bogus claims’. By the end of the 1990’s, many industrialized countries had introduced policies aimed at restricting access including: temporary protection regimes, non-arrival policies (visa requirements and carrier sanctions), diversion policies (safe third country transit countries), and deterrence policies (detention and prohibition of employment). Increasingly with the tougher rules and regulations, those seeking asylum fled to industrialized countries through more sophisticated ‘irregular’ means, often with the assistance of people smugglers (Castles, 2002; Gibney, 2002).

While the members of the International refugee regime with the most capacity to provide protection to asylum seekers within their borders were creating forms of administrative closure to limit refugee admissions, a different paradigm of refugee crisis began to present to which the term ‘complex emergencies’ was employed. Described as having “a singular ability to erode cultural, economic and civil structures of a society” (Bennett, 1995b, p.xiv in Zetter, 1999, p.53), this phenomenon presented challenges not only to “the Convention and its validity, but to the modalities of intervention and the configuration of humanitarian relief as well” (Macrae and Zwi, 1994 in Zetter, p.53). The Convention refugee definition was further challenged when faced with 1. genocide and ethnic cleansing as the tools of mass persecution, 2. the meaningless distinction between refugees and the internally displaced and 3. the fact that perpetrators of violence might also be victims. This legal definition inadequately defined the mass of refugees who were
involuntary victims of broader social, political and ethnic forces (Zetter, 1999, p.54). And, as
Zetter elaborates, “the carefully crafted relationship between humanitarian objectives and non-
political interests” (1999, p.53) had broken down.

In contrast to earlier experiences, the international community, although in diplomatic
disarray and lacking coherence, nevertheless explicitly asserted the right to both political and
military intervention in the sovereign interests of states, in Rwanda and former Yugoslavia,
ostensibly to secure large scale humanitarian programmes. These interventions extended far
beyond the studiously neutral peacekeeping missions of the past .... The concept of neutrality
which underpins consideration of the entitlements of asylum-seekers and the determination
of refugee status, is severely tested where the humanitarian imperative is so closely linked to
political interests and military operations” (Zetter, 1999, p. 53-4).

First evident in the 1990s was what Adleman has called a third international refugee regime
(Adelman, 1999) with the contentious concept of voluntary repatriation as the preferred solution
for addressing refugee flows. Two conflicting views of this third regime are evident. The first
view here articulated by Adelman maintained that:

Economic globalization, which seemed to reduce the degree of autonomy and self-control of
any local state, also increased the degree to which a country was responsible for its own
survival and success. This was as true in the field of refugees as in the economic realm. If the
second phase of the international refugee regime was characterized by an ineffective and
self-defeating ideology of import substitution and exporting the peoples of a country as
immigrants and refugees, the third phase can be characterized by a focus on economic
exports and ensuring that a country’s own people can stay or return home .... In this phase,
globalization, as the culmination of modernity, which weakened the nation-state
economically, also strengthened the reliance of nation-states on the initiative and enterprise
of its own citizens. In the refugee realm, it meant much greater reliance on the initiatives of
refugees and their home and host countries to resolve the refugee issues, and less reliance on
the initiatives and organizing capacity of the international system. (Adelman, 1999, p. 100).

Adelman viewed the gradual evolution of UNHCR from an agency responsible for the protection
of refugees to one “that took as its prime mandate the needs of refugees and displaced persons
within the borders of their own state” as symbolic of this change (Adelman, 1999, p. 100).

questioned the dissimilarities of asylum flows from the Third World in the 1980s from those in
Europe. Referring to the dissimilarities as a myth of difference, a foundation for the ‘new
approach’, Chimni saw this approach as complicit with the strategy of containment of the South
pursued by states of the North and as justification of restrictive asylum measures of Northern states. The policy proposals of this ‘new approach’ advocated for voluntary repatriation as the dominant solution to forced migration as part of a strategy of containment, with an emphasis on return to the state of physical origin, at the rejection of the exilic bias of international refugee law which had been predominant in the Cold War Era (Chimni, 1998b). Chimni’s proposed counter approach was grounded in the principles of solidarity and internationalism, cognizant of the role of a globalizing economy in the growing North-South divide, of the role of imperialism historically in the forced migration of people, and of the distorted international division of intellectual labour (Chimni, 1998b).

In the 1990s UNHCR was the largest relief organization to serve refugees and displaced persons (Adelman, 1999, Zetter, 1999). After 50 years in operation, the agency employed a staff of 5,000 in 120 countries with 22.3 million refugees and others of concern under its protection, with a budget of about $1 billion annually. The funds for refugee assistance are, however, both voluntary and limited and most of the funds contributed by a small number of states; 97 per cent coming from fourteen countries including the USA, Canada, Japan and the European Commission. Current UN High Commissioner for Refugees, Ludders has recognized that the UNHCR must move away from its western origins (Champassak, 2000; 2002). How this can be accomplished while financially depend on those very countries is the question.

Within UNHCR, Chimni maintained that there have been few alternatives posed to the hegemony of the ‘Third International Regime’ due to the discreditation of the exilic bias of international refugee law, the influence of Northern states through control of UNHCR’s finances, the absence of human and material resources, the prejudice of doing theoretical work, and the absent of coherent alternative frameworks. Chimni’s position is that the hegemonic states of the North are replacing the discourse of protection with a discourse of security; a discourse that is rapidly upheld by elites in global peripheries whose interests often coincide with their
counterparts in the states at the centre of power (1998b). Due to the influence of states of the North, UNHCR performs its role in collaboration of such discourse (Chinmi, 1998b).

In the words of one writer, “If there is one clear lesson from the developments of the refugee regime in the 1980s and 1990s, it is that a more interventionist approach to the cause, treatment and cure of refugee flows in unavoidable – and unavoidably political” (Roberts, 1998, p. 394 cited in Chimni, 2000, p.17). And as Harrell-Bond has noted of refugee protection, “the danger of the assumption that it is possible to separate politics from humanitarianism [is] that it prevents an examination of the effects of local, national, and international politics on refugee policy.” (Harrell-Bond, 1986, p.17).
Chapter 3   Refugee law and policy in the Canadian Historical Context

Historically, in Canada, refugee policy has been inextricably tied to immigration policy (Knowles, 1997). The Immigration Department bureaucracy, due to its central role in controlling admission to Canada, has been the primary apparatus for refugees and as such “has been one of the major contributors to the production of discourse on refugees in Canada” (Lacroix, 1999, p. 85). Selection of whom is to enter the country, whether immigrant or refugee, has been a prime concern in the politically controversial area of Canadian immigration (Adelman, 1990; Creese, 1992; Knowles, 1997).

Despite provision in the 1976 Immigration Act for determining the status of refugee claimants at Canadian ports of entry, Canada has considered itself as a country of resettlement rather than a country of first asylum (Dirks, 1995). Immigration officials persistently rejected the label of country of first asylum until the early 1990s. Only in 1990 did the Report on the 1991-1995 Immigration Levels Consultations published by the Canadian Employment and Immigration Commission (CEIC) acknowledge this status declaring, “It should be emphasized...that Canada is now a country of first asylum, a country to which refugees look first for protection.” (CEIC, 1990, p. 6 as cited in Dirks).

Historically, three main objectives can be delineated in Canadian immigration policy: 1. Economic growth and labour market provision. 2. Family reunification and 3. Humanitarian considerations, the admission of refugees or those in refugee-like situations (Lacroix, 1999). More recently, the demographic factor of stimulating a declining population growth and delaying population decline and aging has become a primary concern (CBC News, March 12, 2002). The underlying issue in all of these objectives has been “what type of immigrant is best suited for Canada” (Lacroix, 1999, p.86). Currently “the debate revolves around the broad question of whether sizeable immigration continues to enrich the economy and the culture or whether
[Canada], now mature and settled, need [s] to substantially limit immigrant flows to secure prosperity and social cohesion among established populations” (Meissner et al, 1993, p. 12 as cited in Lacroix, 1999). Trends, paralleling those on the international level, can be delineated in Canadian immigration policy; trends coinciding with major changes in the Immigration Act and influencing the development of the Canadian refugee regime (Lacroix, 1999).

The 1940s – 1970

Canada is historically a ‘white settler-colony’. “Controlled initially by the French, and then by the British, ethnic, class and gender inequality were etched early on. The Canadian state played a key role in these processes through policies and practices that maintained the power and advantage of white, particularly of British origin, males” (Abu-Laban, 2001, p. 265). One tool of implementation of these social structures was immigration policy. Until 1962, racism was enshrined in Canadian immigration law:

Besides the power to explicitly bar certain groups of immigrants on the basis of race [prior to 1962], the Immigration Act also contained systematic barriers [such as continuous passage and head tax] that prevented members of racial minorities from coming to Canada (Matas, 1996, p.95).

In the years following WWII, an underlying exclusionary discourse was established within the Immigration bureaucracy which later influenced Canada’s approach to the “refugee problem” (Lacroix, 1999). In the aftermath of this war, Canada was hesitant to implicate itself in the resettling of Europe’s 30 million displaced people. “Between 1933 and 1945 Canada found room within its borders for fewer than 5,000 Jews; after the war, until the founding of Israel in 1948, she admitted 8,000 more. That record is arguably the worst of all refugee-receiving states” (Abella and Troper, 1983 p. vii as cited in Matas, 1995). Of the lessons to be gained from this period Matas writes:

From the perspective of racism in immigration law, the Jewish experience is illuminating. It tells us that we do not need laws to have racist discrimination practices. All we need is unlimited bureaucratic discretion, an unsympathetic or passive public, unmotivated public
leaders, or racists in positions of power to make apparently neutral laws racist (Matas, 1996, p. 97-98).

A 1946 External Affairs document reporting on the state of refugees spoke of the “highly undesirable consequences of the political activities of such persons, were Canada to grant them asylum” (Whitaker, 1987, p. 24 as cited in Lacroix, 1999). During the Cold War, discrimination based on political criteria became the grounds for exclusion of certain categories of people, fostering a framework of ideological and political criteria for the selection of immigrants. Canada built a national security state during these years, creating an atmosphere that could be felt through the 1960s and into the 1980s, that sometimes affected its international obligations (Lacroix, 1999). In 1951 Canada determined that the UN Convention was adverse to its socio-political needs as it inhibited Canada’s ability to deport aliens (Kelly, 1992 as cited in Pelosi, 1996). Not until 1969 did Canada reluctantly ratify the Geneva Convention Protocol (Lacroix, 1999; Plaut, 1990). The questions of “the right to enter Canada” and the “right to citizenship” echoed in the late 1980s and 1990s and can be heard again in the 2000s as immigration officials try to control the flow of refugee claimants to Canada and the right of entry and citizenship is again debated in the face of national, international security, and economic priorities in a globalized economy (Lacroix, 1999).

During the period of economic growth from post-WWII into the 1960s, immigration increased. During this period immigration policies were aimed at meeting the demands of the labour market. The adoption of Keynesian policies increased the need for labour and technological changes created a demand for skilled workers. The new Immigration Act of 1952 simplified the administration of immigration, conferring wide-ranging powers on the Minister and Immigration officers in the selection, admission and deportation of immigrants (Knowles, 1997). With the new Immigration Regulations tabled in 1962 and 1967, the ‘White policies’, which overtly promoted white European immigration, came to an end.
The power to exclude would-be immigrants in certain categories and of certain origins, on which White Canada policy was based, was laid down in the Immigration Act of 1910, amended by the Act of 1919. Laws to discourage the entry of the Chinese or to exclude them altogether were passed by the federal parliament in 1885, 1900, 1903 and 1923 (Hawkins, 1989, p.17).

These new Regulations removed racial discrimination as the major feature of Canada’s immigration policy. A point system, outlining criteria for the selection of immigrants, was introduced as a measure to reduce the power of immigration officers and provide systematic selection (Lacroix, 1999). Selection was based on competence or potential in areas such as skills, education, work experience and training, employability in jobs for which Canadians were not available or ability to start or buy a business for which there was a demand (Matas, 1996).

Immigration accounted for two-thirds of the labour force’s increases from 1940 to 1950 and for more than half the total increase between 1950 and 1960 (Knowles, 1997). Although brought in to meet the demands of the labour market, it was not until the mid-seventies that Canadian immigration was planned in a comprehensive manner within a structured context (Hawkins, 1989; Lacroix, 1999).

Between 1945 and 1970 Canada was involved in only three major refugee movements: the movement of displaced persons in the years following WWII, the Hungarian movement in 1956-57 and the Czech movement in 1968 (Hawkins, 1989; Dirks, 1995). “All of these movements came from Europe within a Cold War context and were understood by the public mind as being made up of people defecting, fleeing oppressive communist regimes or specific circumstances which could be understood as apart of the East-West conflict” (Lacroix, 1999, p. 90). This atmosphere changed from the 1970s onward.

The 1970s - 1990

Several developments arose in the area of Canadian immigration policy during the 1970s. The 1952 Act, which was remnant of the nineteenth century, was revamped. A Green Paper task force was formed in 1973 and in 1975 a joint committee of the Senate and the House of
Commons was struck to study that Paper and hold public hearings across the country (Knowles, 1997; Lacroix, 1999). A new Bill was tabled in 1976 and in 1978 a new Act implemented (Lacroix, 1999).

New refugee movements came to the forefront internationally. Canada, responding to this international pressure, opened its doors first to the Ugandan Asians in 1972, Chileans and other Central Americans in the 1970s and Vietnamese in the 1980s (Adelman, 1999; Dirks, 1995; Lacroix, 1999). Canada broke from the ways of the previous decades in its management of these refugee movements, paving the road for better refugee management and a more responsible role for government in refugee resettlement in the future (Hawkins, 1989; Lacroix, 1999). Yet “before the institution of an official refugee determination system in 1978, refugees were accepted on an ad hoc basis, depending on international situations and international pressures in burden-sharing” (Lacroix, 1999, p. 89).

With the 1976 immigration Act, the Canadian government recognized the international refugee phenomenon in law, instituting a refugee determination process for the first time in Canadian immigration policy (Dirks, 1995; Lacroix, 1999). No prior statutory reference regarding the issue of refugee status existed. For about five years prior to 1978 when the new Act was put into effect, a committee of officials within CEIC had reviewed claims for refugee status from people already in Canada and passed on recommendations to the minister. In 1976 approximately 600 such claims were made. 25 per cent of these were found to be valid and another 15 per cent were allowed to remain for humanitarian and compassionate reasons. This number of claims was insignificant compared with the thousands of decisions required annually by the mid-1980s (Dirks, 1995).

The 1976 Immigration Act formed the foundation for present-day immigration policy (Knowles, 1997). It designated three categories of individuals who were admissible to Canada as landed immigrants: 1. Family class: immediate family and dependent children including those of
immigrants and refugees 2. *Humanitarian class*: a refugee determination program with two divisions a) designated class system with procedures to screen refugees for overseas selection and b) a determination process for inland refugee claims according to the Geneva Convention and 3. *Independent class*: individuals selected on the point system (Creese, 1992: Dirks, 1995; Lacroix, 1999).

In the humanitarian class, three quarters of the refugees who came to Canada between 1979 and 1990 were selected overseas, coming as permanent residents with the possibility of applying for citizenship (Lanphier, 1990). Selection overseas is made by the Canadian government and by designated private sponsoring groups such as church groups and groups of five. Criteria for selection is according to capacity for resettlement, based on immigration criteria and do not necessitate the application of the Geneva Convention definition of refugee (Lacroix, 1999; Lanphier, 1990). “Through pre-selection, the designated class system has been used effectively to choose refugees who have the most marketable skills for the Canadian labour force and...who are most palatable based on geopolitical considerations” (Creese, 1992, p. 123). This class also included the aforementioned voluntary system of resettlement of movements of refugees who fled for various reasons but where alleged individual persecution was not the central issue. Canada and other receiving countries were “not obliged to take in the refugees [under the humanitarian class], but their humanitarianism combined with their self-interest in admitting immigrants with skills and talents (particularly when this intake complemented their ideological opposition to the regimes from which the refugees fled) meant that many refugees could be accommodated” (Adelman, 1999, p. 94).

The determination process for inland refugee claims applied to those who arrived at Canada’s ports of entry without prior government contact. As a signatory of the 1951 Geneva Convention and the 1967 Protocol, Canada was obligated to provide protection to such persons who presented at its borders seeking refugee status under the Convention. In 1976 the numbers
of refugees claimants arriving at Canada's borders were low. The refugee determination process which was established reflected "the fact that the Immigration Department had not thought this would be come a major avenue for refugees seeking resettlement. Policy focus was still on resettlement of refugees selected overseas" (Lacroix, 1999, p. 92). The provisions for determining refugee status from within Canada represented a cautious but noticeable liberalization of government attitudes, in keeping with the overall trust of the 1976 Act (Dirks, 1995).

The question remained as to how people already in Canada would have their refugee claims determined (Dirks, 1995). In the early 1980s a Refugee Status Advisory Committee (RSAC) with a board of eight members to handle refugee claims was instituted.

From the onset critics expressed unhappiness with this process. These observers, familiar with the global refugee phenomenon, had some doubts about the fairness and justice of the status determination system. The inability of the claimant to appear in person before RSAC for an oral hearing constituted one of the strongest grievances (Dirks, 1995, p. 79).

When it came to criticizing the government's refugee status determination procedures, Non-governmental organizations (NGOs) lead by the churches and Amnesty International, were very active and wielded some influence. Senior immigration officials recognized that church-based groups represented "a cross section of refugee workers without whose voluntary activities it would be difficult to deliver our refugee resettlement program. The major Canadian churches, coalescing under the national umbrella of the Inter-Church Committee on Refugee, felt especially strongly about the need for oral hearings" (Ibid., p. 81).

