

12-3-2010

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Recommended Citation

Rehaag, Sean and Macklin, Audrey, "Playing politics with refugees" (2010). *News Editorials and Commentaries*. Paper 28.
http://digitalcommons.osgoode.yorku.ca/public_writing/28

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Playing politics with refugees

December 03, 2010

<http://www.thestar.com/opinion/editorialopinion/article/900840--playing-politics-with-refugees>

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On Tuesday the Liberal party joined the NDP and the Bloc in declaring its intention to defeat [Bill C-49](#), the government's bill on human smuggling. The government insists it will put the bill to a vote anyway.

The decision of the opposition merits praise as a victory for democracy. In the narrow sense, the Liberals, the NDP and the Bloc collectively represent a majority of voters. In the broader sense, the opposition defended democracy by refusing to pass second reading of a bill that flagrantly violates the Canadian Charter of Rights and Canada's international legal obligations. Against unwavering legal opinion from a variety of sources, the government could not — and didn't even try — to cite a single legal argument in defence of automatic, unreviewable and arbitrary incarceration of children and adults for a minimum of one year based on the minister's bare suspicion about their suspected mode of arrival.

The same could be said of the provisions in Bill C-49 that would have condemned people found to be genuine refugees to a minimum five-year limbo, without secure legal status, without family, without access to stable work, educational opportunities or health care. In the mid-1990s, a similar limbo for Afghan and Somalis was the subject of legal challenge. The government wisely settled the case and got rid of the policy, which accomplished nothing in terms of verifying the refugees' continuing need for protection anyway, but did add to their trauma and impede their integration. And finally, the backdating of Bill C-49, so that it applies to those Tamils who arrived by boat before the bill, could not withstand a Charter challenge. A law that retroactively punishes people for actions that were not proscribed at the time they were committed runs contrary to a centuries-old principle of the rule of law.

It is inconceivable that the government was not advised that key elements of Bill C-49 were unlawful. It is more likely that the government did not care. The government may instead have anticipated two possible outcomes. The first is that the opposition parties would vote down the bill as bad policy and bad law, in which case the Conservative government could get political mileage out of saying that they wanted to get tough on smuggling, but were thwarted by an opposition that was "soft on smuggling." The second is that the opposition parties would let the bill pass to avoid political fallout, in which case the courts would strike down the law. The Conservative government could then blame the courts for obstructing their "get tough on smugglers" and "queue jumpers" agenda.

The bill is unsalvageable. The provisions that actually address smugglers are largely symbolic — it is tough to "get tough" on smuggling by creating new penalties when the penalty is already life imprisonment. The other main aspects of the bill are unlawful. Once severed, there is nothing left to salvage.

To their credit, the opposition parties' refusal to support this bill displays no small degree of political courage in the face of the government's relentless stoking of moral panic and campaign of misinformation.

There is something deeply cynical about a government introducing legislation it knows to be unlawful in order to manipulate the electorate. When we elect politicians to represent us, we trust them to respect the law and the institutions of government. Presenting a bill that is patently unconstitutional violates that trust and abuses the power we confer on government to legislate in our name. No amount of invective hurled against asylum seekers, no deliberate misleading of the public with the falsehood that refugees are "queue jumpers," should distract from the fact that Bill C-49 is an exercise in public relations, an affront to the rule of law, and an insult to Canadians.

If the government wants to address the problem of people-smuggling, punishing people who use smugglers — including refugees — is not the answer. It won't stop refugees from fleeing, it will just prolong and exacerbate their insecurity. The government knows full well that there is no "queue" for refugees to enter, much less jump. There is a line for economic immigrants, there is a line for family members, but there is no line for refugees at Canadian embassies, including the embassy in Sri Lanka.

Other than the almost 8,000 refugees that the government hand picks from selected locations each year, and a smaller number of privately sponsored refugees, desperate people are denied visitor visas, scrutinized by airline officials, and thwarted from any safe and lawful mode of travel precisely because they might be refugees.

Refugees use smugglers to arrive by air, overland or by sea because we give them no alternative. Other migrants also use smugglers. We have a refugee-determination system based on the recognition that it is inevitable and understandable that asylum seekers might resort to irregular means to flee. That system is designed to sort out who needs refugee protection from those who don't. The government's own refugee reform bill was introduced on the basis that it would enhance that system.

About 30,000 asylum seekers arrive in Canada each year. In the fall, shortly after the arrival of around 500 Tamils on a boat in British Columbia, some 30,000 Burmese refugees fled into neighbouring Thailand — over a period of 48 hours. Let's get some perspective.