

Persecution Complex

Still another migration category to exploit

by William Buchanan

The Cold War has been over for six years but it's still silly season on the immigration front. Refugees are among mankind's most persistent and troubling problems. And religious persecution is nothing to be complacent about. What makes no sense is America's refugee *policy* and the latest proposed augmentation to it — **H.R. 2431, the Freedom From Religious Persecution Act of 1997** (formerly H.R. 1685). Sponsored by Rep. Frank Wolf (R-VA), this refugee bill has 98 cosponsors (among whom, I regret to say, are several stalwart immigration reformers) and a Senate companion bill — S. 772.

Some Background

How did we get to the point where legislation like H.R. 1685/2431 could be proposed and quickly garner so much support?

From None to Ad Hoc. When America first placed numerical limits on immigration (1921/24), it made no provision for refugees (or asylees). This is not surprising. The ancestors of today's refugees were locked down in the Soviet empire, subjects of European colonial powers, or excluded — China. Nor was there any international standard for describing a refugee.

Following WWII, a series of ad hoc refugee bills was passed, admitting, for example, displaced persons, and certain escapees from Iron Curtain countries. We embraced these for solid humanitarian reasons, domestic political and economic interests, and to fulfill international goals — to show that we were an open society, the good guys in the Cold War.

The World and Cuba. The 1965 Immigration and Nationality Act set us off in a new direction by establishing an annual quota of 10,200 visas for

Eastern Hemisphere refugees from communist countries and the Middle East. This "seventh preference" was immediately dwarfed by the Cuban Refugee Act of 1966 (CRA) which granted entry to 40,000 Cubans per year over a period of two decades.

The CRA was a harbinger of things to come. We deluded ourselves into thinking that if people came here from Cuba, it proved our system was good and communism was bad. To Castro, however, it was a convenient way to get rid of capitalists and other political opponents. By this device *of our making*, he was able to consolidate his regime.

In what should have been a tip-off, Castro denied the exit of young people, especially men of military age. When it suited him, he turned the spigot off altogether. And when he needed this "safety valve" to bolster, once again, his failed regime, we agreed to take in another 20,000 "refugees" per year. Now we find that the hard currency remittances Cuban-Americans send home effectively neutralize our trade embargoes. Can't anyone around here say "No"? No.

In 1976, seventh preference was extended to the Western Hemisphere, increasing refugee visas to 17,400 per year. In the same year, a court ruling converted the CRA into a non-quota refugee program — a feature that would come to characterize all such efforts.

The 1980 Refugee Act. Complaints were heard that the ad hoc programs were too time-consuming to construct every time there was "an emergency" and that 17,400 slots was insufficient to deal with them. So our legislators set to work. Since we had long been receiving, on average, around 42,000 refugees per year, it was argued, why not just set up a single, separate refugee program with 50,000 annual slots — the "normal flow".

Now, most Americans would find 50,000 refugees per year an acceptable number. But there was still this unpredictable quality about refugee admissions — in any given year, additional refugees might need to be admitted. So why not admit still

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more refugees where justified by, as the law specifies: “humanitarian concerns” or “the national interest.” The President would set the actual number in consultation with eight ranking members of Congress.

Comprehensive in scope, the 1980 Refugee Act established a definition for refugee (and asylee) that conformed to the 1967 United Nations Protocol Relating to the Status of Refugees. As a result, Section 101(a)(42)(A) of the Immigration and Nationality Act (INA), defines a refugee as a person who is unable or unwilling to return to his or her country of habitual residence:

because of persecution or a well-founded fear of persecution on account of race, religion, nationality, political opinion, or membership in a particular social group...

Such a definition is suited to the UN mission — it accurately describes those who need its help. The UN is not a recipient nation, it must husband limited funds, and has no reason to inflate the number who qualify. Such a definition on the books of a recipient nation, on the other hand, may lead to the temptation to select people who don't really qualify.

Erosion of Standards. The U.N. High Commissioner for Refugees (UNHCR), with meager funding, manages to feed, clothe, and shelter millions of refugees. It seeks to either repatriate them (return them to their homeland) or settle them in the country of refuge. Resettlement in a third country is seen as less desirable because it may promote “ethnic cleansing” and also act as a magnet for unqualified persons.

