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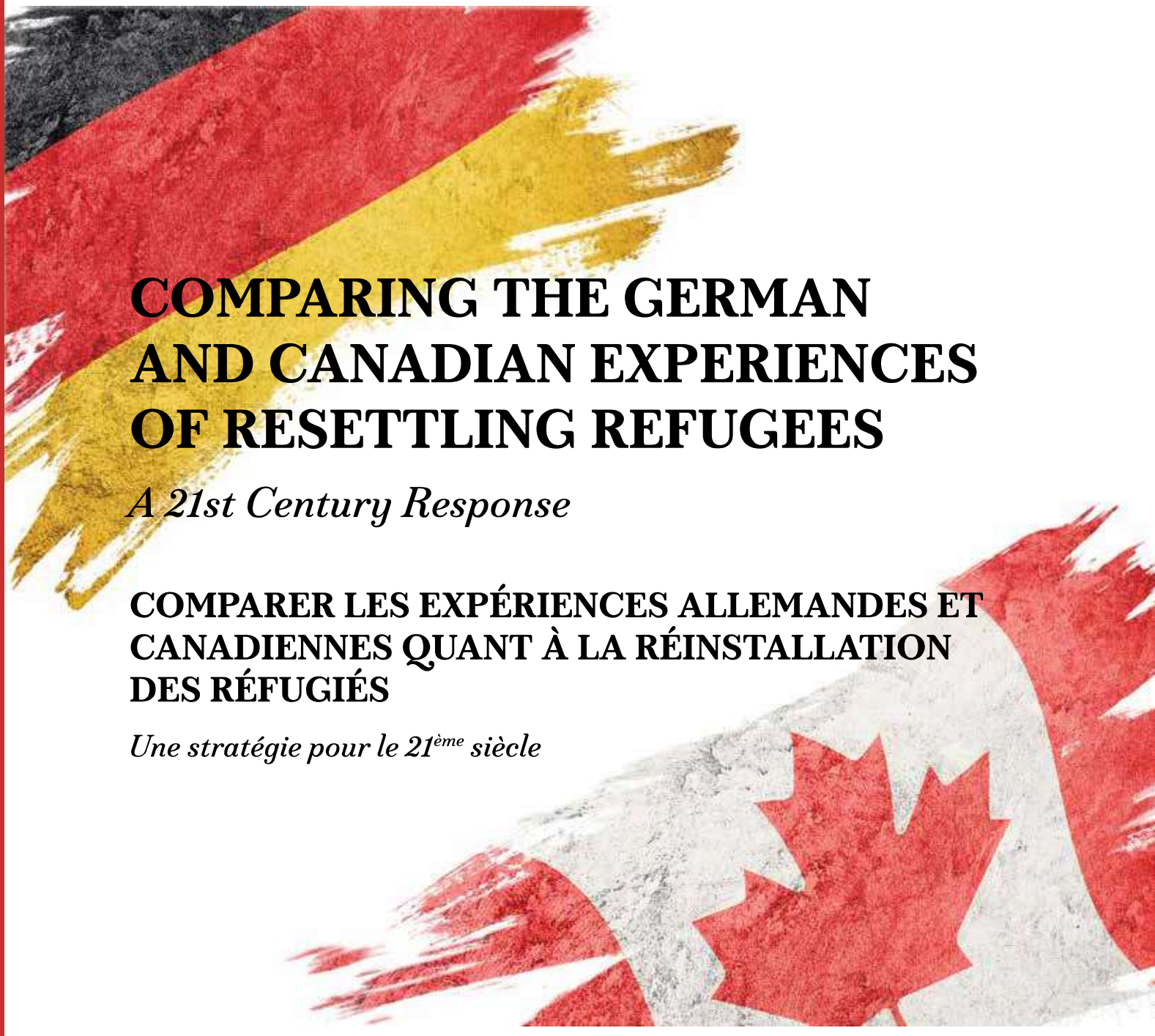