Throughout the early 1980s "the issue of oral hearings for claimants remained a major concern ... and was inextricably connected in the minds of officials with the need to avoid creating a backlog of refugee claimants" (Dirks, 1995, p. 80). In 1984 Rabbi Gunther Plaut was commissioned to write a report developing alternative models that would ensure fairness and
also eliminate the backlog of claimants that concerned authorities (Dirks, 1995; Lacroix, 1999).
The Plaut report was completed within the year.

In the mean time, the existing process was challenged in the Supreme Court of Canada in the landmark Singh case of 1985. The Court held “the entire refugee-determination procedure unconstitutional, in violation of the Charter guarantee of fundamental justice and the Bill of Rights’ guarantee of a right to a fair hearing” (Matas, 1996, p.98) because it did not allow the credibility of the refugee to be assessed in an oral hearing before the tribunal adjudicating the claim (Adelman, 1999; Matas, 1996). Rejected refugee claims were subsequently directed to the Immigration and Appeal Board (IAB) for an oral hearing. Since the IAB was not designed to accommodate a large quantity of cases, this system, despite its expansion, became overloaded resulting in a backlog of cases (Dirks, 1995) and “in turn inviting false claims in the hope of an amnesty” (Creese, 1992, p. 137). Meanwhile, due to the Department of External Affairs’ (DEA) opposition for reasons of foreign policy, the state refused for some time to use visa requirements to end flows of claimants from countries that were clearly non-refugee producing. The desperately needed new legislation was still not forthcoming (Creese, 1992; Dirks, 1995).

In 1986 the decision was made to no longer grant refugee claimants work permits before their initial inquiry. Ineligible to work legally, many claimants and their dependants became destitute and ended up on social assistance. Provincial and municipal governments, believing refugee claimants to be a federal responsibility, “urged authorities to grant refugee claimants employment authorizations until final decisions on their status had been made. Officials at CEIC, already alarmed by the lack of effective deterrents to claiming refugee status, rejected these appeals. Permission to work would, in their view, simply encourage more people to make refugee claims” (Dirks, 1995, pp. 87-88). Intended as a measure “to discourage migrants from using the refugee process as a way to work in Canada, … its immediate effect was to place the cost of supporting refugee claimants on the municipalities of Montreal and Toronto, where the
majority of claimants arrived, adding to the perception that refugees are a burden on Canadian society” (Creese, 1992, p. 135).

Besides the Supreme Court ruling and the ever-increasing backlog, two events precipitated the tabling of new legislation. In 1986 many Central Americans, refugees living in the U.S. illegally due to American foreign intervention policies in their own countries, were forced to seek asylum in Canada because of changes in American immigration policy (Dirks, 1995; Lacroix, 1999). In 1986 the first boatload of people seeking refuge, Tamils, landed off the coast of Newfoundland, an event which the media seized to focus dissent. In early 1987 the numbers of Central Americans arriving at the border was up to 1,000 per week (Creese, 1992; Dirks, 1995). “As thousands of refugee claimants arrived, Immigration officials felt that they were losing control over the selection of people entering Canada: a period of repressive measures was begun” (Lacroix, 1999, p. 93). Beginning in February of 1987, administrative measures were taken to handle the inflow of refugee claimants (Dirks, 1995; Lacroix, 1999). This proved to be the same year that Canada was awarded prestigious Nansen Medal by UNHCR for recognition of her past and present role in protecting and assisting refugees, the first time the award was given to an entire nation (Creese, 1992; Dirks, 1995).

By May 1987 when the new legislation began its first reading in the House of Commons, the backlog in refugee claims had reached nearly 50,000 (Dirks, 1995). By this time ...

... support was growing for a crack down on bogus refugees and in opposition to another amnesty like the 1986 administrative review ... Bill C55, the Refugee Reform Act, was primarily concerned with limiting access to the determination system and speeding up the process for determination (Creese, 1992, p. 137).

In the summer of 1987, a boatload of Sikhs arriving off the coast of Nova Scotia was cause for Parliament to be called back from summer vacation for an emergency session (Dirks, 1995; Lacroix, 1999). Fueled by the media, a crisis that Canada was being invaded by refugees ensued
The Tamil and Sikh sea arrivals in 1986 and 1987 formed pivotal points in the development of the “refugee crisis”.

The global refugee crisis was almost entirely ignored while attention focused on the alleged abuse of the Canadian immigration system by those claiming to be refugees. In this process all refugee claimants came to be seen as queue jumpers or illegal immigrants (Creese, 1992, p.129).

This created the perfect political climate to try to push Bill C-55 through parliament more quickly and to bring forth further legislation, Bill C-84, to arrest the ‘abuse’ of the system (Creese, 1992).

The development of a “refugee crisis” was at least partly an intentional outcome of government policies. Unable to control the volume and source of spontaneous convention refugees, the determination system was allowed to grind to a halt to pave the way for radical restructuring. The mass media also helped to build up the issue into a political crisis (Creese, 1992, p.131).

These bills proposed major changes to the refugee determination process and gave broad powers to Immigration officers. Bill C-84, the Refugee Detention and Deterrence Bill, “created an uproar in the non-governmental sector working with refugee claimants. Changes to the 1976 Act were written by immigration officials and did not respect the provisions for protection in either the Robinson Report of 1981 or the Plaut report.” (Lacroix, 1999, p.94). This legislation rendered the concept of asylum “an appendage to the concept of refuge” and the procedures outlined in this legislation replicated the process in place for determination overseas (Lanphier, 1990).

In May 1989 the federal government instituted an administrative review, which was essentially a partial amnesty, to clear the backlog of 23,000 cases, and proceeded to develop policies to tighten the determination system.

By the time Bill C-55 came into effect two and a half years later, the determination system had ground to a halt and the backlog was estimated at 85,000 cases. Moreover, the discourse on the “refugee crisis” focused mainly on the need to protect Canadian borders and prevent refugee claimants’ access to the internal determination system in Canada on the assumption that most convention refugee claims were false. Little consideration was given to ensuring that genuine refugees retained access to the determination system (Creese, 1992, p. 129).
This ideology was apparent in the parliamentary committee discussions. The second report of the Parliamentary Standing Committee on Immigration gave the following in relation to measures taken, "The control measures announced in February, 1987, were designed to curb further abuse and to manage the flow of claimants (Labour Employment and Immigration, 1989, p. 30 as cited in Pelosi, 1996). As the Minister of Employment and Immigration stated in a press conference, the notion that abuse existed was based on the fact that, "In 1980 1,600 claims to refugee status were made. By 1989 the number had risen to over 18,000" (Labour Employment and Immigration, 1989, p. 3 as cited in Pelosi, 1996). This was the ideological climate at the time the Immigration and Refugee Board (IRB) was formed in 1989, following the passage of Bill C-55 and in response to the 1985 Singh Decision.

The 1990s – 2000s

A thorough account of immigration/refugee history during this recent decade awaits writing. Although not all-inclusive, the following are some of the historical highlights during this period. Increasingly, barriers are constructed to prevent forced migrants from reaching Canada’s borders to claim inland refugee status, the refugee determination system is under threat, and the rights that refugees have had in this country since the 1980s are challenged. The reader may detect a repeat of themes from the events of the 1980s.

- In 1993 the Post-Determination Refugee Claimant in Canada Class (PDRCC) was created by regulation. It codified a previously existing risk review but in application served few. The Guidelines on Women Refugee Claimants fearing Gender-related Persecution was issued by the Immigration and Refugee Board. Canada was the first country to issue such guidelines (Dench, 1999).
- In 1994 the lowering of immigration levels was announced, marking a shift away from family reunification (Dench, 1999).
In February 1995, the government imposed the Right of Landing Fee, otherwise known as the Head Tax. The fee of $975.00 applied to all adults including refugees, becoming permanent residents. Widely opposed, the government rescinded the fee for refugees in February, 2000 but maintained it for immigrants. In March the Minister of CIC announced the creation of an advisory committee to review candidates for appointment to the IRB, in response to persistent criticisms about the quality of board members (Dench, 1999).

In November 1996, the Minister of Citizenship and Immigration appointed the Legislative Review Advisory Group (LRAG) to conduct a comprehensive review of Canada’s immigration legislation and policies (Young, 2000). In late 1997 LRAG delivered its Report, Not Just Numbers: A Canadian Framework for Future Immigration, to the Minister with 172 recommendations that would involve sweeping changes in the immigration and refugee systems. The Report was critical of the inland refugee determination system, concluding that public confidence in its fairness, consistency, and efficiency was flagging badly. Cross-country consultations on the Report ensued. Some of the recommendations proved immediately controversial and were disavowed by the Minister (Dench, 1999).

In December 1997 the Auditor General issued a report on the processing of inland refugee claims by CIC and the IRB. The AG’s concerns centered on efficiency and operational effectiveness; it noted a lack of vigour in certain processes, and a general lack of coordination, integration, strategic direction and overall monitoring and follow-up. The recommendations included: ensuring that the selection process of Board members be better tailored to choose candidates with the necessary qualifications; improving appointment practices to ensure sufficient experienced decision-makers; ensuring members have the information necessary to make well-reasoned and fair decisions; and taking urgent action to improve the organizational climate at the IRB and develop a common vision among its employees (Dench, 1999; Young, 2000).
• In January 1999 the Minister released a discussion paper *Building a Strong Foundation for the 21st Century: New Direction for Immigration and Refugee Policy and Legislation* proposing to retain the Board while taking measures to make the system more effective and less costly (Dench, 1999).

• In the spring of 1999 Canada accepted an appeal from UNHCR for countries to evacuate Kosovar refugees from Macedonia. With tremendous response from the public, government and organizations, 5,000 refugees were relocated for two years with an option for application for permanent residence. The government also moved to resettle refugees with family links in Canada or with special needs (Dench, 1999).

• In the summer of 1999, the arrival of four ships off the shores of British Columbia, carrying 599 Chinese people, mostly Fujianese, placed a spotlight on the refugee system. Most of the arrivals claimed refugee status. All 599, including a number of teenagers, were detained after their arrival, the majority in a detention centre in Prince George, B. C. Originally Canada planned to conclude the cases in less than three months; however, they were still on-going in mid-2001 with eleven claimants remaining in Canadian detention centres (Minghuan, 2001; Young, 2000).

  Much of the public debate was similar to that in the mid-eighties but public response was even more hostile likely due to media response and the method of organization and recruitment of the migrants through agents, the manner in which payment for the voyage was arranged and the fact that for many the ultimate destination was not Canada but New York city (Young, 2000). During that period and until the passage of new legislation on immigration, the Canadian media ran stories related to refugees almost daily; for the most part depicting refugees as “queue jumpers”, “invaders”, “illegals”, and “beneficiaries of Canadian taxpayer dollars”. One striking headline read: “... the cost of 600 boat people rises to 42 million, and the bill could top 60 million” (Minghuan, 2001).
In April 2000, Bill C-31 was tabled in the House of Commons. It had received second reading and been referred to the Standing Committee when an election was called in October of that year. The bill died on the Order Paper (Young, 2000).

In June 2001 the House of Commons passed Bill C-11, after rushed and abbreviated hearings by the Standing Committee on Citizenship and Immigration. NGOs, including the Canadian Council for Refugees (CCR), had only a few minutes to discuss their extensive concerns. Few of CCR's concerns were addressed by the Bill although it did bring some needed changes.

On November 1, 2001, the Immigration and Refugee Protection Act (IRPA) became law, expanding the state's ability to detain as a measure of security and also acting as deterrence for people making refugee claims. The Bill placed a heavy emphasis on measures intended to protect Canada from criminals and abusers. The Minister of Immigration, in announcing the Bill portrayed it as “tough,” placing emphasis on criminals and abusers. Increased powers were granted to immigration officials such as the power to detain on the basis of identity without adequate independent oversight.

The Bill recognizes that refugees are fundamentally different from immigrants, having a distinct section on Refugee Protection with separate objective; however this distinction is not respected throughout the document. Recognized as a piece of framework legislation, only the main overall rules are included in the bill itself. The important rules are in the Regulations, leaving it open for the government to change the rules without parliamentary scrutiny (CCR, 2001).

In June 20, 2002, an article in the Globe and Mail entitled ‘Refugee claimants flood border to beat new rules’ announced that in numbers three to four times larger than usual, refugee claimants were surging to the Canada-U.S. border, fearing that by the end of the month new rules will make it harder for them to get into this country (Ha & Clark, 2002).
As part of the new Immigration and Refugee Protection Act, the Refugee Appeal Division (RAD) was to have been instituted on June 28, 2002, the date the new Act came into force. It would have addressed one of the fundamental flaws in the system through the provision of failed refugee claimants with the right to a paper appeal of a negative decision. The Inter-American Commission on Human Rights had criticized the lack of an appeal mechanism in a report on Canada’s refugee system written subsequent to an on-site visit in October of 1997 at the invitation of the Government of Canada.

On April 29, 2002 the Minister of Citizenship and Immigration Canada, Denis Coderre, announced that the implementation of the Refugee Appeal Division (RAD) of the IRB was being delayed. "The Canadian refugee determination system is facing an unprecedented increase in refugee claims. The number of claims almost doubled over the last three years, with the most dramatic increase in 2001. Because of the pressures on the system, we are delaying the creation of the Refugee Appeal Division within the IRB and focusing first on current challenges, namely, implementing other aspects of the Act while reducing the inventory and processing times," said Minister Coderre. At the time of writing in April of 2003, the implementation of the RAD is no where in sight (Minister of Citizen and Immigration Canada, 2002).

A 30-point "Smart Border" declaration was signed with the US in December 2001 to ensure more ‘secure’ borders following the September 11, 2001 collision of airplanes into the World Trade Center in New York, U.S.A. instigated by Al Quaida.

For the first time since the Second World War, immigration was the main source of Canada’s population growth between 1996 and 2001, accounting for more than one half of the increase. With Canadian demographics driven increasingly by immigration, growth tends to occur in the larger urban areas of the Golden Horseshoe in southern Ontario, the metropolitan Montreal area, the Calgary-Edmonton corridor and British Columbia’s Lower Mainland.
2001 Statistics Canada census count revealed that Canada’s national population increased to 30,007,094 people as of May 15, 2001, an increase in population of 4.0 per cent from the 1996 census, matching the smallest five-year growth rates in the country’s history. The period from 1981-1986 also showed growth of 4.0 per cent. Government immigration policy during the early 1980s “lead to the lowest inflow levels since the end of the War” (Simmons and Keohane, 1992 as cited in Lacoix, 1999) (CBC News, March 12, 2002).

- December 2002, the Canada/US agreement, a safe third country agreement, was signed and is to be implemented in September of 2003. Refugees arriving in the US will be expected to seek asylum there; only those arriving directly in Canada will be eligible to make inland claims. It is estimated that a 43% decrease in refugees coming via the US border will result.

- In February 2003, the Federal Court of Canada ordered the Immigration Department to process 102 applications before the March 31 deadline for assessing them under the criteria of the former Immigration Act. A subsequent class action case sought a similar order for 30,000 to 40,000 similar cases to make the Immigration Department change its plan to apply new, stricter immigrant-selection criteria to people who applied more than a year ago. Failing that, they will seek a refund of their fees and coverage of their legal costs.

- The Attorney General for the Province of BC and the Legal Services Society entered into a proposed Memorandum of Understanding that eliminates funding for legal services for immigration matters including proceedings relating to refugee claims, preparation of documents supporting claims and appeals in circumstances where people have been denied the opportunity to make refugee claims.

- Once again in crisis, the IRB in an official report to Parliament, the Immigration and Refugee Board Report on Plans and Priorities 2003-2004, outline the development of a national action plan focused on the workload in the IRB and strategies to meet its goal of finalizing 48,000
refugee protection claims, a 40% increase over the 34,000 claims finalized in the previous fiscal year (CCR, open e-mail, 2003).

Summary

The themes are similar: reports on proposed changes to legislation and reports in rebuttal, changes in legislation and regulations without transparency on the part of CIC, arrival of boat loads with numerous refugee claimants, increase in the media discourse focusing on the alleged abuse of the Canadian refugee determination system and welfare system, backlogs in processing, a crisis necessitating new ways of meeting the demands on the system, and attempts at bureaucratic streamlining and changes to the system to respond to the threat of ‘invasion’ - in other words a progressive erosion of the refugee determination system in Canada. Rarely throughout this sequence of historical events does the focus rest on the matter at the heart of the system, the protection of forced migrants, and how to ensure that their rights are respected in any process of change.
Chapter 4  Research Methodology

Identifying Problematics

Following the methodology of institutional ethnography, the initial step in discovering the social processes and practices that organize people’s experience, is the investigation of everyday experience in relation to the institution under study, in this case, the experience of refugee claimants in relation to the Canadian refugee determination system. That experience then becomes the basis for identification of research ‘problematics’ from the location of the claimants who experience the ‘relations of ruling’, the organized practices and policies of the state and social institutions to which they must respond (Smith, 1987). This method of analysis marks a paradigm shift in sociology because of its “unique epistemological/ontological grounding” that has the researcher extending “her knowledge as a member of this world to its extra-local forms of social organization” (Smith, 1995, p.19). As G. Smith states: “This kind of ontology marks off her [Smith’s] work from other empirical and/or radical approaches to sociology because it proposes to investigate social life in terms of how it is actually organized” (Ibid., 1995).

