



**University
of Victoria**

Graduate Studies

Notice of the Final Oral Examination
for the Degree of Doctor of Philosophy

of

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Masters of International Law (University of Sydney, 2008)
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“Refugees, Citizenship and State Sovereignty”

Faculty of Law

Monday, June 27, 2016
1:00 P.M.
David Turpin Building
Room A144

Supervisory Committee:

Prof. Donald Galloway, Faculty of Law, University of Victoria (Supervisor)
Prof. Jeremy Webber, Faculty of Law, UVic (Member)
Dr. Scott Watson, Department of Political Science, UVic (Outside Member)

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Chair of Oral Examination:

Dr. Ian Putnam, Department of Mathematics and Statistics, UVic

Dr. David Capson, Dean, Faculty of Graduate Studies

Abstract

This dissertation examines two different perspectives on refugee status and state sovereignty respectively, and their bearings on refugee protection regimes. It reveals how dominant views of refugee status and state sovereignty have contributed to establishing restrictive refugee law and policy associated with various forms of external migration controls in the 21st century, and provides alternative views that may contribute to creating more “just” refugee protection regimes.

When refugees came to be regarded as those who fled from various push factors, such as persecution, distress and wars etc. (the persecution perspective), refugee policies were developed to provide “push factors-free” environments. These have not necessarily included surrogate political membership in the country of asylum (particularly, in developed countries). Instead, developed countries have endorsed humanitarian assistance schemes that aim to provide aid to refugees in regions of their origin rather than providing settlement in their own territories. Moreover, in refugee law, the fear of “persecution”, as a push factor, has become a critical factor in determining refugee status. As a parallel, governments have developed various forms of deterrence policies based on a traditional concept of state sovereignty that allows states to implement migration policies at their own discretion. Under these circumstances, refugees find it difficult to reach developed countries, and many of them end up being “contained” in refugee camps or other facilities in regions of their origin for a long time.

This dissertation calls into question these views of refugee status and state sovereignty, by providing alternative views: the protection perspective and an account of sovereignty that requires “responsible” border control. The protection perspective regards the ruptured protection relationship between a state and a citizen (thus, the lack of state protection) as the core element of refugee status. According to this view, refugee status is inextricably associated with systemic failure of the nation-states system (not merely with push factors) that is designed to secure political membership for each individual in the international state system. Therefore, as a matter of justice, the ultimate remedy for refugeehood is to provide surrogate political membership in the country of asylum or to restore original political membership in the home country. This project also proposes a concept of “responsible” border control, according to which, a state should exercise state sovereignty in relation to border control within institutional frameworks in which multiple authorities, including human rights norms, have been institutionalized. In this way, the dissertation aims to provide a more “just” framework in which to propose, adopt and implement refugee law and policy. From this alternative perspective, refugees are perceived as those who have right to political membership in the country of asylum rather than mere humanitarian assistance in refugee camps or somewhere else.