COMPARING THE GERMAN AND CANADIAN EXPERIENCES OF RESETTLING REFUGEES

A 21st Century Response

COMPARER LES EXPÉRIENCES ALLEMANDES ET CANADIENNES QUANT À LA RÉINSTALLATION DES RÉFUGIÉS

Une stratégie pour le 21ème siècle

VOLUME 17 | NO. 2 | 2020

With the support of the Erasmus+ Programme of the European Union

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REFUGEE PROTECTION IN CANADA: RESETTLEMENT'S ROLE

Shauna Labman, University of Winnipeg

Both a condensed summary of the book *Crossing Law's Border: Canada's Refugee Resettlement Program* (UBC Press, 2019) and updated observations, this article examines Canada's resettlement program from the Indochinese crisis of the 1970s to present day. The article considers how resettlement and particularly private sponsorship are employed in relation to access to asylum in Canada. While the Canadian system allows in principle for complementary routes to refugee protection, the article outlines how government messaging can imply that resettlement is the proper means to access refugee protection and those who come to Canada on their own to access the asylum system are not genuine refugees. The role of private sponsorship as a component of Canada's resettlement program is examined through the lens of responsibility shifting and the tension of additionality as sponsorship numbers now surpass government resettlement.

À la fois un court résumé du livre Crossing Law's Border: Canada's Refugee Resettlement Program *(UBC Press, 2019) et des observations plus récentes, cet article examine le programme de réinstallation canadien depuis la crise indochinoise des années 1970 jusqu'à nos jours. L'article se penche sur la manière dont la réinstallation et en particulier le parrainage privé fonctionnent par rapport à l'accès à l'asile au Canada. Bien que le système canadien permette en principe des voies complémentaires à la protection des réfugiés, l'article décrit comment le message du gouvernement peut laisser entendre que la réinstallation est le moyen approprié pour accéder à la protection des réfugiés et que ceux qui viennent au Canada de leur propre chef pour accéder au système d'asile ne sont pas de véritables réfugiés. Le rôle du parrainage privé en tant que composante du programme de réinstallation canadien est examiné sous l'angle du transfert des responsabilités et de la tension liée à l'additionnalité, le nombre de parrainages dépassant désormais celui des réinstallations gouvernementales.*

Canada's refugee resettlement program predates the country's commitment to asylum-seekers in the 1951 Refugee Convention. Before refugees were ever mentioned in Canada's immigration laws, Canada was resettling refugees referred by the International Refugee Organization following the second world war and through sponsorship negotiations between the government and religious organizations keen on encouraging and supporting refugee protection. Canada financially supported the United Nations High Commissioner for Refugees (UNHCR) from its establishment, and took a lead role in the drafting of the 1951 Refugee Convention which dictates that when asylum-seekers reach a state's territory they will not be sent back if they meet the refugee definition. It was not until 1969, however, that Canada ultimately committed to the convention and announced: "Although Canada's treatment of refugees has been, as a matter of policy, in accordance with the letter and spirit of the international instruments for the protection of refugees, the act of acceding will denote official

acceptance of the international standards for the protection of refugees and the approved international and universal definition of the term refugee" (Department of Manpower & Immigration 1969, 11). With this commitment, Canada set forth to include refugee recognition in the federal immigration legislation and, at the same time, refugee resettlement and the sponsorship of refugees by private Canadians was brought into the law.

This historical synopsis, primarily condensed from my book, *Crossing Law's Border: Canada's Refugee Resettlement Program* (2019), is important as it helps to understand resettlement's role in refugee protection and the interplay between resettlement and asylum.

In the late 1970s, resettlement was playing a primary role globally. In 1979 a UNHCR representative reported that "resettlement was viewed as the only viable solution for 1 in 20 of the global refugee population under the responsibility of UNHCR" (Troeller 2002, 87). Even once inland refugee protection was brought into Canadian law with the 1976 *Immigration Act*, Canada still saw itself as primarily a country of refugee resettlement and not a country of first asylum. Canada is surrounded by oceans on three sides, what Hyndman et al. term "cold ocean geography," (2016, 11) shares a border with only the United States, and simply does not, and did not, have numerically significant air travel into the country compared to its southern neighbor. Canada is a difficult country for refugees to get to. While in country asylum claims for refugee status occurred, the Canadian government did not consider itself a country particularly involved in asylum claims even once legislation was in place. In both the 1986 and 1987 annual reports to parliament on immigration, the Minister of Immigration declares that "Canada's refugee program is directed primarily toward persons in legitimate need of third country resettlement; that is, people who cannot be repatriated voluntarily or settled in first-asylum countries" (Employment and Immigration Canada 1986, 8; 1987, 10). During this same timeframe, resettlement and private sponsorship were surging. The first sponsorship agreement was signed between the Government of Canada and the Mennonite Central Committee in 1979 (Janzen 2006). Canada resettled approximately 60,000 Vietnamese, Laotian and Cambodian refugees between 1979 and 1980 alone with over half arriving through private sponsorship (Employment and Immigration Canada 1982, 14). It is well celebrated that in 1986 Canadians were awarded the Nansen Medal for their resettlement of Indochinese refugees.