Investigation started with the actual experience of refugee claimants and “sociological theory, political theory, and other abstract and abstracting practices of traditional sociology” were initially bracketed so as to “leave social phenomena, for the purpose of analysis, concretely embedded in the social organization of the everyday world” (Smith, 1995, p. 25; Moustakas, 1994). This concept of bracketing, related to the concept of Epoche in Phenomenological research, will be revisited in the discussion of the data analysis. The initial step in this study was to gather data through interviews with people who had applied for Convention Refugee Status from within Canada.
Sampling

Since the objective was to understand issues in relation to Canadian Immigration and Refugee policy and procedure, a purposive sample was used in this study; meaning that respondents were selected on the basis of their experience as applicants for Convention refugee status (Creswell, 1998; O’Brien, 1994). For the purposes and confines of this research and in an attempt to minimize the complexities of language interpretation, gender differences, and possible cross-cultural differences in experience, the language, gender and country of origin of participants were limited. Therefore, only English speaking, Nigerian men were requested to respond. The short duration and the timing of the study were also factored into this decision. The participants also happened to be single men.

Lacroix (1999), however, made an argument for an explicit refugee experience constructed by the process of seeking protection as a Convention Refugee which would be an argument for investigation from the location of refugees across cultures, languages, nationalities and ethnic groups. The interaction of problematics in relation to the refugee determination process across parameters such as culture, political persuasion, race, gender and sexual preference is an important area for further investigation. Women’s reasons and needs for protection for the large part vary from those of men and are not adequately accounted for by the Geneva Convention which is geared towards protection on grounds of individual political persecution. This gap in the definition is reflected in the creation of the Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution in Canada (Macklin, 1996; Moussa, 1993). For this reason women’s experience, encompassing gender differences, warrants investigation as a separate ‘point d’appui’ or standpoint.

Nigeria was selected as the country of origin after consultation with the staff of Vancouver Association for Survivors of Torture (VAST). Due to VAST’s contact with the Nigerian community at the time, claimants from Nigeria were deemed to be the most suitable
participants. Within Nigeria there are, of course, several ethnic groups. This demographic information was not gathered from participants out of concern for confidentiality about pre-flight experiences, a point that will be discussed in more detail, and because of the focus of the study on problematics in relation to the process of seeking refugee status. Regarding the question of the possibility of gender bias with a female researcher interviewing male participants, the researcher turned again to the expertise of the staff of VAST. They noted that because some questions could evoke an emotional response on the part of the male participants, from their experience the participants would likely be more at ease with the expression of this emotion with a female interviewer and in this way the interview might be facilitated.

In her research with Ethiopian and Eritrean refugee women, Moussa noted the significance of “listening to the resistance of women to join in the research because it contributed to the data about the politics of doing research with refugees” (Moussa, 1993, p. 39). Pelosi (1996), in investigating intercultural communication in the refugee determination hearing, also spoke of refugee claimants’ hesitancy to be interviewed considering the uncertainty of their status in Canada. In the current study, it had originally been my intent to interview claimants at the stage of their refugee determination hearing before the IRB. Indeed, three potential participants preparing for their hearings expressed their desire to participate in the interviews but decided that they would not since it represented too much of a risk to them. In this case the men’s decisions not to participate were based both on the emotional intensity associated with the hearings and on the fear that public disclosure might affect the IRB decision, which they said would have life or death consequences for them. They told VAST staff that they did not want to risk further emotional upheaval or that their disclosure might affect their families in their country of origin or themselves if later deported. These statements in themselves speak to the pressures placed on the claimant by the IRB hearing process.
Research has been conducted looking at new refugee arrivals at reception centers in countries of first asylum where establishment of status as a refugee may be a crucial determinant for food assistance and other support (Harrel-Bond, 1986). This research noted that the experience can frequently be harrowing since “refugees may go through an extensive period when they have justifiable fear of being forced to return to their home to once again face war and/or persecution” (Ibid., 1986). Moussa (1993) noted similar concerns among the female participants of her study. This is a formidable real life concern to be appreciated in similar research in the future.

**Ethical Concerns**

Through research announcements (see Appendix C) circulated at VAST, two men in the early stages of the refugee claimant process and one, already granted Convention refugee status but unable to gain landed immigrant status due to lack of ‘satisfactory’ identification documentation (Brouwer, 2000; Goodwin-Gill, 2000), made contact to participate in the research. In the literature it was noted that establishing trust and maintaining confidentiality were key to conducting research with those seeking Convention refugee status (Moussa, 1993; Robinson, 2002). As noted in the literature, the refugee experience itself can make refugees intensely suspicious of institutions, governments and individuals representing these bodies (Ager, 1998; Moussa, 1993). Because the maintenance of confidentiality was of primary concern in the research, details about demographic information, flight, and pre-flight experience were not asked of participants, leaving revelation of such information to voluntarily disclose. All participants were known and receiving services from VAST, an agency whose mandate is “to encourage and promote the well being of people who have survived torture and political violence” (see VAST Mission Statement, Appendix B).

A policy of full disclosure was important in building relations with potential participants. The purpose of the research was explained fully and honestly in the recruitment information.
(Appendix C) and informed consent form (Appendix D). Both clearly stated that the investigators were in no way connected to the Immigration Department or to the Immigration and Refugee Board; that the interview would have no effect on current dealings with the Immigration Department; nor influence the outcome of their refugee claim or application for permanent residency.

Informed consent was received from all participants before interviews were conducted. Subjects were informed that they had the option to decline to answer specific questions, to stop the interview or withdraw from the study at any time. Since it is not always possible to predict what might transpire during the interaction of an interview, it is essential to be clear about these options beforehand (Rosenblatt, 1995). Since the researcher was identified as a volunteer therapist at VAST, the informed consent form and contact with participants also specified that involvement or withdrawal from the study would in no way affect the services received from VAST.

Since the researcher was asking people to trust her with the information collected, she also placed trust in them. Potential participants were informed about the researcher, the purposes of her research, and her involvement as a volunteer therapist with VAST. The researcher's home telephone number was included on flyers as a sign of good faith and potential participants were given this number to make initial contact with the researcher. In this initial telephone contact, potential subjects had the opportunity to speak with her directly and ask questions about the research or the researcher herself. This conversation also ensured that potential participants were informed of the process of the study and met the criteria for participation. Disclosure of the researcher's motivation for studying the refugee determination system, rooted in her family's experience of war, internship and immigration, served to identify her as someone with member knowledge (Smith, 1995), having experience that was related but different from that of the
participant. The researcher made this closure when meeting the participant before each interview as one of the conscious steps to creating an atmosphere of trust and openness.

Data Gathering

In February and March of 2001, interviews were conducted by the researcher in person at VAST, a location familiar to the participants, at a time when staff members known to the participants were present and could be available to the participant after the interview. Interviews were audiotaped and the microphone and tape recorder were placed so that the participant and researcher could both have control of them. Participants were informed that they could stop the tape recorder at any time. Seating was arranged so participants could see and have direct access to the door. Questions were given to the interviewees just prior to the interview so that they had a chance to read them and they were aware that they could choose not to answer questions if they so wished. The researcher took these steps directed by her own experience in working with forced migrants in her volunteer capacity at VAST. From recent literature she has learned that other researchers have taken similar considerations when interviewing asylum seekers (Robinson, 2002).

Prior to each interview, in the initial telephone contact and informed consent form, the purpose of the research was described as the study of the process of claiming refugee status from the participant’s vantagepoint and not the study of the participants themselves. All participants were relieved to understand that the interest of the research was not in hearing their experiences of trauma but rather to lend a voice to their experience as a starting place from which to examine the social organization of the refugee determination process (Smith, 1987).

Interviews were semi-structured and approximately one and a half to two hours in duration, allowing participants to recount their experiences and concerns in their own fashion and add information that they thought relevant but also ensuring that predefined questions regarding the refugee determination process were raised. The interview guide was pretested with
someone who had already gained refugee and landed immigrant status in Canada (see Interview Guide, Appendix E). Field notes and observations were kept of the interview process. Allowing people to speak freely in open-ended or semi-structured interviewing is critical since this interviewing should "yield stretches of talk that 'express' the social organization and relations of the setting" (Smith, 1987, p. 189).

Those who participated gave their motivation for doing so as wanting to help other forced migrants and affect change. They recognized that their motivation was consistent with the purpose of the study. Participants themselves expressed concern that their experience not be considered exemplary of that of all refugees since, as they knew from the experiences they were familiar with, these experiences varied. It was reiterated to participants that the purpose of the research was not to select a sample representative of refugee experience since the intent was rather to establish a location from which to identify the everyday problematics of refugees in relation to claiming convention refugee status. They had been accepted as part of a purposive sample, the focus of institutional ethnography being to:

Identify discrepancies between allegedly neutral and non-discriminatory institutional practices and individuals' experiences of marginalization. Subsequent steps would entail identifying the social relations that determine the contradictions identified. By exploring the links between respondents' experience and the social relations which shape them, institutional ethnography can reveal how oppression is created and maintained through the functioning of social institutions (O'Neill, 1998, p. 133).

Although those interviewed appeared nervous and somewhat apprehensive prior to the interview, afterwards all expressed that it had been helpful to talk about their experience and appreciated having done so. In the interest of confidentiality, interviews were tape-recorded and transcribed by the researcher. Participants were provided with a copy of the transcript, which they reviewed, corrected, and edited. They had contact with the researcher either in person or by telephone to discuss changes and offer additional comments. Participants were also paid an
honorarium for involvement in the study; however, not all accepted that sum but preferred to
donate it to VAST.

*Data Analysis*

The shift in Smith’s feminist critique of knowledge is from an objective to a reflexive
epistemology. In this shift the sociologist inhabits an actual world, the social organization of
which she is investigating. This methodology allows the position of those who stand outside a
ruling regime to be adopted. In terms of research it means treating informants’ knowledge as
socially organized and beginning reflexively from the researcher’s own actual location in the
world as opposed to starting from an objective standpoint. (Smith, 1995).

Phenomenological methods were utilized to analyze the data gathered in the interviews
(Moustakas, 1994). According to phenomenological principles, knowledge is “arrived at through
descriptions that make possible an understanding of the meanings and essences of experience”
(p. 84). Following the notion of epoche, prejudgments, biases, and preconceived ideas about the
phenomenon were set aside so that the data is approached with openness and transparency.
Initially through the process of bracketing the researcher reflected on her own experience,
thoughts, and attitudes related to the phenomenon of forced migration and seeking refugee status
(Ibid., 1994). These were then composed in writing, but rather than being set aside, were used to
identify the actual location of the researcher in the research (Smith, 1995).

Next the transcript of each interview was reviewed and reworked through the process of
reduction until each was “texturally meaningful and essential in its phenomenal and experiential
components” (Moustakas, 1994, p. 93). Deviating from the usual methodology, each text was
left as a separate unit rather than capturing one essential phenomenological text since the task at
hand was to identify the ‘problematics’ in everyday experience of these refugee claimants, rather
than to engage in phenomenological analysis. It was also thought preferable to maintain
separateness of experience since the claimants were at different points in the refugee
determination process. The researcher, however, did note the degree of similarity, not in the details of the participant's experiences, but in what they related as most significant in those experiences.

At this stage, the interview texts were revisited to identify 1. the 'problematics' in the everyday experience of these men in the process of applying for refugee status, identifying the "discrepancies between the allegedly neutral and non-discriminatory practices" of the refugee determination system and the participants' "experiences of marginalization" (O’Neill, 1998, p. 133) 2. to explicate the social relations from how claimants had spoken about the refugee determination process. Since "the everyday world as problematic is that social relations external to it are present in its organization", Smith argues that "the way terms are used in their original context...is 'controlled' or 'governed' by its social organization and ...the same social organization is present in an ordering procedure in how people tell others about the original setting"(Smith, 1987, p. 188). After listening to the refugee claimants to discover an organizing logic in their talk that is located elsewhere than in their own activity and experience, the task was to identify the social relations and the ideology in that social organization that determined the identified contradictions (Campbell & Gregor, 2002; Smith, 1995).

Explicating Social Relations

Problematics identify what Dorothy Smith (1987) referred to as a line of fault. This fault line represents a 'rupture of consciousness' between what people know to be on the basis of their everyday experience and the social relations and ideology of the 'politico-administrative regime' to which they relate (Smith, 1995). George Smith borrowed the term 'politico-administrative regime' from regulation theory because its makes explicit that institutions have two interrelated pieces of organization: a political apparatus and a bureaucracy, which seemed particularly applicable to the refugee determination system. After identifying the problematics, the task was to examine the 'social relations' of the institution, the "social organization as [it was]
coordinated and concerted, reflexively and recursively across space and time, in the practices and activities of individuals” (Ibid., p. 24; Smith, 1987).

There was, however, a question in the researcher’s mind as to whether the problematics had been adequately explored and what direction to take in investigating the social relations of the institution. One route of investigation would have been to continue interviewing until reaching a point where the problematics repeated themselves, where the same topics would resurface in interviews, reaching an evident saturation point in collection of the data. Since three participants had been interviewed, two of whom were in the early stages of applying for refugee status, completing their Personal Information Form (PIF), a beginning step in the refugee determination process, and a third participant had completed the refugee determination process and was in a state of limbo waiting for permanent resident status, more experience directly in relation to the IRB process could have been sought. The researcher would have liked to have interviewed more people who had recently or were currently going through the IRB hearings. This, however, was not readily possible due the complexities of interviewing such participants, as previously discussed.

Data Gathering

The question then was how to best proceed with the research process; how to further explore the identified problematics and examine how they were organized by ideology through the social relations of the institution. Interviewing commissioners at the IRB would have been a preferred route to investigate the social relations in that institute, however such contacts were not readily available. In the literature, Pelosi had also discussed her inability to gain consent to interview commissioners or interpreters working at the IRB and concluded that this was indicative of the “guarded and suspicious institutional culture of the IRB” (Pelosi, 1996, p. 43).
Whereas the methods of traditional ‘objective’ sociology depend on the procedures of inductive statistics to accomplish a level of generality, the ability to embed the description of people’s activities in a wider set of social relations depends on an important ontological property of social courses of action, their recursivity (Smith, 1998, p. 32). Since the Immigration Act and Regulations organized the refugee determination process as a copy of social organization across multiple settings across Canada, the organization of these social relations is recursive. “This ontological property of social relations makes it possible, in examining a particular instance at a local level, to move to a description of a general form of organization, to social relations as general course of action coordinated by texts” (Smith, 1998, p. 32).

The researcher decided to proceed in two ways: a) investigate the social relations that formulate the identified problematics though observations of refugee determination hearings and b) explore the problematics and social relations through knowledgeable informants working with the regime (Smith, 1995). The following diagram depicts the interrelation between the areas and methods of investigation:

![Diagram](image)

*Figure 1: Methods of investigation*
A. Observations of refugee determination hearings

George Smith (1998) raised the research methodology question of how to access the field when starting from a standpoint outside a politico-administrative regime. He wrote of his investigation of management of the AIDS epidemic in Ontario: “[Dorothy] Smith’s type of analysis is especially useful for providing a groundwork for grass-roots political action, not only because, as a matter of method, it begins from the standpoint of those outside ruling regimes, but because its analysis is directed at empirically determining how such regimes work, that is, how they are socially organized” (Smith, 1998). The researcher was able to observe the working of the institution during a six week intensive fieldwork practicum in April and May of 2002 with the Comité d’aide aux réfugiés/Committee to Aid Refugees (CAR), an advocacy organization working with refugee claimants in Montreal, when she attended refugee determination hearings as an observer. This provided the opportunity to witness the working of the IRB system (see Field Observations, Appendix F).

Notes were kept of observations in the field. These notes of the observations of refugee determination hearings were later analyzed to investigate the social relations that produced the identified problematics. In addition, the researcher witnessed the working of another section of the immigration system, the detention system, attending detention reviews and meeting with claimants held in detention centre for reasons of security or inadequate identification. Although not directly a part of this research, this opportunity provided yet another vantagepoint on how this related branch of the system was socially organized (see Field Observations, Appendix F).

B. Interviews with knowledgeable informants

During this field study, the researcher interviewed three people with extensive experience with the refugee determination system: a community organizer and social worker who worked with CAR for approximately ten years during the late 1980 and 1990’s, an advocacy worker working with CAR since the late 1990’s with a background in political science and international
relations and an awareness of issues facing asylum seekers in The European Union, particularly Algerian refugees, and a lawyer who had worked for over ten years in the area of Immigration and Refugee law in Montreal. These interviews allowed for the problematics identified in the research to be supported by the experience that these informants had with refugee claimants and with the refugee determination process in another location, thereby verifying the findings through triangulation and investigating the co-ordination of social relations across sites of the institution (Creswell, 1998; Maxwell, 1996; Smith, 1995). The identification of divergence in problematics through the interviews of informants with a different standpoint in respect to the system added to the understanding of how the system works; however, it was necessary for the researcher to maintain awareness of this standpoint as different from that of refugee claimants themselves. The informants were also able to give greater context to the researcher’s observations of IRB hearing proceedings. Those interviewed, commenting from their extensive experience and different vantagepoints of the political-administrative regime of the IRB, shed light on how these problematics were produced by the social relations of the refugee determination system and pointed to the ideology organizing these social relations.