It should be obvious that even at present levels the refugees we admit are just a tiny percentage of the total (13 million in 1996). Nevertheless, we resettle each year twice as many refugees as the UNHCR slates for the whole world! This is because 80 percent of our refugees enter under terms of section 101(a)(42)(B) of the INA. Described there are refugee types the U.N. may care for but does not consider suitable for resettlement such as internally displaced persons (IDPs) — estimated to number as many as 30 million world-wide. It includes others the U.N. has no interest in.

Further Erosion of Standards. Did I say that this omnibus refugee act of 1980 would put an end to ad hoc legislation? No, it was Congress that

said that. And so, like that gal (or guy) who “can't say no,” ad hoc legislation continues to roll off the Congressional presses — the Amerasian Homecoming Act of 1987 and the Chinese Student Protection Act of 1992, for example.

Another ad hoc bill provides air fare and direct admission for refugees from the states of the former USSR and the countries of the former Indo-China. According to a study by Scripps-Howard reporter Michael Hedges, however, INS records show that by 1993, less than one percent of these refugees actually had a “well-founded fear of persecution,” and that the program is the object of “astronomical fraud.” Other critics note that 37,000 of these refugees have never even bothered to come here.

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Another original understanding held that persecution validated claims for refugee status only when that persecution was committed by a government. In recent years, however, that definition has been clouded by administrative decisions that grant refugee status based on individual or cultural circumstances. Like judges who believe the law is whatever they say it is, adjudicators have granted permanent residence to a woman who, back home, might have been the target of female genital mutilation, a man with AIDS, who might have suffered local abuse in his home country, and a man who proved that he was law-abiding and baseball-loving all the time he lived illegally and worked illegally in the United States. With nobody looking (and nobody is), who knows to what lengths these intrepid magistrates may go?

The result has been a mounting volume of refugees and asylees. In the 15 years 1981-95, we averaged 109,000 refugee admissions per year. Another 132,000 were admitted in FY96 and pending asylum applications stood at 456,000.

New Legislation. Complaints that the asylum process was being abused by unqualified aliens, seeking an excuse to enter or to avoid deportation, led to reforms included in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). There is no certainty that this law will have

a lasting effect, however. The ACLU is on the attack — a single deportation with troubling results may turn public opinion, and the Commission on Immigration Reform, no longer anchored by the redoubtable Barbara Jordan, has demanded the return of the old “safeguards.” Moreover, the IIRIRA, itself, added a juicy loophole.

Rewriting the Legal Definition.

Though markedly compromised in practice, the legal definition of a refugee had remained the general one indicated in section 101(a)(42) of the INA (see above). When Congress adopted the IIRIRA, however, it decided to get *specific*, amending that section to reflect its latest foreign policy concern — China’s population policies. Its so-called “Chinese Refugee Proviso” reads:

For purposes of determinations under this Act, a person who has been forced to abort a pregnancy or to undergo involuntary sterilization, or who has been persecuted for failure or refusal to undergo such a procedure or for other resistance to a coercive population control program, shall be deemed to have been persecuted on account of political opinion, and a person who has a well founded fear that he or she will be forced to undergo such a procedure or subject to persecution for such failure, refusal, or resistance shall be deemed to have a well founded fear of persecution on account of political opinion.

Disgust with China’s population policies is one thing, doing something about it is another. The above language must be a howler for the Chinese and qualifies just about everyone in China for refugee status in America. [For a preview of what we may be courting read *Human Smuggling: Chinese Migrant Trafficking and the Challenge to America’s Immigration Tradition* published by the Center for Strategic and International Studies.]

Commission Omission. We were hoping for sane guidance on refugee policy from the U.S. Commission On Immigration Reform (CIR). In its

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June 1995 report it called for a target of 50,000 refugees per year and a more comprehensive congressional consultation in the event more were contemplated.