And yet, asylum seekers were also arriving to claim refugee status. Canada's initial processing of inland claims involved only written submissions, assessed by a committee in private with decision-making by the Minister of Immigration. It took six Sikh refugee claimants from India and one of Indian descent from Guyana to challenge the the procedures for the adjudication of refugee claims as violating the *Canadian Bill of Rights* and the *Canadian Charter of Rights*. In 1985, the Supreme Court of Canada agreed and held that refugee claimants in Canada are entitled to an oral hearing of their claim.[1] To recognize and implement this right, the Immigration and Refugee Board was established in January 1989. The Minister of Immigration's annual report to parliament in 1991 included, for the first time, a new section titled "Refugee Determination System." Significantly, the report positioned Canada's shift from resettlement focused refugee protection to asylum claims:

> The government remains committed to its program for resettlement of refugees from abroad. However, Canada's program is moving away from resettling mass movements of persons... towards emphasis on protection cases. At the same time, the UNHCR is focusing its efforts on voluntary repatriation and local resettlement of refugees. Third country resettlement is considered only in exceptional cases (Employment and Immigration Canada 1991, 7).

Canada's positioning aligned with messaging from UNHCR at the time that resettlement should be a "last resort" behind the durable solutions of local integration and voluntary repatriation (UNHCR 1991).

Canada's resettlement numbers dropped drastically in the 1990s tied to processing delays, the end of the Cold War, and a recession (Treviranus and Casasola 2003, 187). Private sponsorship numbers dropped from 17,433 in 1991 to 2,838 in 1994 and sat somewhere in the range between 2,000 and 4,000 privately sponsored refugees each year until 2008 (Labman 2019, 41). During the same period, the number of asylum claims in Canada were increasing as was the Canadian response. In 1987, 174 mostly Sikh refugees landed on the coast of Nova Scotia triggering national debates on refugee admissions and an emergency session in parliament to amend the immigration act (Knowles 2007, 222). In 1999, four boats carrying a total of 599 Chinese migrants arrived off the coast of British Columbia, again prompting panic and protest (Armstrong 2000, A7). Within this context, the Government of Canada was revising the Immigration Act. The *Immigration and Refugee Protection Act*[2] was introduced in April 2000. While maintaining the custom of framing Canadian refugee law within a humanitarian intent, this was now tied to proposals to be "tough on those who pose a threat to Canadian security", (Kruger, Mulder, and Korenic 2004, 77). Michael Casasola, a UNHCR resettlement officer in Canada noted:

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1 *Singh v. Canada (Minister of Employment and Immigration)*, [1985] S.C.J. No. 11, [1985] 1 S.C.R. 177

2 *Immigration and Refugee Protection Act*, S.C. 2001 c. 27.

> Unfortunately, the most negative aspect of the legislative package was that the many positive resettlement initiatives were presented as a counter to some of the more punitive actions the government planned in order to limit access to the refugee determination system in Canada. In fact, the resettlement initiatives became an important part of the selling of the bill to the Canadian public. [...] Resettled refugees were presented as part of the refugees using the 'front door.' And by providing refugees greater access, Canada suggested it had the moral authority to limit access to those refugees described as using the 'back door' (2001, 79).