The informants interviewed worked within the framework of a strong advocacy network and NGOs working with refugees in Montreal. Montreal is the second largest inland refugee-receiving city in Canada, behind Toronto and ahead of Vancouver. Part of the rational for completing a field practicum in Montreal was to view the workings of the IRB in an area where there was a much greater influx of inland refugee claimants and a more extensive network of social services and NGOs directed towards refugees to see if this would have a bearing on the problematics identified in the research. This could provide an indication if there were indeed variations in social organization across multiple sites of the refugee determination system despite common regulatory texts nationally in the Immigration and Refugee Protection Act (IRPA) and Canada’s commitment to International Convention’s and Agreements.
Interviews were again semi-structured (see Informed consent form, Appendix H and Interview Guide, Appendix G), first of all guided by the problematics determined through the research but then opening to the participants observations from their work in relation to the refugee determination system and their position of working with refugee claimants. The interviews were analyzed to elaborate on the identified problematics, explore the social relations, and explicate the relations of ruling in the social relations.

Finally the refugee determination system was then viewed from the vantagepoint of the informants interviewed, the researcher’s observation of the refugee determination hearings, texts and other research on the refugee determination system in order to explore the ongoing social organization and organizing ideology of the refugee determination system.

Social organization and ideology

Traces of the ideology organizing the refugee determination system became apparent in various stages of the research. In particular, they started to become more tangible in the interviews with knowledgeable informants. Following analysis of the interviews, the international refugee regime and the Canadian refugee determination system were re-examined from an historical perspective in order to “embed the data in a wider set of social relations” and wider context (Smith, 1995, p. 32). At this stage, theories of immigration control and economic globalization were reviewed to critically situate the ideological framework behind the practice of the refugee determination system. The examination of relevant documents and theory was left until the end stages so that the analysis of the data could provide a framework for the reading rather than the reverse (Ibid., 1995).

Methodological challenges

Beyond the challenges already discussed of interviewing claimants in certain stages of the refugee determination process, the main challenge for the researcher was that of maintaining the refugee perspective, herself having been a naturalized Canadian at an early age and having
grown up in Canada. As an initial effort in this methodology, this research was a way to learn a complex methodology; however, the researcher clearly saw that working and discussing with refugee claimants themselves to identify the problematics, the social relations producing them, and the organizing ideology is essential to keeping that perspective from outside the relations of ruling.

This application of the methodology of institutional ethnography was not intended to deliver a "definitive product" of research but rather was viewed as an initial exploration of the on-going relations of ruling as evident through the social relations of the refugee determination system. George Smith’s research into the management of the AIDS epidemic, began in 1988 and was still ongoing in 1994. Smith stated: “When political strategies are grounded in theory – sociological or political – there is a strong tendency for them to misfire, or worse yet, backfire. Grass-roots organizing is better based on a sociology committed to describing how society actually works” (Smith, 1995, p. 33). Commitment, avenues, and venues for such long-term research with practical grass-roots application are difficult to come by. Given the position of forced migration in relation to a fast evolving global economic system, a changing political world order, and changing national interests, an expansion of this institutional ethnography of the Canadian refugee determination system is a relevant project.
Chapter 5 Findings

Problematics: The dual reality of refugee claimant experience

The everyday world of people seeking status as Convention Refugees in Canada was organized by 1. an exclusion from legal residential status in Canada and the accompanying institutional barriers to full participation in Canadian society, and by 2. the needs of the legalistic, bureaucratic Canadian refugee determination system. Refugees who had experienced organized violence or persecution in their homeland experienced an administrative exclusion while awaiting refugee status or landed status at the precise time that they were required to mobilize community and individual resources in the process of reconstructing themselves and adapting to their new social context. This created the dual reality of refugee claimant experience. Claimants said the refugee determination system, a system they did not understand, a system that did not believe them, controlled their fate. Consequently they identified that they were ‘given pressure’, made more vulnerable, stigmatized, marginalized, and criminalized.

Adaptation and self reconstruction

Someone being a refugee claimant, he is not even a refugee

I don’t know what my standing is in this country. I’m nobody. When people hear that I’m a refugee claimant they look at me as a somebody who does not belong to this society; somebody who is going to be thrown away at any given time ... Someone being a refugee claimant; he is not even a refugee ... I don’t belong to this society. I don’t belong to any place. Baseless, you aren’t based anywhere, anything could happen.

Forced migrants, fleeing for their lives arrived alone in an unknown place after a long flight, not only often without knowing anyone, but also surrounded by a culture different from their own. Sometimes they did not know anything about their destination or the process upon which they were about to embark.

I never even want to think of coming to Canada

[I went to a church in Singapore to escape Nigeria.] The priest in Singapore said, “I think it is best for you to go to Canada. This is the only place I know where you will be helped”. I didn’t know about Canada. I had no idea. I can tell you from my heart, I never even wanted
to think of coming to Canada. I thought Canada and the States were even the same [country]. From the map you can not see the difference.

Upon arrival at Vancouver International Airport, refugee claimants experienced a contradiction between their expectations of their reception in Canada and the reality that awaited them. They were greeted by a lack of readily accessible structure to assist them in their immediate settlement.

I just managed myself.

I thought they [the Immigration officers] were going to take me and give me a place to stay and start the things, but they didn’t do that. They only told me to go into Vancouver and told me how to get there. When I got into Vancouver, I don’t know anywhere to go. I don’t know where to start. I just managed myself. I went to a place. I told somebody, “I’m looking for a place to stay”. He told me to go to a particular hotel, Jericho Beach hostel, and I went there and I slept for two nights.

Forced migrants coming from Nigeria identified the particular challenge of figuring out how to navigate in an industrialized country.

It is totally different for somebody who hasn’t been to a developed country before

I was able to stay with people from my country and they helped me until I got accommodation of my own. But what if someone doesn’t have such help? How would a person who doesn’t know anybody here, who had never been to any developed country before, how is he going to cope with that problem? It is different. It is totally different. Somebody who hasn’t been to a developed country before doesn’t know where to start.

Contrary to the common Canadian perception of smuggling agents, forced migrants identified organized smuggling rings as a source of assistance in seeking protection in Canada.

But to come on their own to get into this country

There are people who are coming here through organized smuggling rings. Those people can tell you what to do when they enter because they are paid for it ... but to come on their own to get into this country....

The experience of fleeing one’s home in self preservation is most readily equated with the experience of loss, forced separation from family, rupture from culture and those structures that confirm a person’s identity and self worth (Moussa, 1993, p. 27). Conditions in the country of refuge can compound that experience.
I was reduced to nothing

When I remember it, I feel so sad and my heart just beats and keeps beating on because anything could happen. The moment they throw me back to where I come from it is going to take my life because my life is in danger where I come from. That is why I left that place and everything I have: my father's property, my property, everything. That was enough money to take care of my life for the end of my life without begging for a food. And right now I left all of them and I came here and I became nothing. I was reduced to nothing.

Everything is just confused

I started making calls to see if there's any Nigerians ... but the people [in the housing shelter] didn't know anybody. So all I do is just go to church there and go back to the place and I start sleeping. It was just for sleeping because you don't feel at home, you don't know where you are, you don't know what is going on ... I always feel pressured for not knowing where I am. It is a lot of stress because the culture is different - how you ask people for something and how you know about the bus system and how you know where to get what you want. So everything is just confused. A lot of things are in your mind... "What is going next? What is going to happen?" You are thinking what is the next movement. It is hard to get people to leave their business or leave what they are doing to just go and help you because you are a new person. It is only people who work as social workers or such people who say, “Okay, come back. We can help you or we can go there and get this information”.

In various ways, asylum seekers made their way to people and organizations that assist refugees to access services and negotiate the steps of the refugee determination process. Here they came across people who could relate to their circumstances.

I can talk to these people. I feel at home. It is multicultural. I feel at home

At the airport I was waiting for the Immigration to open because the person who is supposed to talk to me is not yet in. I am a part of the Christian Renewal Movement by background so I was walking around the airport and I saw an airport chapel. I went inside there to start to pray. Fortunately, I met somebody who started talking about what brought me and what is my problem so from there I met people. They were church people so then I was feeling: “Oh, I can talk to these people. I feel at home”.

After I made the immigration, the chapel head helped me to phone somebody, the Mennonites. They have a house for international students. I was there for about 8 months to a year before I moved out. Those students come from all over, from Bangladesh, Japan, Newfoundland, Quebec. When I lived there, one Somalian guy lived there too. I said it is multicultural. I feel at home ... I just thank God that those churches helped me. They said any time you are going to Immigration and you don't know how to get there, someone can drive you there. So that is the help that I got when I came here.

I wasn't expecting something like that

[At the hostel] they give me a booklet ... I saw a 'Inland Refugee Society'. I went there and I met somebody. She's the person that helped me and called Welcome House for me.... they kept me for three weeks. They are the people that analyzed things for me, how to start
making the refugee claim. They showed me the welfare. I went and applied. They say that
the welfare was going to pay for the Welcome House .... I asked them what else am I going
to do?... They told me that I am going to apply for a lawyer through a place called Legal
Aid. I went to the Legal Aid and I applied .... the lawyer told me to fill the form [Personal
Information Form] and write my story and bring it back and she is going to study it with me
and write it with me and make it a good story. I did that. I wasn’t expecting something like
that you know.... Actually I was expecting that everything is going to be ended the same day.
I don’t know that I am going to start to claim and that I’m going to court.

As refugees began to set up their lives, they were confronted with the realities of being
without legal status in Canada. Lack of identification documents from the Canadian
government and a lack of formal recognition within Canadian society made basic tasks
difficult or impossible without assistance.

I don’t have any identification.

I don’t have any identification. The paper they give you is not identification .... You are not
part of the system. To be honest with you, I feel ashamed to bring out the paper they gave
me. When I went to open a [bank] account and brought that paper hoping that maybe if they
see this they will know who I am. No, the paper says, “this does not confer status”. I look
stupid. I feel stupid. You understand. Bring us something to identify yourself, something that
bears your name.

It also made them feel vulnerable, particularly as survivors of violence or persecution.

Awareness of vulnerability

Without that identification, knowing anywhere you go, if identification is being asked
anything could happen. Even if the police stopped you ... you are at the wrong place at the
wrong time and you got stopped by the police... if you’re asked for identification, the
immigration paper that they issue, this can not be used as identification. You don’t have any
identification.

This lack of legal status had repercussions on claimant’s ability to earn an income and be a
productive member of society. Unable to work, existing on social assistance, they felt unable to
contribute to Canadian society, unable to be ‘good citizens’ as the Immigration officer had
recommended.

“Try to be a good citizen”.

It took me about 7 to 8 months before I got my work authorization so that hold me back ....
Back home, I was a busy person. Everybody knows every Nigerian who has his or her own
business always wakes up around 6 a.m. and comes home around 8 p.m.– works long hours.
So now you are here, you can not just sit down. And even if the government is helping you, it doesn’t make you to be a good citizen, because after the Immigration talk to you, they say, “Try to be a good citizen”. So how can you do that when you just stay home. I was phoning them all the time to help to get my authorization paper so I can go and look for work.

Even when claimants got their Social Insurance Number, they said it was preceded by a ‘9’ which informed the potential employer that they were non-permanent residents or temporary labourers which reduced their chance of being hired. With little option but to collect social assistance, claimants reported that they were challenged about their right to collect assistance as ‘foreigners’.

Do you think your government would do this?

You go to welfare ... somebody one day said to me, “the way that you come here and start demanding things. If it were your country, do you think that the government would just do this for me like that?”

During the initial months of waiting while the first stages of application for refugee status were completed, the claimants could not work. To these claimants it was an agonizing wait.

The process is slow

Well I can say that it is very slow. You give an example of someone coming into this country. You don’t have money, nothing. You want to make a refugee claim, then they say, “if you want assistance go to the income assistance board”. That is good, but the idea that you have to stay and do nothing for months ....

Contrary to media portrayals as bogus refugees taking advantage of the Canadian social welfare system, the need and desire to work, participate and belong was strongly expressed by claimants. Work represented a normalizing of their lives.

That time that I lived, I feel terrified

I started to work and I say that I think it is better for me to work than to be on welfare. Even if I work long hours, I can do that. I have somewhere to go. I can meet people. I can talk to people. You are left out because you are not doing anything. I don’t think there is anybody who thinks staying at home is better for him. In my own case the time that I lived [before working], I felt terrified.

Without a work permit and without access to education, claimants were limited in options of how they could participate in Canadian society and consequently did not start to develop a
sense of belonging. Regulations change about what is permissible and at times it was even unclear whether work permits were required for volunteer work.

Anything to have some purpose

I can't do anything. If you were allowed to work, or if it is not work, because I am not used to the system, I have no [Canadian] experience yet.... One thing that can make a big difference in my daily life is to have a way I can become active. If I were able to go to the gym... I play soccer very well. Even volunteer work, I'm willing to do that to be active. Anything to wake up in the morning and say I'm going to do this...anything to have some purpose.

Claimants protected themselves from unpredictable reactions from the Canadian public.

As newcomers to Canadian society, they felt vulnerable to people’s reactions. Those from their own country could relate to their pre-migration experiences.

Not something you would like to be saying in public.

If you make contact with someone and start chatting, they are going to ask you some personal questions: your name, where you come from, what you do. This information you don’t want to give to someone you just don’t know. That is one thing that prevents you from making contact. Even if you look at it from the natural aspect of your pride, I mean someone asks you, “What are you doing?” You say, “Nothing”. “What’s your status here?” “I’m a refugee claimant”. It’s not something you would like to be saying in public. You never know what people’s reactions will be. Some might be sympathetic; some might be condescending; some might even right this person off: “He is nobody”. You never know how they will act with you, so you have to protect your feelings and try to make limited contacts. You can only be free with people from the same country; some of them went through the same experience at home.

Without a way of interacting and contributing to society, these claimants could not move on and were held in a state of legal limbo thinking about what happened to them, the reasons they were forced to seek refuge.

I dwell much time thinking of the past

It affects me emotionally and mentally because, since I am doing nothing, I have time to reflect on what happened, why I need to leave my country in the first place and I dwell much time thinking of the past. If I am somehow engaged in something active, I will have less time to dwell on my past experience.

This sense of preoccupation with the past was accentuated by uncertainty about the future. An inability to affect an outcome reinforced the sense of vulnerability and powerlessness
in their situation. Due to the insecurity of their futures claimants led a precarious life until their refugee status and permanent residential status were determined.

_Cause whenever he remembers, he doesn’t know where he stands_

[Don’t keep] someone waiting. It could develop another type of psychiatric or psychological problem for someone. Cause whenever he remembers he doesn’t know where he stands. He could be working, doing something.... It is really affecting me because I don’t even know when it is going to happen, when they are going to decide. So, every day, every night, it makes me not to sleep. I could think about it 24 hours of the day and without being myself. It is really a very big situation, a sad situation to my life. They are going to decide what they are going to decide. That’s what I think about that.

_Determination of refugee status_

Added to this feeling of being at the mercy of the system was a lack of information and understanding of the process of claiming Convention refugee status in Canada. Claimants were heavily dependent on the lawyer who represented them in their refugee determination hearing to help them understand and guide them through the process as well as prepare them for the hearing.

_I didn’t know anything about what a refugee is or how to do it._

I didn’t know anything about what a refugee is or how to do it. I saw it as somebody who has a problem. People were pushing me to kill me and I was running. I was running to somebody’s home country and [I thought] they were going to help me, to hide me - not that they are telling me that I’m going to claim the refugee status and if I was refused, I would be given 30 days to leave the country and return to where I came from, where those people are going to see me and kill me.

They did not understand what it meant to be defined as a ‘refugee’ in Canada. The quasi-legal process of determining refugee status did not fit within their understanding of the functioning of the law.

_They don’t know the process because they don’t know part of the law_

I think many of the people who came here will feel that their life can be safe. They are here; nobody is trying to shoot them; nobody is trying to arrest them but they don’t know the process because they don’t understand the law. The law here was created in a world of liberty but back home it wasn’t like that. It is only big men get law; rich men that have the law. The poor, you can be thrown to jail, nobody cares about you.
I'm going to court and I don't know what I did

It seems they want to take it as strategies to send me back from where I come from because I don't see the reason why they are telling me to make the refugee claim.... What I understand by somebody going to court is somebody who committed some crime but I'm going to court and I don't know what I did. They say that I'm going to court to claim that I'm a refugee and I don't know what they mean by that.

When claimants researched their case, the application of the criteria for determination was not clear to them. Their idea of human rights and persecution did not always fit with the western individualistic interpretation in the Geneva Convention.

I don't know the criteria that they are using

To go to the level of the hearing proper, I don't know the criteria that they are using to make their judgements. I told you before about the Nigerian from Viessa state, Orgoniland. I felt he should have won status here but he lost his case.... I know that that area is being wracked by violence between the indigenes and the government. The people from the area produce the wealth of the country while they are being neglected. They are environmentally being destroyed by the international oil companies: Mobil, Shell, Chevron. Based on my experience of what is going on in that area of the country, anybody from that area is at risk, a refugee in their own country. I feel if somebody from that area can loss his case, do I stand a good chance of winning mine? At least give some clear guidelines. You can make your claim on race, religion, political opinion ... but race in what way? It's not that clear. They are making this claim based on their political opinion or for religious reasons only to be told it is not this... It is not fair for people to see the process as a gambling thing ...cause you never know if you are going to win or not.

Lack of information and contradictions in evidence, documents, or in the Personal Information Form (PIF) were identified as bad for the IRB hearing and the refugee case. One participant explained obstacles he was up against in trying to secure the required information. This focus in the refugee determination hearing demonstrated a disregard for the reality of circumstances in non-industrialized, non-bureaucratized countries.

