How Competent Lawyers Help Make Asylum Procedures

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"Do deterrence policies actually meet their stated goals of reducing administrative burdens?"

All national governments seek to control immigration flows. The desire to control national borders becomes particularly fraught in the case of forced migration, seemingly pitting enforcement concerns against protecting human rights. Because the movement of forced migrants is hard to predict and because the removal of those denied asylum is contentious as well as logistically difficult, various countries have taken steps to reduce asylum-seekers' rights in the name of bureaucratic efficiency.

Australia, Canada, the United States, and many EU countries have thus argued that granting too many rights to asylum-seekers leads to staggeringly high application rates, significant administrative burdens and overall inefficiencies. Such rationale has been used to justify a range of rights-restrictive measures. This includes Australia's policy of making asylum-seekers file refugee claims in Nauru and, under the Trump administration, the US adopted a policy requiring Latin American asylum-seekers to file their claims from Mexico. Many EU countries have two-tier application processes that make it easier to reject claims made by people from designated "safe" third countries.

While such rights-restrictive policies are not new, it remains unclear whether they do, in fact, make asylum procedures run more efficiently. Do deterrence policies actually meet their stated goals of reducing administrative burdens? I investigate the link between rights and bureaucratic efficiency in my article, "More Than Advocates: Lawyers' Role in Efficient Refugee Status Determination." My research shows that deterrence measures can fail and it suggests that migrants' right to counsel can, in fact, foster efficient bureaucratic processing.

Testing the Assumption that Rights Hurt Bureaucratic Efficiency

My research lifts the lid on the black box of asylum determination in new ways. Social scientists have been studying what factors shape refugee movements, how state officials decide refugee claims, and the politics of refugee policy for several years. But less attention has been paid to assessing what makes immigration procedures, such as refugee status determination (RSD), more (or less) efficient.

My study investigates bureaucratic efficiency in Canada, known for its generally successful rights-based RSD system. But the country has also struggled with managing high volumes of asylum applications. In the early 2010s, Stephen Harper's Conservative government passed a series of reforms, including a two-tier application system, designed to make it easier to deport asylum-seekers from designated "safe," countries, such as Roma fleeing Hungary and the Czech Republic. Policymakers believed that adjudicators

"Deterrence measures failed to reduce the number of withdrawn and abandoned refugee claims"

were wasting their time dealing with abandoned/withdrawn refugee claims. According to Canada's Minister of Citizenship and Immigration at the time, Jason Kenney, these rights-restrictive measures would deter "bogus" refugees and make the RSD system function more efficiently.

The Harper government's reforms attracted criticism from refugee advocates because applicants from designated "safe" countries faced expedited application procedures and could be removed from Canada at any time at the discretion of the Minister. Furthermore, these policies allowed the government to detain asylum-seekers, deny applicants with pending asylum claims access to social welfare benefits, and to strip successful applicants of refugee status (unless they had naturalized) in cases of suspected fraud and/or due to changing circumstances in the sending country (usually signalled by the applicant's travel record).

But do rights-restrictive policies actually make immigration procedures more efficient? Over the past ten years, several reports commissioned by the Canadian government (in 2012, 2015, 2016 and 2018) have debated whether the Harper government's changes to refugee policy met their stated goals of reducing administrative burdens. In the first scholarly exploration of this question, I use statistical analyses as well as interviews with refugee lawyers and bureaucrats who decide refugee claims to identify what makes Canadian RSD procedures run more (or less) efficiently.

Showing Rights Help Efficiency: The Role of Competent Lawyers

Did the Harper government's two-tier application system allow for quicker decisions on asylum claims? My analysis shows that it did not. I use a series of statistical models based on data from close to 180,000 decisions adjudicated by the Immigration and Refugee Board of Canada's Refugee Protection Division in the years before and after reforms came into effect to show that deterrence measures failed to reduce the number of withdrawn and abandoned refugee claims. Perhaps surprisingly, my statistical models also demonstrate that the presence of counsel at refugee hearings reduced the likelihood of withdrawn and abandoned refugee claims.

Could granting immigrants access to legal counsel help make immigration procedures more efficient? To explore this possibility further, I interviewed 22 refugee lawyers and 10 (former and current) IRB officials with expertise in Canadian asylum procedures. These conversations revealed the extent to which IRB adjudicators depend on highly committed and knowledgeable refugee lawyers to help them pre-screen applicants, understand the most pertinent facts of each claim and reach decisions in a timely manner. Having legal counsel was benefical to the system

Policy Implications

Policy discussions about immigration can sometimes devolve into a debate about protecting human rights versus controlling national borders. The notion that receiving states must restrict migrants' rights to make bureaucratic procedures run more efficiently reflects such a dichotomy. My study on Canadian asylum policy challenges such thinking. It not only shows that deterrence measures can fail but also illustrates how migrants' right to counsel can foster efficient procedures. This research suggests that immigrant advocacy groups can find common cause with receptive government officials by using access to counsel to infuse immigration procedures with legal expertise.

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Dr. Fraser received his Ph.D. in political science at the University of Toronto, with a specialty in comparative politics and public policy. He holds a B.A. in political science from the University of Calgary, as well as M.A.s in political science from the University of British Columbia and Waseda University in Japan. His research focuses on how states attempt to control and manage the long-term impacts of immigration; it also engages questions about how interest groups, agencies, and courts influence policy and public attitudes in these fields. He has received numerous previous research grants, including the SSHRC Doctoral Fellowship, and was formerly a fellow at the Munk School of Global Affairs and Public Policy in Toronto.