Between the introduction of the new legislation and its passing in Parliament in November 2001, the terrorist attacks in the United States heightened the fear of outsiders and attached suspicion to their motives for seeking asylum. It was in this same period that Canada successfully negotiated the Canada-U.S. Safe Third Country Agreement with the United States effectively limiting access to Canada's inland refugee claim system. Increasingly, those entering the country were seen more with suspicion than humanitarian recognition as refugee claimants. Audrey Macklin argued that refugees were discursively disappearing through "the erosion of the idea that people who seek asylum may actually be refugees" (2005, 365). She forewarned: "this erasure performs a crucial preparatory step toward legitimating actual laws and practices that attempt to make them vanish in reality" (2005, 369).

Through this period, Canada's resettlement continued along quietly with little academic, public or political attention. Yet, with the arrival of more boats off the coast of British Columbia – first the *Ocean Lady* in October 2009 and then the *Sun Sea* in August 2010, the government increasingly positioned resettlement as the right way to obtain refugee protection in Canada. Jason Kenney, the Minister of Immigration suggested the arrival of the *Ocean Lady* put Canada at risk of developing "a two-tier immigration system – one tier for legal, law-abiding immigrants who patiently wait to come to the country, and a second tier who seek to come through the back door, typically through the asylum system" (Armstrong and Ibbitson 2009, A1). Earlier the same month he had declared private sponsorship "a vital part of Canada's international humanitarian commitment" (Citizenship and Immigration Canada, 2009). As the *Sun Sea* approached Canadian waters less than a year later, the Minister's spokeswoman declared: "Our government is committed to cracking down on bogus refugees while providing protection to those that truly need our help" (Bell 2010, A1). The implication was that those who approach Canada on their own to access the asylum system are not genuine refugees. Meanwhile, Minister Kenney was meeting with community groups across Canada to encourage private sponsorship (Citizenship and Immigration Canada 2010a).

It was within the context of these arrivals and the promotion of private sponsorship that the government announced an expansion of Canada's resettlement program and introduced Bill C-11, the *Balanced Refugee Reform Act*. The legislative change was pitched as a streamlining of asylum claims to reduce delays and abuse but advocates argued it tightened borders making access to asylum even more challenging (Canadian Bar Association 2010). The resettlement announcement, made one day in advance of the legislative change, served to counter allegations that government reform signaled a move away from refugee protection. The resettlement announcement concluded: "Providing increased support for resettled refugees clearly demonstrates Canada's ongoing humanitarian commitment and affirms our long-standing tradition as a leader in international refugee protection" (Citizenship and Immigration Canada 2010b). The humanitarian commitment was firmly placed on the shoulders of private sponsors with the commitment amounting to an increase of 500 government resettlement spaces and 2,000 private sponsorship spaces.

From this point forward, resettlement was increasingly at the forefront of the government's humanitarian response to refugees, with responsibility placed on private sponsors. The government positioning of resettlement refugees as the only genuine and deserving refugees in contrast to those crossing into Canada to seek asylum ramped up during this period. In 2011, a government backgrounder on Canada's resettlement program states: "All of these individuals who immigrated to Canada through our resettlement programs waited patiently in the queue for the chance to come to Canada legally [...] The Government will stand up for these refugees' rights to be processed in a fair and orderly fashion, consistent with our laws and values[...]."(Citizenship and Immigration Canada 2011). The document fails to make any mention of the government's obligations in Canadian or international law to refugees claiming asylum.

In 2013, the government made an initial commitment to resettle 1,300 Syrian refugees by the end of 2014. The bulk of this resettlement was again to be through private sponsors with 1,100 of the spaces allotted to private sponsorship and 200 spaces allotted to government resettlement (Citizenship and Immigration Canada 2013). In the House of Commons, as the government was receiving criticism for this minimal commitment, the response by the Immigration Minister Chris Alexander focused on private sponsorship: "we would ask that all members of the House reach out to private sponsors and sponsorship agreement holders across this country to make sure that we fill the 1,300 places available. They have not—" (Canada 2013). As the crisis in Syria escalated and the United Nations pushed for more resettlement commitments, Minister Alexander again noted, "We know we'll be able to

3 *Balanced Refugee Reform Act*, S.C. 2010, c.8 (assented to 29 June 2010) (formerly Bill C-11).

do much more if we combine our government assistance with innovative forms of private sponsorship" (Mas 2014). Ultimately the government did commit to resettle 10,000 Syrian refugees over 3 years in 2015 with 60% of this commitment resting on private sponsors (Foreign Affairs, Trade and Development Canada 2015). However, for the first time, in 2015, refugee admissions were at the forefront of a federal election in Canada.