If you contradict your information, it is bad

Here you can only give one information and if you contradict your information, it is bad. Back home we are not using computer. When someone is saying I need this information for my family, someone will just write it with Bic. Maybe he is drinking or smoking cigarette or even running for the bus or going out late from work. He just write it in whatever hurry he was in to say I have done it. And back home, believe me, to get your information or your documents, you have to pay someone for your own information .... bribe somebody to give
you your own documents. And not only that ..., it will take longer than you expect. If you pay higher, you get it easily.

To contact people directly to ask for help in securing documents or supporting information is not only costly but also not always possible since others have also had to go into exile.

It is hard for them to say the reality

Even if you call your home, they can't talk about the news because you can't talk in Nigeria. Everybody knows that. You can't ask, even for your case. And most of my friends...we worked together putting up posters for campaigns and for demonstrations about annulment of the election...some of them were in Ghana, some of them left for Benin. Some of them were where you can not even find their address. If you call the office that we used to use, they say, "Call back in the night" and when you call, they say, "This phone is not correct" or maybe somebody is trying to hear what you said. You don't know what is going on. It is hard to talk to your people. So it was frustrating because for your case you are supposed to be giving them evidence. You have to give them someone to call. Last time I had a telephone bill of $480.00 and I was on welfare.

Even once all the information was given, the claimant's sense was that the IRB or Citizen and Immigration Canada (CIC) did not believe them; whereas, the claimants' stance was that it was the Nigerian government that was the source of the problem and not to be believed.

Sometimes when you give them the information they don't even believe you

There is a lot of things that I went through when I was coming and the Immigration knew that. Sometimes when you give them the information they don't even believe you, instead of them not believing the government of Nigeria.

ID requirements from someone fleeing political unrest, persecution, ethnic violence or war are often unrealistic. The granting of refugee status by the IRB, does not necessarily mean automatic granting of permanent resident status by the CIC. Convention refugees can be denied 'landing' if the 'satisfactory' documentation is not available.  

Unrealistic expectations about ID

Don't ask for too much ID because we don't have too much ID back home. You can only have your driving license, maybe your traveller's passport or your certificate for the school where you are registered. But somebody who ask you to bring four ID! What do you mean four ID? ...I am trapped and they are not helping me. There is nothing else I feel I could do. I don't have any other ID. I have done everything in my power. They are putting me into more pressure because it is their decision. My lawyer said he talked to them. He is a Canadian. He
is a professional lawyer. They did not even tell him what decision they made on these documents.

From the refugee perspective, the inland refugee determination process was unfair because those that they thought most at risk, those who were less known, had a more difficult time to prove their case, if they could even reach Canada to make a refugee claim.

The small fish are the ones that find it more difficult to win their case than the big fish.

There are those that I would call high profile applicants, those that are known in the country or political arena. Their names appear in the newspapers, in the media everyday in the country. He is just a spokesman or leader. It is only the leader that is recognized. When those people come to make their refugee claims, it is easy. Even before they come, they have been heard of here. But, this person cannot do things by himself. There are thousands of people who you don’t know who are active. People who have not been heard of, whose situation are more risky than that of known people because it is not easy to take a known person and put him in jail. Those people who are not known, you can easily knock at their door and shoot them to death. No one asks questions because they are small fish and the small fish are the ones that find it more difficult to win their case than the big fish. That is the system. Anyway that falls under the category of fairness.

Participants were clear that they as individuals were not the problem but rather the state that had opposed their right to organize politically or had failed to provide social stability to protect their lives, forcing them into exile.

The citizens of Nigeria, the problem is not themselves

The citizens of Nigeria, the problem is not themselves. It is the government of Nigeria that caused these problems and whoever is helping should know this first. This is an ordinary human being. Their problem is coming from their government. It is how the government works these people tell you. Help these people if you want them to become good citizens. Allow them to come into this society and know what this society is about.

Canadians’ reactions were variable and reflect the biased discourse concerning refugees reflected in the media. A limited understanding of refugee experience or Canada’s obligations as a Convention signatory existed.

what cause to leave your country?

If someone comes as a refugee, you ask yourself for what cause to leave your country? Some people will feel you just come here because you want to make money, but you want to be safe. You know you don’t want to loose your life because you are fighting for people.
Claimants saw a discrepancy between the Canadian Minister of Foreign Affairs’ position on the Nigerian government and the general treatment they, as people who had had to flee that same Nigerian government, received from Canadians and the Canadian refugee determination system.

You wonder is that the people that you are hearing about?

My refugee case was during the time of the election [in Nigeria when the government was] stopping people from speaking. You read the newspapers here and there was no news about that. In Nigeria, I read in the Nigerian newspapers about Lloyd Axworthy, the Foreign Affairs Minister. I respected him.... he spoke out about Nigeria at the time. He was the first who spoke out about sanctions against Nigeria because of the dictatorship. And when I came to this country he still spoke about Nigeria but the newspapers didn’t bring this information to people or even to Nigerians who feel left out .... Canadians have a reputation. You hear talk about human rights or how to help people to go to democracy in this country.... But when you are here as a refugee, you wonder is that the people that you are hearing about?

Participants were clear about what response would make a difference to someone in their position.

You will be okay

It is not the way to do it, giving somebody pressure. You are not helping that person. When you see someone who is going through a very painful situation, you say, “I know what you are going through and you will be okay”. And that person will have hope and trust. That welcome language should make him feel that, oh, upon all the distance, upon all my will, I made it here and somebody said, “You’ll be safe”.

Summary of findings

Refugees expected to be well received in Canada due to Canada’s good reputation internationally in the protection of refugees under the Geneva Convention and in the support of democratic values. Experience from the everyday world of refugees said that refugee claimants were “nobodies” to Canadian society, excluded from legal residential status, and not recognized in fundamental ways that would facilitate their initial settlement. Institutional barriers and limited availability of services, restricted refugees’ participation and integration into Canadian society.
Inclusion depended on success in the inland refugee determination process, a process that they did not understand and that took place in a socio-political and cultural context that they did not understand. Claimants were not believed, suspect as ‘criminals and illegals’ until they could prove themselves ‘genuine’. In order to prove themselves deserving, they had to present and prove their experience of persecution according to the definitions, values, institutional culture, regulatory practices, and contradictions of the Canadian refugee determination system. Comprehension and successful participation in this process depended in part on the support, resources, and information they accessed during the initial settlement period, demonstrating the important connection between these two aspects of refugee claimant experience, the initial settlement period in Canada and the navigation of the refugee determination process.

The complementary organization of the refugee determination system

At this stage of the research, drawing from interviews with informants, field observation of the refugee determination system, reports, and other research, it is possible to make initial explications of the social relations of the refugee determination system that complements the refugee claimants’ experience, focussing on the Immigration and Refugee Board (IRB). Informants confirmed that, from their vantagepoint, the problematics identified from the everyday world of claimants interviewed in Vancouver was generally consistent with their understanding of claimant experience in Montreal, another site of the refugee determination system. The main identified difference in experience related to the difficulties in the initial settlement period and front end of claims. A pilot project was being conducted in Montreal to try to speed and synchronize the initial steps for claimants. This and the longstanding presence of non-governmental organizations (NGOs) working with refugees, the co-ordination of efforts of these groups, and the existence of Services d’Aide aux refugies et immigrants du Montreal Metropolitain (SARIMM), a social service agency funded by the provincial government with the
mandate of offering social services to refugees and new arrivals in Canada, facilitated the initial settlement period and early steps of the refugee determination process for claimants. Informants indicated that the majority of current advocacy concerns in Montreal related to the hearing process and negative refugee determination decisions (Interview 2, 2002).

Interviewing informants - a lawyer, social worker, and refugee advocate - allowed for investigation of the social relations in the IRB and how they related to the political and administrative sites of the regime in order to uncover the links between institutional social relations, ideology, and claimants’ oppressive experiences (O’Neill, 1994). In what follows, a brief orientation to the steps of the refugee determination process will lead into an exploration of the social organization of the system.

Mandate

The Supreme Court’s 1985 Singh Decision gave refugees the right to an oral hearing in Canada (see Chapter 3 The Canadian Historical Context). By legal mandate, the IRB is an independent, non-adversarial, neutral, and quasi-judicial body, governed in accordance with the principles of fundamental justice and the rules of natural justice. This means that when the tribunal adjudicates a refugee determination hearing, it must act fairly, in good faith, without bias and with judicial distance, giving the claimant the opportunity to adequately state his or her case (Hathaway, 1993, Pelosi, 1996). The IRB’s mission “on behalf of Canadians is to make well-reasoned decisions on immigration and refugee matters, efficiently, fairly and in accordance with the law.” (Minghuam, 2001). It is the tribunal’s responsibility to ensure that the claimant is treated with appropriate sensitivity and respect (Pelosi, 1996). This is especially important since as one informant expressed, “The experience strips them [refugee claimants] down to the bare essentials [as human beings] and refugees don’t even understand the system” (Interview 1, 2002).
Outline of process of refugee determination decision making

The principle steps of the refugee determination process are (1) a port of entry claim interview where claimants are interviewed on arrival about the substance of their claim. (2) an eligibility determination interview conducted by a Senior Immigration Officer. (3) if eligible to make a claim, a medical examination (4) the completion of the PIF and (5) the refugee determination hearing conducted by the Refugee Division of the Immigration and Refugee Board (Matas, 2001). If a negative decision is made at the hearing there are two recourses: 1. A leave of appeal to the Federal Court of Canada can be made only on the grounds that an error in law occurred in the original hearing. No new evidence can be introduced into the proceedings. A low rate of overturn of decisions is achieved on these specific terms (Interview 3, 2002; Young, 2000). 2. A plea to remain in Canada can be made on the grounds of risk of return to the country of origin or on Humanitarian and Compassionate Grounds. Here again the level of positive decisions is low (Matas, 2001). No adequate appeal system exists. This makes the refugee determination decision a crucial decider of the refugee’s future.

Refugee determination decisions

In making decisions regarding refugee status, IRB members must apply the definition of Convention refugee contained in the Immigration Act (now the Immigration and Refugee Protection Act) and as interpreted by the courts, to the facts presented by the parties and discovered as a result of its own research. The Division is not bound by any legal or technical rules of evidence and may base a decision on evidence it considers credible and trustworthy in the circumstances of the case (Young, 2000; Field observations, Appendix F). Guidelines issued by the Chairperson of the Board serve to assist the members of the Refugee Division and Appeal Division in carrying out their duties under the Act. As will be discussed later, an additional purpose for the Guidelines is to act as texts to foster consistency in decision making in what is a very decentralized system. The Immigration Act stipulated that all proceedings before the
Refugee Division be as informal and expeditious as is consistent with fair treatment (Young, 2000).

In addition to being non-biased and non-adversarial, commissioners must act with judicial distance and must, as indicated by the following judgement, place the claimant testimony in a proper socio-political and cultural context (Pelosi, 1996).

The court indicated to the Board the danger of attempting to impose Canadian standards of behaviour on totalitarian regimes, and on their victims and has expressed a willingness to quash a decision when the Board fails to consider the claim within its proper cultural and socio-political context (Ye and Giron vs. Canada, Fed. Court of Appeal A-387-89, May, 1992 as cited in Pelosi, 1996).

Herein lies a fundamental contradiction, as will be seen later when examining the administrative structure and institutional culture of the IRB, since the structure of the regime itself was conceived in and is determined by Canadian values, views, legal and regulatory practices that influence the social relations in the refugee determination hearing (Interview 1, 2002; Pelosi, 1996; Field observations, Appendix F).

**Complexity of decision making**

Decision-making in granting refugee status is an enormously complex task, involving life and death decisions and requiring layers of complex understanding in various fields. (Interview 1, 2002; Interview 2, 2002). There are several factors that make a commissioner’s work complex.

1. The task requires listening attentively to accounts of violence and persecution for several hours daily. A fair hearing requires that the listener have an understanding of how trauma affects people, how it can manifest itself, have an understanding of their own emotional response to these signs of trauma, and understand these reactions in relation to the claimant’s cultural, social, and political context (Interview 1, 2002; Interview 2, 2002; Interview 3, 2002). Some cultures have different coping strategies for dealing with traumatic events such as forgetting for Mozambicans or active forgetting for Ethiopians who are reluctant to reveal intimate material outside the close family circle (Bracken, 1995). For these people
remembering for the sake of refugee determination will go against these normative cultural ways of coping. These differences must be considered in the decision-making process.

2. The decisions involve understanding communication, accounts, and circumstances across a multitude of cultures (Interview 1, 2002; Pelosi, 1996). Variations in phenomenon from language usage and concepts, non-verbal communication, culturally appropriate demonstration of emotion, culturally appropriate response to authority, ways stories are told, calendars and significance given to time and dates to cultural, religious and ethnic practices from various areas of the globe are commonly encountered. For some the very basis of the decision, the definition of eligibility for refugee status as individual persecution, can be problematic due to its Eurocentric focus.

As is the case of Somalian refugees, some cultures do not have a concept of the individual apart from the collective and will speak of their suffering as a person as part of the collective ‘we’. For people such as these, dispossession and perceived collective injustice have more relevance than the concept of individual persecution and personal suffering required for refugee determination (Zarowsky, 1997). This again must be considered in the decision-making.

3. A good understanding of country conditions outside of Canada is required as well as up-to-date knowledge of often rapidly changing conditions, and awareness of the numerous contradictions that can exist within countries is required (Interview 2, 2002; Interview 3, 2002). This knowledge must include an understanding of the functioning of systems and level of bureaucracies in other countries to permit judgements about availability of documentation and inconsistencies or errors in identity documents. For one informant the ideal from some countries would be an identity document with errors rather than without because forged documents are more likely to give the Canadian system what it wants – the perfect document (Interview 3, 2002).
In recognition of how difficult this can be, IRB members have been designated as experts in specific countries but this too can be problematic when members think they know the conditions and a variation of those conditions comes across their path. An informant gave the example of a Commissioner who had been to the Embassy where a claimant had stayed. The claimant had stayed in the basement of the building and gave evidence that there was a side entrance; however, the Commissioner was adamant that no such side entrance existed and on that ground alone had not found the claimant credible (Interview 1, 2002). The same informant remembered how, when Sri Lankans and Tamils first started arriving in Montreal in the late 1980s, NGOs put out fact sheets about the situation in those countries since people, including at the IRB, were not informed (Interview 1, 2002).

4. As social workers know from their particular professional training, judgements of the nature required by IRB commissioners require knowledge of one’s own value system, attitudes, cultural background, biases and prejudices in relation to race, gender, class, sexual orientation, political opinion, religion or other in order to fully and honestly engage in such decision making (Pelosi, 1996). One informant commented on overhearing informal talk about Nigerians involved in credit card frauds prior to hearings of a claimant from that country. He indicated that in some cases there can be such strong biases without acknowledging the serious human rights abuses that occur in that country (Interview 3, 2002). In the field notes, the researcher remarked on the contrast between the upper middle class urban white Canadian male commissioner determining the refugee status of the rural black Zimbabwean woman who was obviously not at home in the bureaucratic setting of the hearing room (Field observations, Appendix F). Pelosi (1996) also commented on how knowledge associated with class background can be as or more relevant than cultural differences in the hearing process.

In light of the complex decision-making IRB members are responsible for, members would ideally be experienced and competent in areas including human rights, law, psychology,
and intercultural communication, political science, international relations and refugee advocacy (Interview 1, 2002; Interview 2, 2002, Interview 3, 2002; Pelosi, 1996). Commissioners are, however, appointed to their position and, as will be discussed in the following section, have not always been selected for their related experience or competence (Hathaway, 1993). Moreover, the renewal of their position is determined with the input of the Department of Citizenship and Immigration Canada.

Training

The IRB provides training to members of the Board, much of it done internally. It is not clear how available this training is to members on an on-going basis or how open members are to it. Pelosi (1996) reported that training was offered during normal working hours and so not always readily available to members who had a busy schedule. In her research it was also noted, from interviews with a commissioner and a training animator, that training sessions were not obligatory, nor always of the highest calibre (Pelosi, 1996). NGO’s who saw room for improvement in IRB training particularly focussing on trauma and torture were themselves designing workshops for training (Field observations, Appendix F). During the time of this research, the system was preparing for the implementation of major changes resulting from the newly legislated Act. These changes were much talked about around the IRB offices and it was anticipated that for some time to come most resources would be invested in education regarding the new Act and the consequent changes in the system (Field observations, Appendix F).

The question that arose for the researcher was whether the existence of training for members served to absolve the IRB of the responsibility for making recommended changes in their hiring procedures or other structural changes in the system. One informant’s observation was that, although there was some good training, there was a predominant focus on “how to get to the negative answer” rather than “how to give a fair hearing” in terms of how to conduct a hearing and hear a claimant’s testimony, a topic that will be revisited in more detail (Interview 3,
The subject of quality, availability, and focus of training of IRB members is one for further investigation toward understanding the social organization of the system.

The Refugee Determination Hearing

At the IRB hearing itself two commissioners constitute a quorum, unless the claimant has consented to a hearing before just one member. A refugee claims officer (RCO), formerly refugee hearing officer (RHO), acting on behalf of the Department of Immigration to provide assistance in the form of legal counsel and recommendation to the commissioners; a translator for the claimant, if needed; the claimant’s lawyer; and the Minister’s representative in cases where the Canadian government considers that the claimant presents a national security risk are also present. All hearings are held in camera and tape-recorded. In order for a member of the public to attend, the claimant and panel must grant permission (Pelosi, 1996; Young, 2000, Field Observations, Appendix F).

Although the hearings take place in offices of the IRB which are designed to be informal, more like a conference room environment than a court room, there are signs of the power differential involved: the guard at the entrance, the large crowded waiting room for the claimants (mostly of colour) near the entrance, the glass shield separating the reception desk, the restricted separate passageways and entrance for Board members, the elevated platform for the commissioners (largely white of European descent) in the hearing room, the Canadian and Quebec flags located behind the Commissioners, the fact that everyone stands when commissioners enter the room, and the physical distance between the claimant(s) and decision makers (see Hearing room, Appendix I). For the claimants in this setting, it is inevitable that they are nervous and afraid facing the authorities in whose hands their future lies. Tension is the predominant feeling in the hearing room; the stakes are known, as is the distribution of power. As Pelosi observed:
It seems a precarious dilemma is created by the very nature of the refugee determination hearing. While the hearing is the tool with which the state measures the truthfulness of an individual's claim, the claimant's vulnerable state of mind renders communication difficult, hence the hearing may not accurately reflect the claimant's true situation (Pelosi, 1996, p. 48).

In determining refugee status the commissioners focus on five major areas: 1. plausibility of events 2. credibility of the claimant, including identity, truthfulness, contradictions in account 3. objective fear of persecution and whether the claimant would be at risk if returned to their country of origin 4. if refuge could have been sought in an area of the country of origin and 5. if the claimant had been personally, individually persecuted (Hathaway, 1993, Pelosi, 1996; Field observations, Appendix F). The hearing is to be non-adversarial; however, in many ways, due to the very nature of the system itself, it is inevitable that the interaction take on an adversarial dynamic. As an informant in Pelosi's study stated:

It's an illusion to try and be non-adversarial because our legal culture is adversarial.... In our legal system basically the state is the opposing party and it can be represented by a tribunal which is trying to preserve the well being of the state that has appointed them (Interview lawyer 1, 1995 as cited in Pelosi, 1996, p. 49).

Within such a system, is it possible not to seem adversarial when trying to establish factors such as plausibility and credibility?

Determining criteria for refugee status

A central document in the hearing is the Personal Information Form (PIF). The PIF is generally completed with the assistance of a lawyer and submitted many months to over a year before the hearing date has been establish. This document forms the basis of a person's claim, stating the reasons for the claimant's request for refugee status. In addition to answering questions pertaining to background, education, marital status, and previous place of permanent residence, the claimant must demonstrate that she or he was personally persecuted due to her or his race, religion, nationality, political opinion, or membership in a particular social group (Interview 1, 2002). Since the availability of documentary evidence is problematic at most
refugee determination hearings, establishing credibility through testimony is key. The concept of credibility includes that the claimant is truthful in the assertions before the IRB, that no contradictions exist in the testimony, and that the claimant’s identity can be proven (Interview 3, 2002; Pelosi, 1996). Comparison for inconsistencies, errors, additions or omissions of information between the claimant’s testimony in the hearing and the PIF is a primary method for determining credibility.

In the training sessions, they [the IRB members] were trained to look at the PIF as a statutory document, like sworn testimony, to try to look for the differences between these two and pick at these differences. They’re told that if the people put in more details [than in the PIF], their testimony is to be doubted because the information should have been in the PIF.... Nobody puts every important detail in the PIF. This never happens.... Then they are also told that if people omit things, this is another reason for doubting them because it was in the PIF and they did not say it.... They are looking for the lie. They are not looking for the truth. (Interview 3, 2002).

Related to the concept of credibility is plausibility, the likelihood that events indeed occur. If events were not plausible, then the claimant would also lack credibility (Pelosi, 1996). The aforementioned factors that determine the complexity of decision-making for commissioners in the process are also factors that make accurate judgement of credibility and plausibility difficult. This is even more the case in a “system that is geared to the negative answer” (Interview 3, 2002).

Legal representation

For the claimant, representation by a lawyer is an essential aspect of the refugee determination hearing. Claimants are dependent on lawyers for guidance in the preparation of the PIF; in the research and preparation of documentation for the claim; for explanation and interpretation of the IRB system; for preparation for the questioning process of the hearing; but most of all for ensuring a proper hearing of their refugee claim. Lawyers, according to the informants and observation, varied in the degree of their preparedness for hearings (Interview 1, 2002; Interview 2, 2002; Field observations, Appendix F). Building a trusting relationship with
clients is of utmost importance especially with people who have been persecuted or tortured. Not all lawyers took the time to develop this sense of trust, to have clients understand the refugee determination process or to prepare the client for questions and cross examination that were likely to be part of the hearing process (Interview 1, 2002, Interview 2, 2002; Interview 3, 2002). Lawyers were paid largely through Legal Aid. Legal Aid had suffered financial cuts and lawyers were being paid less (Interview 1, 2002). Lawyers representing clients in detention were sometimes double booked with detention hearings simultaneous to hearings (Field observations, Appendix F). Not all lawyers were trained in international and refugee law and some, particularly those starting out, might lack the experience to challenge commissioners on the process of the hearing (Interview 3, 2002 and Field observations, Appendix F).

Role of refugee support and advocacy organizations

Many refugees arrived in Canada with unrealistic expectations about the reception that they would receive in Canada, based on what they knew of Canada's reputation. Because of this they were not prepared for what they might encounter in the hearing room - questioning, possible cross-examination, not being believed - and needed to be prepared for possibility of that reality (Interview 1, 2002; Interview 3, 2002). Informants observed that it was often not enough to have the refugee determination process explained once, that sometimes it had to be explained at different points throughout the process (Field observations, Appendix F). Beyond the actual functioning of the process of the refugee determination hearing, a claimant needed orientation to Canadian society and the Canadian mentality (Interview 1, 2002).

This is where NGOs, welcoming groups, churches, refuges, advocates, and communities came in, assisting, supporting, preparing, and orienting refugee claimants. This refugee support and advocacy network could provide vital support to the lawyer's role by "preparing people in how to present themselves in unfamiliar quasi-legal proceedings in this new cultural context, in how people here think, what the Canadian mentality is and how they fit into that. It helped
prepare them for communication – verbal and non-verbal, what is appropriate, how to give
direct, succinct answers and how to demonstrate respect appropriately” in the hearing. Some
communities actively organized to prepare members who were claimants for the hearing
(Interview 1, 2002). And sometimes claimants were better able to talk to members of these
organizations than they could to their lawyer (Interview 1, 2002). As Pelosi wrote, the hearing
could:

... be seen as a test of the claimant’s ability to construct an appropriate image of the
Convention Refugee [in Canada]. For the claimant portraying this image involves
understanding cultural norms and values and the ability to navigate administrative
bureaucracies (Pelosi, 1996, p. 58)

A proper hearing

From the researcher’s field observations it was clear that commissioner’s style of
conducting hearings varied substantially. On one occasion a member was heard to voice
sympathy at the claimant’s obvious distress in testimony, to the apparent discomfort of her co-
commissioner. Later the researcher discovered that the member expressing sympathy was a new
member being trained for the Board (Field observations, Appendix F).

In another circumstance, the member on a one-member panel was gruff and intimidating
in questioning a woman, who had limited English, was obviously nervous about how to be and
how to answer, and preferred to have her husband speak. The male commissioner asked her why
she was smiling and why she was answering questions before he had finished asking them (Field
observations, Appendix F). In this hearing the member bypassed the claimants’ testimony with
the lawyers consent and moved directly to question the couple, for the most part controlling the
questions and limiting the information given. The lawyer also had the opportunity to ask
questions of the couple. The member then asked the RCO to question. The RCO asked in detail
about dates and cross-examined what had previously been said to such a degree that the member
himself was irritated and indicated that he was being too adversarial (Field observations, Appendix F).

In yet another case, the claimants were given the opportunity to testify, guided by questions from first the lawyer and then the member. The atmosphere in the hearing room changed obviously after an emotional uninterrupted section of testimony by one claimant and later a sincere response and testimony by the other claimant, a relative. From this point on, the RCO had no further questions, the commissioner was obviously moved, as was everyone in the room. The Commissioner gave his affirmative answer to the determination of status before the hearing was out but everyone was already aware of that likelihood from what had transpired (Field observations, Appendix F).

These accounts are given to indicate the range of styles that commissioners can have in the hearing and how the style of questioning or asking for testimony can affect the claimant. In the hearings observed, those where the claimant was not overly interrupted or guided by the IRM member or RCO tended to bring out more of the claimant’s story in a sincere and emotionally cohesive way (Field observations, Appendix F). As one informant observed,

traumatized people react in various ways; some remember every detail vividly, while others block the memories out, and still others see it as if through a cloud; however, it is the people who have suffered the most who have the greatest problem with the type of hearing where the Board is looking for details and looking for the lie (Interview 3, 2002).

One informant reported that from 1996 on the IRB members in Montreal received training on how to “look for the lie and not the truth” and with this was “a strong bias toward the negative answer” (Interview 3, 2002). In the training, it was suggested that, if the lawyer questioned the claimant and they were allowed to tell their story, they would merely repeat the information in the PIF. To save time the commissioners were encouraged to start with questions from the RCO. Instead of having a real hearing where the people are heard on what happened to them, they start with a cross examination by someone [the RCO] who is not really interested in the evidence of what happened to them but is trying to pick holes in it. An examination helping someone tell their story is very different from [this kind of] cross examination ... The Board
members were told that this would be a more efficient way of doing things and they would save time .... It is not more efficient in terms of saving time in the hearing but it is more efficient in terms of arriving at the negative answer (Interview 3, 2002).

Again in the name of efficiency, IRB members were encouraged to ask precise questions and request precise answers. They’d ask specific questions about details but they didn’t want to hear the whole story, which is wrong because you [the claimant] are supposed to get a hearing” (Interview 3, 2002). This is also contrary to what international studies recommend as the best way to get to the truth.

According to texts in international law such as Goodwin-Gill’s *The Refugee in International Law*, errors increase dramatically in response to specific questions by comparison with spontaneous testimony given in the form of a free report. In international studies they talk about asking open questions as opposed to closed questions and allowing the people to talk (Interview 3, 2002; Goodwin-Gill, 1996).

As the informant observed, in cases where the claimant did not fully testify, it could not be assumed that the members accepted what was written in the PIF as true. Since credibility is such a crucial issue in the hearing, it is up to the lawyer to insist on a fair hearing. “Lawyers are supposed to be there to protect the claimant’s right to a fair hearing” (Interview 3, 2002). This clearly did not always happen. Prescriptions in how the refugee determination hearing is conducted can indicate the degree to which decision-making is text-mediated. Such decision-making will reflect organizational interests that are ruling interests (Campbell & Gregor, 2002). The degree of variation and inconsistency in how hearings are conducted is an important factor in understanding the social relations at the IRB and one that invites further exploration.

**Efficiency**

In Canada fast track procedures have been instituted to speed the refugee determination process. If the Minister does not advise the Refugee Division of an intention to participate in the hearing, claims may be decided positively in an expedited process by a single member without a hearing (Young, 2000). In clear cases, such procedures enable individuals to be quickly approved for refugee convention or humanitarian status, saving considerable time and the resources
involved in a multi-party hearing. Statistics were not immediately available as to how often expedited hearing took place or as to whom defined or what constituted “a clear case”. This is another direction for further exploration.

Expedited processes, however, are also used for deportations. As part of her field study, the researcher attended one such process. Several Costa Ricans had arrived in Montreal on the same flight and were detained. The researcher attended the detention review for one detainee and learned of the expedited process to be held immediately after. Although the claimants were claiming refugee status, they did not seem to understand the definition of the Convention refugee and were in the process of getting legal counsel. Costa Rica was not considered a refugee producing country and similar cases had been seen in Montreal in the prior months. What struck the researcher about the case was the zeal with which the adjudicator pinned the young claimant into a corner and exposed him as “an economic refugee”. He truly met the image of the gatekeeper protecting the state while the young claimant in question appeared to be very naïve and misguided (Field observations, Appendix F).

The pressure for efficiency must clearly be balanced without placing accuracy or right to a fair hearing at risk. Although the informants interviewed in this research, from their stance, could not quite embrace the refugee claimants’ view that “the hearing was like a gambling game” which made the decisions rendered by the IRB too arbitrary, others sometimes did, “I sometimes feel like the hearing is a chess game. Some days you lose, some days you win. It depends on the commissioner” (Lawyer 3, interview 1995 as cited in Pelosi, 1996).

Clearly inconsistencies were prevalent. These inconsistencies emerge from various sources, some accounted for and others to be unearthed in looking further at the ideology of the system. The concern in the current ‘crisis’ and backlog in the refugee determination system with the proposed push for greater administrative efficiency, is what will happen to these
inconsistencies in a system where refugees are already seen as “guilty until proven innocent”, at least by some within the refugee determination system.

**Explication of social relations and ideology of the political-administrative system**

Canada, as a signatory of the Geneva Convention and Protocol relating to the status of Refugees, has undertaken to protect Convention refugees from return to a country where they fear persecution. Canada states that a fundamental principle upon which the Immigration Act and Regulations is based is humanitarian concern for refugees (CIC, 1997). Most reports and informants said that overall the Canadian refugee determination system was not a bad one; was one of the better systems in the world; praised by UNHCR as an ‘exemplar’ in refugee recognitions, but that there were problems in its application (Interview 1, 2002; Interview 2, 2002; Interview 3, 2002). Refugees said the system was one that treated them like ‘nobodies’; one that did not believe them; one in whose hands their fate lay. Interviewing informants, professionals working with refugees, examining texts and other research, allowed for an initial investigation of the politico-administrative sites of the regime to uncover the links between the institutional social relations, ideology, and claimants oppressive experiences (O’Neill, 1994).

**The Governance of the IRB**

With close to 1,000 order-in-council appointees and staff, the IRB is the largest administrative tribunal in Canada. The IRB’s head office is located in Ottawa with regional offices in Montréal, Toronto and Vancouver, and district offices in Ottawa and Calgary. The Chairperson is the IRB’s chief executive officer. The Chairperson reports to Parliament through the Minister of Citizenship and Immigration. He or she is appointed by the Governor in Council to hold office for a fixed term of up to seven years. The Deputy Chairperson of the Refugee Protection Division, also, reports to the IRB Chairperson, and manages approximately 180 decision-makers (Chairperson’s Report, 2001-2002; Young, 2000).
Since the IRB is a highly decentralized administrative body with so many members making independent decisions, it is inevitable that consistency in decision-making would be problematic. Although in its texts the IRB speaks highly of the training available to members (Chairpersons’s Report, 2001-2002), it has been recognized that training alone is not sufficient to rectify the problem (Young, 2000). Guidelines, well-researched, succinct statements of the issues and relevant cases in the past, were issued by the Chairperson of the Board and given a statutory basis serve as texts to foster consistency in this decentralized system. Members who are considered independent decision-makers were instructed that “they need compelling or exceptional reasons for deviating from the principles contained in the guidelines”(Young, 2000, p. 8). An additional measure to establish consistency in decision-making was to create coordinating member positions of at a ratio of 1 to 15 members of the Refugee Division (Young, 2000). However Young notes that:

Questions relating to the quality and consistency of decision-making continue to plague the Board. Members are very conscious of their roles as independent decisionmakers, and the pressures for consistency may be either resisted or misinterpreted (Young, 2000, p. 14).

This raises research questions around how these guidelines are formulated and communicated and whose views they represent on controversial issues. The inconsistencies in decision-making have sometimes been very visible. For example in the controversy over the validity of claimants from Israel, mostly emigres from the former Soviet Union, 75% of such claims were accepted in Quebec; 10% in Ontario (Young, 2000). From the researcher’s field notes of one such case, it was a long hearing with a particularly stressful environment in the hearing room. The members appeared from the nature of their questions to be concerned about the political nature a decision indicating that Israel produced refugee, especially in the case where the claimant was part Jewish (Field observations, Appendix F). Such situations have ramifications for Canada’s Foreign Affairs and diplomatic relations, involve yet another level of complexity in decision-making, and are obviously another source for discrepancy in decision-making.
Appointment of Commissioners

The Governor in Council appoints members to their positions on the IRB. This appointment procedure has been seen as problematic. There are no criteria in the Act for the qualifications of appointees and observers of the Board have often been critical of the quality of the appointments, particularly those perceived to be based on patronage (Interview, 3, 2002; Hathaway, 1993; Matas, 2001; Young, 2000). As per the recommendations of the Hathaway Report (1993), a nine-member Ministerial Advisory Committee was created in 1995 to recommend members for appointment to the Board. Notably though, upon his retirement, the first Chairman of the Committee, Gordon Fairweather, maintained that the process continued to be political (Young, 2000). Some still considered this to be a major problem, particularly in some sites across Canada where some commissioners have a strong political affiliation (Interview 3, 2002). This is an avenue through which political pressure as well as peer pressure can be exerted.

As previously stated, NGO's working with refugees have long maintained that herein also lies a source of inconsistencies in refugee determination decisions since Commissioners are not always appointed with competency in the field as the main prerequisite. (Interview 1, 2002; Interview 2, 2002; Interview 3, 2002). Renewal of an IRB member's position is also contingent on input from CIC. In CIC there is a strong bias towards lowering and controlling the inland acceptance rate for refugees (Interview 3, 2002; Hathaway, 1993; Matas, 2001). If it is commonly known that those with too many positive refugee determination decisions will be looked down on for renewal of positions, it is a means of exerting pressure for reduced acceptances (Interview 3, 2002).