A new government was elected in October 2015 with a campaign promise of resettling 25,000 government-assisted Syrian refugees by the year's end. The number, 25,000, was a massive increase from government resettlement that in recent years had averaged 7,500. While commendable, the logistics of such a significant and sudden increase to resettlement numbers proved challenging. A revised goal to resettle 25,000 Syrian refugees by the end of February 2016 through both government resettlement and private sponsorship was set and achieved (Zilio 2016). On the momentum of this internationally applauded effort, Canada used the UN Summit on Addressing Large Movements of Refugees and Migrants and the resulting 2016 New York Declaration for Refugee and Migrants, to announce a joint project with the UNHCR and the Open Society Foundations to export the Canadian sponsorship model to interested states. The Global Refugee Sponsorship Initiative was thus created. Since this time, Canada's resettlement numbers have risen considerably. Yearly government resettlement targets are in the 10,000 range, marking a significant increase from the recent past but the real increases are in private sponsorship where the numbers now double government resettlement in the 20,000 range (Immigration, Refugees and Citizenship Canada 2018).

From the outset, private sponsors have always been wary of absolving the government of responsibility for resettlement. During the Indochinese resettlement efforts when the government drew back on a commitment to match 1-1 government and privately sponsored refugees, the Standing Conference of Canadian Organizations Concerned for Refugees, the original name of the Canadian Council for Refugees, sent a letter to the Prime Minister and other leading ministers stating unequivocally "We are not prepared to release the government from its obligations" (Adelman 1980, 25). Private sponsors have always considered the principle of additionality as framing their involvement in refugee protection. In the early 2000s, Barbara Treviranus and Michael Casasola noted "this concern about 'off-loading' remains an issue within the program, as sponsors see the 'additionality' of their efforts as key to the program's success" (2003, 177). While sponsors continue to see "additionality" as underlying the program (CCR 2013), the government position differs in a 2016 notation that "the principle of additionality is not part of the PSR program theory" (Immigration, Refugees and Citizenship Canada 2016). While in Geneva for the first World Refugee Forum in December 2019, Minister of Immigration Marco Mendicino joined the Global Refugee Sponsorship Initiative to share Canada's private sponsorship experience and commented "The work that is being done at the grassroots level is truly transformational and Canada is in that space, and we are playing a leadership role" (Harris 2019). In response, Janet Dench, the executive director of the Canadian Council for Refugees qualified: "The efforts that civil society makes to resettle refugees should be additional to the contributions of governments, not instead of them. The Canadian government could and should do much more to resettle refugees" (Harris, 2019). The tension of additionality continues to frame the sponsorship relationship. But alongside of this concern, it is necessary to consider how resettlement and particularly private sponsorship are employed in relation to access to asylum in Canada.

In the spring of 2019, the Canadian government celebrated 40 years of the Refugee Sponsorship Program citing the impressive fact that private sponsors have resettled more than 327,000 refugees since the start of the program. Then Minister of Immigration, Ahmed Hussen is quoted as noting "Thank you to all Canadians for opening both their hearts and homes... We can all take pride in the example Canadians set for the world. It is truly emblematic of the character of Canadians and the fabric of our great country" (Immigration, Refugees and Citizenship Canada 2019). However, the day before this announcement was made, the Finance Minister tabled the budget bill which includes a significant new limit on the eligibility to make a refugee claim. The Canadian Association of Refugee Lawyers labeled the changes an "alarming clawback of human rights of refugees" (2019). The bill passed in June 2019.

Jamie Liew and I have recently argued that Canada is employing a manner of moral licensing with refugees whereby laws limiting access to asylum can be justified because Canada has demonstrated its humanitarian concern for refugees through resettlement (2019, 190). Resettlement absolutely plays a crucial role in global responsibility sharing for refugees and citizenship involvement can greatly expand this support but the weight of this responsibility should not be put on private citizens nor should resettlement be used to blur an understanding of Canada's legal obligation to refugees who come to Canada on their own to claim protection.

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