Canada’s acceptance rate since 1995 has ranged from under 50% to 58%. Although Canada’s acceptance rate is the highest in the world, the actual “stay rate” or number of claimants who actually stay in other countries may be similar to Canada’s, despite lower recognition rates (Young, 2000). The Canadian ‘model’ refugee determination system must be understood within the overall context of deterrence from entry into the system that is a
Culture of the IRB system

As identified from refugee claimant experience, there is a contradiction between Canada’s reputation as leader in human rights and respect for democratic values and Canada’s practice in implementation of its refugee determination system. Law and legal systems are cultural products that perpetuate the ideals of that society (Pelosi, 1996). An international definition of a Convention Refugee, that does not address the current reality of who refugees are, is interpreted through a national legal system. Canada’s refugee determination system operates in a national climate where, through the Immigration Department, it is increasingly restrictive with regard to refugees, in a climate of Northern industrialized nations that is equally, if not more restrictive. The signing of the Safe Third Country with the USA, to be operative in September, 2003, demonstrates a clear contradiction between the implementation of Canada’s refugee policy and the generous reputation Canada has cultivated. It is inevitable that this climate be reflected in the IRB system itself, especially since the refugee determination system was never constituted with a strong human rights orientation. The IRB as an institution is strongly hierarchical, with lack of transparency and with several already noted structural features that are not conducive to a climate of receptiveness or cultural openness (Pelsoi, 1996).

Rather than a human rights stance that might more approximate the climate in Foreign Affairs, the CIC “gatekeepers of the nation” mentality and ideology of ‘control’ has carried over to the IRB due to the close affiliation between the two and also to the powerful impact of the public discourse on claimants as abusers of the system (Barsky, 1994, 2000; Interview 1, 2002; Interview 3, 2002). Hathaway (1993) discussed how CIC by not maximally fulfilling their obligations in the process, were actually undermining the process and contributing to the bias within the IRB. The socially-constructed dichotomy between genuine and false refugees is not
new and was reflected in the concerns expressed by the Parliamentary Standing Committee on Labour Employment and Immigration at the time of creation of the IRB:

Canada remains committed to genuine refugees in need of our protection, but many of the refugee claims in recent years have been made by economic migrants. They have been abusing the refugee determination process to avoid immigration selection abroad (Labour Employment and Immigration, 1989, p. 30 as cited in Pelosi, 1996).

One informant noted that such scepticism was prevalent throughout the system and is reflective of the larger political context within which the IRB operates, one that places an emphasis on immigration control rather than human rights (Interview 3, 2002). In such a climate, protection of refugees is not necessarily contingent on his or her need for protection, but rather on her or his ability to navigate and understand the Canadian legal and bureaucratic refugee determination system.

IRB and CIC

While the IRB administers decisions under the Immigration and Refugee Protection Act, it is mandated as an independent body from CIC. Ties exist with the Immigration Department but no lines of direct accountability. In proportion to these structured relations, specifically designed to guarantee the IRB’s ability to independently administer its separate mandate, informants report a high degree of co-operation between the IRB and the Immigration Department (Interview 3, 2002; Hathaway, 1993; Pelosi, 1996). There is a blurring of the mandate and ideology of the IRB with that of the Immigration Department. Protecting the borders is the mandate of the Immigration Department but, as noted, the mentality of the gatekeeper of the borders has filtered into the IRB to some degree, calling into question the independence of the Board (Interview 1, 2002; Interview 3, 2002; Hathaway, 1993).

Matas raises the question, “why has government after government in Canada and around the world generated refugee determination systems that are both complex and unfair?” (Matas, 2001, p 51). His answer is that another objective intrudes into refugee determination systems; the
objective of control, since these systems impinge upon other government policy objectives (Ibid., 2001). Granting refugee status is not only a decision about protection but also a decision about who will have right to apply for Canadian citizenship. This is strong motivational factor for CIC to be interested in IRB decisions. The decision regarding permanent residence status falls in the mandate of CIC. They say they are guided by fundamental principles such as family reunion, promotions of Canada’s social, economic, demographic and cultural goals in their decisions (CIC, 1997). In recent years the connection between refugee status and permanent residence has become looser, indicating that the state is increasingly linking the admittance of refugees for resettlement with a requirement of return when conditions in the country of origin improve (Brouwer, A, 2000). So the refugee determination can conflict with immigration and foreign policy objectives, although as Matas notes, since Canada attempts to promote human rights abroad, if only in a neutral manner, and is a country of immigration, recognizing refugees can support rather than contradict Canada’s foreign affairs and immigration policies (Matas, 2001).

Historically it is clear that “Canada’s open door/closed door immigration and refugee policy reflects political and economic expediency rather than humanitarian values” (Pelosi, 1996, p. 28; see chapter 3 the Canadian Historical Context). In recent years, measures of deterrence instigated by CIC and the state in the last decade are indiscriminate in their effects and likely to prevent, deter or punish the entry of both refugees seeking protection under the Convention and economic migrants alike (Creese, 1992; Gibney, 2002). This interpretation of minimal obligations to the Geneva Convention neither respects the spirit of the Convention nor recognizes the importance of protection as a commitment to burden sharing and maintaining political stability of world regions. (Gibney, 2002; Acharya, A, 1997; Chimini, 1998b, 1999). Canada, through policy measures, would like to “impose on asylum movements the kind of predictability and manageability associated with refugee settlement schemes” (Gibney, 2002, p. 15). Yet as Matas notes, “It is a good deal harder to be recognized as a refugee overseas than
inland.... The system gives an artificial incentive for claimants to come to Canada to make their claims, working at cross-purposes with the overall objective of the system to have applications processed at visa posts abroad” (Matas, 2001, p. 50). He states:

It is this failure to separate refugee determination from immigration that explains the superficial perversity of a system that works with much less success abroad than in Canada. Officials seem not to care that the system creates an incentive to get to Canada, because they know that the web of visa requirements, visa denials, and carrier sanctions will prevent the arrival of most of those who want to come (Matas, 2001).

If the state is struggling to ensure a “manageable flow of refugees to its borders”; one “that does not fluctuate dramatically upwards over time” (Gibney, 2002, p. 15), this assumes that states have reasons for accepting refugees and asylum seekers. These reasons would include: 1. The state’s desire to be seen as respectful of humanitarian goals. 2. Pressure by internal interest actors, including economic and ethnic groups. 3. Pressure from external actors such as other states (Gibney, 2002).

The stability of flow requirement stems from the state’s desire to be seen as in control of the inward movement of foreigners (Gibney, 2002) as witnessed by Canada’s response to recent allegations from the USA that Canada is not in control of her borders; therefore placing American citizens at risk. Currently in Canada claims on Humanitarian and Compassionate grounds are being delayed as resources are being diverted into detention and deportation (Interview 3, 2002). Since Sept. 11, 2001 there has been an increase in ideological reasons for exclusion and for control of borders. There must be motivation for Canada to maintain a refugee determination system, while not making it fairer or less complex for the benefit of those who need protection. At this point in the investigation of that system, the data suggests to the researcher that maintaining such a system deflects from criticism for the restrictive measures that are being employed in refugee determination overseas and in gaining access to Canadian borders. In this way the inland refugee determination system is self serving for the Canadian government and in particular the objectives of the Department of Citizenship and Immigration.
The researcher has edited all quotes to enhance comprehension for Canadian readers. This is always a concern when converting oral to written speech. Since language and how it is spoken is crucial to this research methodology, the intention was to retain as much of the authentic spoken Nigeria word as possible. One participant was very concerned about how Canadians would perceive his oral speech when put into written word. He did not want to be made to sound stupid. He was assured that you, the reader, would be informed that differences in speech are just that. They are not a sign of lack of knowledge of the English language.

Goodwin-Gill, G.S. & Kumin, J. (2000), p. 2. elaborate on “why the Canadian practice of requiring refugees to obtain identity documents from their countries of origin and of issuing Convention Travel Documents to recognized refugees only after they have become permanent residents is not in line with the spirit or the letter of the 1951 Convention”.

SINs that begin with the number 9 are issued to individuals who are neither Canadian citizens nor permanent residents, who need a SIN for employment purposes or to comply with other authorized uses, such as income tax filing. Holders of these SINs include temporary foreign workers and refugee claimants.

Claimants require authorization before they can work and are ineligible for employment-related training. Prior to 1989, claimants were not permitted to work. Following an amendment of immigration regulations in 1989, claimants were given the right to work after they had successfully completed the first phase of the refugee hearing process of the refugee hearing process. The Minister of Citizenship and Immigration has since changed the regulations to enable claimants to seek employment when they allowed into the determination process, usually after their PIF has been filed. (Opoku-Dapaah, 1994, p.12).

As Brouwer, A. (2000). explains, this process typically takes 12 to 24 months. If a refugee’s identification documents are not deemed ‘satisfactory’ or a lengthy security check is conducted, the process can take longer. It is estimated that in 2000 there were 7,500 to 10,000 refugees in limbo in Canada because they are unable to produce documents that the Immigration Department considers ‘satisfactory’. This indicates a Canadian policy trend towards temporary protection and away from permanent settlement.

Since the time of this research, this process has changed with the passing of the Immigration and Refugee Protection Act in 2001 and with security changes in the aftermath of Sept. 11, 2001.

With the passage of the new Immigration and Refugee Protection Act in 2001, an appeal system was to have been instituted in 2002 but at the last minute plans were cancelled due to lack of resources with promises to institute it at a later date. That promise has not been fulfilled.

The translation of refugee claimant’s testimony presents its own set of problems which were not investigated in this study since in order to facilitate the research, English speakers were interviewed. Pelosi (1996) explains that the IRB specifies that the interpreters render word for word translation. Sometimes achieving this compromises the meaning of what the claimant said. Also interpreters may speak the same language as the claimant but may come from an opposing ethnic group or many speak a dialect that is significantly different from that of the claimant. The claimant may not feel in a position to challenge the adequacy of the translation. Sometimes the only way that the inadequacy of the translation into English becomes known is if the claimant’s lawyer has knowledge of the language interpreted. See Pelosi (1996) for a more complete discussion of the concerns that can arise related to interpretation.

The role of the RCO has been subject to various interpretations. Hathaway (1993) recommended that restrictions be placed on the RCO’s information-gathering activities, that they have less of a role in the hearing and that the objectivity, impartiality of their role be emphasized. The Board decided that RCOs would remain as a source of expertise for the panel and would question claimants at the panel’s direction but that the members would become more engaged and active participants in the hearing process (Young, 2000).
Chapter 5 Discussion and Conclusion

Review of findings

Institutional ethnography investigates the ongoing local material and historical organization of social practices and the ideology that formulates them. The objects and activities of daily life are more than their simple physical properties but are "anchored in and anchor a social organization of actual practices" (Smith, 1987, p. 124).

Refugee claimants, who had expected to be well received in Canada due to Canada's good reputation in refugee protection, identified exclusion from legal status with the accompanying restrictions and being held suspect as 'criminals and illegals' until they could prove themselves 'genuine' according to the regulatory practices of the Canadian refugee determination system as their experience in relation to the refugee determination system. Inclusion in Canadian society depended on success in the refugee determination system, a system that refugee claimants did not understand, that was situated in a context that they did not understand. At a time when they needed to mobilize community and individual resources in the process of reconstructing themselves and adapting to their new social context, refugee claimants experienced an administrative exclusion while waiting for refugee status or landed immigrant status. Successful participation in the refugee determination process depended in part on the support, information, and resources that claimants could access during this period of exclusion.

For refugee claimants, it was their fate that was at stake in the refugee determination process. Viewing the social relations of the refugee determination system from the standpoint of the refugee claimant indicates the lines of disjuncture, the fault lines between that experience and the social organization of the system (Smith, 1987; Smith, 1998). This study suggests that, due to the organization of the refugee determination system, and specifically the IRB, the intrusions of non-refugee objectives and ideology were reflected in the inconsistencies encountered in refugee determination decisions. An initial investigation of the ideology contributing to the social relations of the IRB suggests that the origins of these intrusions stem from multiple sources: the
process and criteria for selection, appointment and renewal of IRB commissioners; in the training of IRB commissioners; in the working relationship with the Department of Citizenship and Immigration; and in the predominant domestic discourse and international social, political and economic climate and discourse concerning refugees. It further suggests that the manner in which the refugee determination hearing was conducted, and the degree to which it was text-mediated or influenced by bias within the system, was key to the claimant’s testimony in the hearing and consequently possibly to the outcome of the refugee determination hearing.

At this point in the investigation, the data suggests to the researcher that, for the state of Canada, maintaining an inland refugee determination system, acknowledged internationally, deflects criticism from the restrictive policy measures that are being employed elsewhere in immigration and refugee policy; in refugee determination overseas, in restricted access to Canadian borders, and in agreements like the Safe Third Country agreement with the US which will very effectively limit the number of inland refugee claimants in Canada. In this way, the inland refugee determination system is self serving for the Canadian government and, in particular, the objectives of the Department of Citizenship and Immigration, as opposed to being primarily motivated by the protection of refugees and meeting Canada’s international responsibilities.

Discussion

This institutional ethnographic study of the refugee determination system is an initial investigation and warrants further exploration into the social relations and ideology that organize the experience of refugee claimants. In such investigation, an expansion of refugee claimant’s experience in relation to the refugee determination hearing is recommended, particularly in relation to the hearing process. One route for further investigation would be to interview those filing claims on H &C grounds after refusal of their refugee status claims. The challenges of doing such investigation through direct interviews with claimants have been discussed; however,
may be possible in a situation where more long-term contact has been established. An alternate route of investigation could involve textual analysis of negative written decisions rendered by the IRB for refused refugee claims. Variations of refugee experience also need to be further explored as will be discussed under directions for further research.

A shortcoming of this study is that it did not investigate the complementary social organization of the refugee determination system through the exploration of the social relations from the experience of IRB members. Although this also presents some challenges, as was discussed in relation to Pelosi's (1996) research and the lack of transparency within the organization, this is a crucial area for investigation for further explication of the social relations and influencing ideology of the system. Likewise, investigation into the ideology of the politico-administrative level of the refugee determination system would benefit from direct investigation with actors within the various managerial levels of the system, including those responsible for training and interpretation within the IRB, and from the examination of texts such as IRB guidelines and their use within the system. The interrelationship between the IRB and CIC in all levels of functioning is also fundamental to investigating the underlying ideology of the refugee determination system.

In the implementation of the methodology of this study, the researcher discovered the challenge of maintaining a central component, the standpoint of the refugee claimant. This proved difficult for the researcher due to the nature of the study as part of an academic thesis, due to the researcher's academic training, and due to the fact that the researcher as a naturalized Canadian citizen since childhood did not share the same location on the margins of society as refugee claimants. As a consequence the researcher is of the opinion that as an application of institutional ethnography, this investigation is in essence a hybrid. In order to address this concern in any future application of institutional ethnography, the researcher would build in a participatory or consultative component with refugee claimants since the researcher saw how
easy it is to deviate from that essential perspective or miss fundamental elements of the experience when investigating the social relations of the system. To the researcher, an examination of the international and Canadian historical context seemed a vital aspect in the study, shedding light on how this context sets a framework and influences the organization of the Canadian refugee determination system. In this investigation of theory, however, it became particularly apparent to the investigator that she could easily unwittingly deviate from a 'refugee perspective or critique' and that such investigation needed to come from a firm grounding in the standpoint of the refugee claimant on the margin of Canadian society.

The researcher had anticipated that the experience of racism might emerge as an aspect of investigation of refugee claimant experience. This did not emerge in the analysis of the data but the researcher speculates that the fact that participants were cautious and that the researcher was a Canadian woman of European descent might have had a bearing on what participants discussed in relation to their experience and racism, not knowing what the researcher would be open to hearing or what she might do with that information. The participants from their comments were clearly concerned about how refugees might be presented. In retrospect there were incidents related that hinted at racism about which the researcher could have sought more elaboration, again a consideration for any further investigation.

Comparison of findings with other literature

This initial mapping of the experience of people seeking refugee status in relation to the refugee determination system lends support to Lacroix's thesis that there is a distinct core experience of 'refugeeness', which claimants in this study characterised as 'baselessness', exclusion and loss, resulting from the social organization of international and Canadian immigration and refugee policy. As mentioned previously more exploration is needed for a fuller representation of this experience. The method of institutional ethnography is, however, also interested in exploring social relations from the different vantagepoints within the experience of
refugee claimants, be they based on gender, sexual preference, political opinion, or other reasons for seeking refugee status, since the grasping of the organization of various experiences of oppression can expand general knowledge of how these social relations are organized and how they work (Smith, 1987).

Pelosi (1996) in examining the intercultural communication in the refugee determination hearing saw a gap between the IRB’s principle of cultural receptiveness and what occurs in the refugee determination hearing. She relates this ‘paradox’ to the difficulties of applying the international definition of a Convention refugee to a socially and culturally constructed refugee determination process. Although the focus of the study is on intercultural communication rather than refugee experience in relation to the system, the study makes similar observations to the present investigation. However, the focus of institutional ethnography on explicating the ideology of the ruling through investigation of the social relations from, in this case, the standpoint of refugee claimants, in order to understand how the system creates oppressive experience, provides the investigation with the additional potential for use in effecting change.

**Future research directions**

Several directions for further investigation of the social organization of the refugee determination system were already noted in the discussion. The need to interview claimants around the time of their hearing or claimants whose refugee claims have been denied and are applying for residence status on Humanitarian and Compassionate grounds has been discussed. It has likewise been noted that approaching the organization from various points d’appuis within refugee claimant experience can expand general knowledge of how these social relations are organized and how they work in organizing oppression (Smith, 1987).

One important standpoint to investigate, as indicated by Rousseau et al’s (2001) research into family reunification and refugees, is that of women and men who have been separated from their families or children. The men in this study, as mentioned, were single and reunification did
not emerge as a priority for them, except in the case of one participant who, while held in limbo waiting for landed status was not able to leave Canada to see his dying mother, a restriction for which he clearly would not forgive the system. For parents separated from dependent children or for those worried about the safety of their family, reunification and how the system facilitates it is pivotal.

The need for a separate exploration of women claimant’s experience due to the lack of consideration of women’s reality in the Geneva Convention definition of a refugee, has been noted. Such investigation could also focus on the application of Guidelines on Women Refugee Claimants Fearing Gender-related Persecution in Canada. Due to the nature of their difference, sexual preference, the location of gays and lesbians, bisexuals and transsexuals would also shed a varying light on social relations in the refugee determination system. Unaccompanied minors are also becoming a recognized reality of the refugee claimant experience, investigation of which would indicate how a system relates to independent children who seek protection.

The point d’appui from various political persuasions, religious groups or according to country of origin, particularly those construed as a threat according to the current security agenda, would also lend an interesting perspective on social relations of the refugee determination system. Race, culture, and ethnic group, particularly those that are unfamiliar to Canadians are also essential standpoints from which to approach an investigation of the system. Minghuan (2001) in her study of the experience of Fujianese ‘boat people’ commented that “they all mentioned that they were completely reliant on Canadian lawyers, counsels and advocates” (Minghuan, 2001, p. 6). The acceptance rate for Fujianese ‘boat people’ was low. This was attributed to the fact that boat people’s ability to communicate with lawyers had been greatly restricted (Minghuan, 2001). These observations point out the importance of investigating the experience of those who must understand and communicate their reality through interpreters and
also the reality that increasingly refugee claimant’s are experiencing detention, another location from which to investigate the system.

**Implications for social work and for change**

From their research findings, Bracken, Giller and Summerfeld (1995) advocate that psychological responses to war and atrocity be viewed in terms of their context in social, political and cultural realities. They illustrate how these realities structure the individual’s response to violence by determining 1. the semantic environment and 2. the practical context in which the violence occurs and in which the individual recovers. In addition, they provide evidence demonstrating that factors such as “community cohesiveness and political solidarity determine to a large extent how the traumas of war are experienced and coped with” (Bracken et al., 1995, p. 1078). Refugee claimants after having experienced violence and persecution in their homeland, experience an administrative exclusion from Canadian society precisely when they need to mobilize their resources in the process of reconstructing themselves and adapting to their new social context. This exclusion can contribute to re-traumatization of those seeking refuge.

Structurally and clinically this investigation presents a challenge to the profession of social work to contribute to a new knowledge base from which to intervene with refugees and define their needs for services as well as to the development of alternate policy which considers the individuals involved. Social workers are in a unique position to be able to contribute to a structural understanding and analysis of refugee claimant experience, particularly in relation to the refugee determination system, and link that to clinical interventions to assist both the individuals and communities involved and in the organization of services and community development on the local level.

From a structural perspective this investigation demonstrates the relevance of understanding the causes of current refugee movements as rooted in the major global economic and geopolitical forces of change. Such a perspective demands a critical evaluation and stance on the evolving
economic and political hegemony of our times and efforts to hold states, transnational companies
and international agencies accountable for the social impact of their actions. Domestically it
involves action against a pejorative discourse concerning refugees and immigrants, a demand for a
voice in establishing the priorities for immigration and refugee policy in a transparent immigration
and refugee determination system, and efforts towards getting the states of the North to change their
non-entreté policies; efforts such as educating and mobilising people against restrictive policies like
the US-Canada Safe Country agreement.

Since refugee claimants have no official voice in Canada, there is a need for refugee
advocacy groups to collaborate with umbrella organizations representing immigrant and refugee
organizations such as the Canadian Council for Refugees. Education and advocacy are needed to
maintain and expand refugees’ access to social resources on a provincial and federal level. Such
efforts must also focus on maintaining refugee rights as part of a commitment to burden sharing
that is part of a commitment to achieving stability in regions of the world. These efforts can not
be separated from a commitment to redistribution of world resources. The opportunity to work
towards the protection of refugee rights is the opportunity to examine the interconnections of
struggles for social responsibility from a local to a global level.

Conclusion

This initial exploration of the social organization of the refugee determination system
suggests that the availability of an inland refugee determination system with its inconsistencies and
contradictions maintains a minimum provision, although recognized as model by world standards,
for forced migrants who reach Canada’s borders to claim refugee status. The study suggests that, in
this way, Canada deflects criticism from restrictive immigration and refugee policy measures that
are in tune with the present economic and political climate in countries of the North.

Analysis of economic globalization explores the tension between the denationalization of
economic space and the re-nationalization of political discourse, identifying immigration and
refugee policy as strategic to the inquiry about the limits of the new order emerging with globalization. Immigration and refugee policy serves as a critical indicator of these limits since it relates to the re-nationalization of politics and the notion of the importance of sovereign control over borders at the same time as being implicated in a larger dynamic of transnationalization of economic spaces and human rights regimes (Sassen, 1998).

The social organization of the refugee determination process reflects the interests of the Canadian state which has committed itself under international agreement to the provision of protection to refugees but that holds refugees increasingly suspect until such time as they have been determined ‘legitimate’ by the IRB. These ruling relations result from international agreements concerning the human rights of refugees that are predicated on the principles of protecting state sovereignty and relationships between states and not on the needs of those people whose lives are most directly affected by these laws and policies (Aleinikoff, 1995).

In such a global climate, the politicization of the line of exclusion/inclusion in a liberal democracy such as Canada is inevitable whether that line is drawn at the Canadian border or in the hearing room of the refugee determination system when refugee status is determined. The inevitability lies in the fundamental nature of a neo-liberal democracy state in a globalizing economy that increasing creates a division between North and South; have and have-nots. Only in a context of global commitment to changing the nature of this system and the root causes of refugee movements will this controversy around borders and refugee determination decisions significantly shift. Within the present context it is also inevitable that there exist a fundamental tension between an inland refugee determination system and an overall state policy of control and deterrence – a source of an ongoing rift between government and potential refugee claimants and advocates for refugee protection.
References


*Interview 1*, refugee rights advocate/social worker, (May, 2002). Montreal, Quebec.

*Interview 2*, refugee rights advocate/political scientist, (May, 2002). Montreal, Quebec.

*Interview 3*, refugee and immigration lawyer, (May, 2002). Montreal, Quebec.


# Appendix A
## Glossary of Terms

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
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<tbody>
<tr>
<td><strong>Asylum seeker</strong></td>
<td>Term commonly used in Europe which is comparable to usage of refugee in North America.</td>
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<td><strong>Commissioner</strong></td>
<td>The individual designated by law to preside over the refugee determination hearing and judge whether the claimant is a refugee.</td>
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<tr>
<td><strong>Convention Refugee</strong></td>
<td>Under the terms of the Geneva Convention of 1951, any person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group, or political opinion a) is outside of the country of his/her nationality and is unable, or by reason of such fear, is unwilling to avail himself/herself of the protection of the country, or b) not having a country or nationality, is outside of his/her former habitual residence and is unable, or by reason of such fear is unwilling to return to that country.</td>
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<tr>
<td><strong>Credibility</strong></td>
<td>Refers to the believability of a testimony. The assessment of credibility is largely based on the consistency of an individual’s testimony, the lack of contradictions and the plausibility of what is described.</td>
</tr>
<tr>
<td><strong>Forced Migrant</strong></td>
<td>Someone who has involuntarily fled his/her country to avoid persecution or harm.</td>
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<tr>
<td><strong>Humanitarian and Compassionate Grounds (H&amp;C Review)</strong></td>
<td>If a claimant is not accepted as a Convention Refugee, she or can request to stay in Canada on humanitarian grounds. This review is conducted by the Immigration Department.</td>
</tr>
<tr>
<td><strong>Immigration and Refugee Board (IRB)</strong></td>
<td>The quasi-judicial body designated by law to adjudicate refugee claims. It is defined as a neutral, non-adversarial, and independent body.</td>
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<tr>
<td><strong>Inland refugee claimant</strong></td>
<td>Individual who makes a claim for refugee status at the border or from within the country. The term Spontaneous refugee applicant is also used.</td>
</tr>
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<td><strong>Personal Information Form (PIF)</strong></td>
<td>A form in which a refugee claimant is asked to give personal information on family members and other matters including the reasons for which the claimant is asking for refugee status. This form is entered into evidence in the hearing and is critical for the refugee determination process.</td>
</tr>
<tr>
<td><strong>Plausibility</strong></td>
<td>The feasibility or likelihood that an event or a series of events has transpired.</td>
</tr>
</tbody>
</table>
Refugee Claimant: An individual who is applying for Convention refugee status within a country. In Europe such the term asylum seeker commonly is used.

Refugee Determination Hearing: An oral hearing in which the individual seeking refugee status testifies the events leading up to and of her/his persecution. A decision is then made as to whether the individual conforms to the definition of a Convention refugee as interpreted by domestic law.

Refugee Claims Officer (RCO): The refugee hearing officer is an impartial officer of the Refugee Division of the IRB. Their role is to ensure that the IRB panel is apprised of all relevant facts and issues relating to a claim. The refugee officer is instructed to be scrupulous to avoid creating the impression that she/he is an adversary rather than a neutral party. Before 1995 the RCO was referred to as the Refugee hearing officer (RHO).

Safe Third Country: Any country that a refugee claimant passes through before claiming refuge in Canada that is deemed ‘safe’ by the Canadian government. The claimant may be refouled back to that third country to make her/his claim. The recent agreement signed with the U.S. is to come into effect in September, 2003.
The Vancouver Association for Survivors of Torture

Our mission:
The Vancouver Association for Survivors of Torture (VAST) was founded as a not-for-profit organization in 1986 to encourage and promote the well-being of people who have survived torture and political violence. We work primarily in four ways: through the direct provision of clinical and support services to survivors and their families; through education to the general public on the importance of preventing torture; through outreach to other community groups and professionals on the effects of torture; and by developing more effective assessment and treatment methods, unique to the needs of torture survivors and their families. Our mandate is based on the definition of torture provided by the United Nations Declaration Against Torture.
The United Nations has stated that torture is “one of the vilest acts to be perpetrated by human beings upon each other” (U.N., 2000). At VAST, we are daily witness to the strength of the human spirit to survive even the most horrific acts of violence, a belief which guides us in every aspect of our work, forming the basis of our philosophy and principles of care. We are deeply inspired by the stories of survival of the people we work with and for, and we acknowledge that our role is defined according to the needs and goals of each individual.

Who comes to us:
Since our inception in 1986, we have worked with over two thousand individuals, diverse in age, gender, language, culture, religion, ability, economic status and educational background, from over fifty countries who have survived torture and political violence and are residing in the Lower Mainland. In 1999, VAST offered individual and family counselling, support services, specialized referrals, medical and bodycare treatments, and a drop-in centre to 280 individuals; men, women, and children. In addition to direct services at VAST, we also provide information and training for professionals, community groups, and front-line workers who come in contact with survivors, as well as public education sessions to raise awareness of issues relating to torture and political violence world-wide.

The VAST Team:
The VAST team is a unique and specialized group of professional staff, volunteer counsellors, physicians, bodycare practitioners, interpreters, and program participants. We have a community of care which represents diverse cross-cultural knowledge and experience, and incorporates a multidimensional approach to working with survivors of torture. The holistic model which governs our work is inclusive and supportive of all people who fit our mandate, and allows us to remain flexible in responding to the diverse needs of individuals receiving therapy and support as they struggle to settle in Canadian society and heal from the trauma of their experiences of torture and political violence.

Our Funders:
Funding for VAST comes from the U.N. Voluntary Fund for Victims of Torture; the Ministry Responsible for Multiculturalism and Immigration; and the City of Vancouver. We also receive donations from concerned individuals and groups in the larger community.
Appendix C

VOLUNTEERS NEEDED FOR INTERVIEWS
People seeking refugee status needed for a study of refugees’ experience and the Immigration and Refugee Review Board

Purpose
The purpose of this study is to hear from those seeking refugee status under the Geneva Convention regarding their experiences with the Immigration and Review Board (IRB) process. This study focuses on the IRB process to determine refugee status and how this affects the lives of those seeking refugee status. The findings of this study will be used to try to effect changes in the IRB process and in programs for refugees.

Study Procedures
Participants will be involved in a 1½-2 hour private and confidential one on one interview. Topics to be discussed will include experiences with the IRB process and how these experiences affect your life. Interviews will be audio-taped and transcribed. Participants will be provided with a copy of the transcribed interview and invited to meet with the researcher to review the data and discuss any issues that may arise from the research process. A copy of the final report will be available to participants as well as the opportunity to have input into the analysis of the data. Participation in this study is voluntary and subjects are free to withdraw from the study at any time.

Who’s invited to participate?
In order to have some commonality of experience, Nigerian men seeking refugee status will be the focus of this study.

Confidentiality
All information gathered during and resulting from this research study will be kept strictly confidential. Any identifying information will be deleted from any reports.

Contact
Interviews will be conducted by Augusta Lokhorst, a Master of Social Work Student, University of British Columbia as part of the requirements for the completion of the graduate program. Augusta is also a volunteer with VAST. She is not connected to the Immigration Department or to the Immigration and Refugee Board. Participation in this study will not impact on the outcome of your refugee claim before the Immigration and Refugee Board. If you are interested in participating or just want more information, call Augusta Lokhorst at 873-9624 or Professor Brian O’Neill at the School of Social Work and Family Studies, University of British Columbia at (604) 822-2460.

Participants in this study will receive a $20.00 honorarium after completion of a confidential interview in recognition for your contribution.
Appendix E

Data Gathering Instrument/Interview Guide

1. What point are you at in your claim for refugee status?
   - When did this process begin?
   - Where did this process begin?

2. What have been your experiences with the IRB process to determine refugee status?

3. How has the process of determining refugee status affected your daily life?

4. Has this process been what you expected? In what ways?

5. Has this process been different from what you expected? In what ways?

6. Are there similarities to other experiences in your life?

7. What has helped you through this process?

8. What changes would you want to see in the IRB process?

9. What other changes would make a difference for you in your daily life?

10. Is there anything else you would like to tell me?
Appendix F
Field Observations

April to mid May 2002

Refugee determination hearings 9 hearings attended
Detention reviews 19 reviews attended
Videoconference 1 attended
Review under live in caregiver program 1 attended
Federal Court Appeal 1 appeal attended
Detention Centre 1 visit to female section
1 visit to male section
Observations in IRB waiting room pre and post hearings and reviews
Meeting of the Table de concertation des organismes au service des personnes refugiees et immigrantes.
2 meetings attended
Comite d’Aide aux Refugies (CAR) 2 Board of Directors meetings attended
CAR refugee advocacy on-going observation/participation
Consultation at Montreal Jewish Hospital 1 consultation attended
SARIMM accompaniment of refugee claimants
Appendix G

Interview Guide

1. Please tell me what your line of work is. Would you briefly describe what you do in this capacity.

2. How would you describe your position in relation to refugee claimants?

3. In in-depth interviews with refugee claimants the following issues were identified in their experience:

a) Claimants came to Canada thinking they would be well received because Canada grants status under the Geneva Convention and because of Canada’s good reputation. When they arrived in Vancouver, they found that they had to find a place to stay and find their own way to services and people who could help them. They found that people’s reactions to them were unpredictable. They found that the system did not recognize them in fundamental ways that would facilitate their settlement, such as give them identification that would enable them to open bank accounts. They also felt vulnerable to being in the wrong place at the wrong time and possibly arrested by police if without ID that properly identified them.

b) The Immigration Officer would tell the claimant to ‘be a good citizen’ but the refugee claimants did not see how they could do so when they were not allowed to work and had to go on social assistance.

c) The Refugee determination system was not explained to claimants. The quasi-legal process was not clear to them and they understood court as a process that deals with criminals. They do not consider themselves to be criminals. They considered that the government in their country was the problem. They also said that they did not feel that they were believed. They also did not trust the system since in their country (Nigeria) they said the law serviced the interests of the rich and the poor were easily imprisoned.

d) They said they did not think the IRB system was realistic in its demands for things like lack of contradictions in ID documents or for number of required ID documents. Conditions in their country of origin sometimes meant that there would be errors in documents or that ID would not be available or would be limited in number of documents available. They also did not understand that people in the country of origin could not communicate about what had happened because of danger to themselves and their family.
e) Claimants did not understand the criteria for IRB decisions. They saw contradictions between how they would interpret the stated criteria and some decisions made by the IRB, e.g., in a case of a man politically active in Orgoniland where multinationals oil companies are destroying the environment. They said they saw the process as a gambling game.

e) The claimants saw a contradiction between the position taken by Canadian Foreign Affairs and Canada’s talk about human rights and how to help people to go to democracy and the way that they were treated as refugee claimants.

f) They said that high profile applicants or political leaders are able to gain access to refugee status but the people behind the leader do not have access to the same system, even though these are the people most at risk because they easily be jailed or killed.

What are your thoughts on why these issues exist?

4. Are there other primary areas of concern in the IRB process that you would identify that affect refugee claimants?

5. Do you see ways that these issues could be addressed/changed?

6. Is there anything else you would like to say?