Its June 1997 special report, on the other hand, looks like the glossy product of a well-funded private refugee agency — complete with pictures. The target of 50,000 was gone — even the *Washington Post* wondered about that. Instead, the CIR (as noted above)

criticized the restrictions the IIRIRA placed on asylees, demanded that the 10,000 per year cap on asylee adjustments be lifted, and called for American “leadership by example.” Leadership? We are already taking in more than half of the resettled refugees! Leadership? The Cold War is over. Nobody harkens to our proclivities.

Next Step — H.R. 2431?

H.R. 2431, the Freedom From Religious Persecution Act of 1997 (FRPA) would establish a second *specific* refugee category, one for persons persecuted because of their religious beliefs, a plan more broad and nebulous than any we have seen before. But what a name! How could anyone be against Freedom From Religious Persecution?

No true American believes that any government or group or individual has a right to persecute any other group or individual because of their practice of religion or religious beliefs. Religious liberty was probably America’s first great departure from the Old World’s stultifying grip. So in criticizing H.R. 2431 I mean to say that we should make our opposition to religious persecution abundantly clear, but pursue that opposition in some other way.

The Bureau. This bill would create an Office of Religious Persecution Monitoring (ORPM) in the executive office of the President. This office would coordinate with the Secretaries of State, Commerce, and Treasury and the Attorney General to see that this law is “fully implemented.” It would report to four congressional committees in each house.

The Scope. The bill defines religious persecution as “abduction, enslavement, killing, imprisonment, forced mass settlement, rape, or crucifixion, or other forms of torture” directed at religious groups. It names Baha’is, Christians,

moderate Muslims, and Tibetan Buddhists as objects of religious persecution and lists China, Cuba, Laos, North Korea, Sudan, and Viet Nam as countries known to practice such persecution. Nevertheless, section 4 declares the scope of the legislation to be “any [persecuted religious] community within any country or region....”

The bill would require the ORPM to develop a list of “category 1 countries” — those in which the government assists in religious persecution, and a list of “category 2 countries” — those in which the government does not participate in persecution but “fails to take serious and sustained efforts to eliminate” it. The ORPM would publish these lists in its annual report.

The U.S. would be required to vote against IMF and multilateral aid for listed countries and restrict certain kinds of trade with them unless the President provided a waiver and supplied the Congress with an explanation. Individual and corporate violators would be punished in accordance with the “Trading with the Enemy Act.” If this legislation went no further, it would probably have some limited utility. It goes much further.

The Unraveling. One of the goals of the IIRIRA was to tighten up the refugee/asylee process. Section 235 of the INA was completely rewritten to provide for: immediate hearings in the event of a claim for asylum, denial of work authorizations, reduced avenues for appeal, and punishment for frivolous suits. Among the new items was section 235(b)(1)(B)(v) which defines “Credible Fear of Persecution” as follows:

the term “credible fear of persecution” means that there is a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien’s claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum under section 208.

The FRPA would amend this section “by adding at the end the following:”

*Any alien who can **credibly** claim membership in a persecuted community found to be subject to category 1 or category 2 religious persecution...shall be considered to have a **credible fear of persecution** within the meaning of the preceding sentence (emphasis added).*

Not content with that loophole, the proposal goes further. Section 604 of the IIRIRA further tightened asylum law by rewriting Section 208 of the INA, “Asylum Procedure,” in such a way as to reduce the discretion of the Attorney General to grant asylum and specifying conditions under which asylum may **not** be granted.

Lest any asylum officer dare to deny a claim under the FRPA, however, section 208 of the INA would be amended “by adding at the end the following.” There then follows no less than 4 pages of special requirements. These include a written

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report containing the reasons for the denial, supported by references to the most recent annual report of the ORPM and human rights reports by the Secretary of State regarding the country in question.

Also required: lists of materials publicly available and copies of materials not publicly available that were relied upon as a basis for denying the application. And if the application was denied on credibility grounds, the INS must provide copies of all statements made by the alien, other evidence found not to be credible, a statement certifying that the applicant was provided an opportunity to respond, and a summary of any responses.

Finally, a person found to be a victim of religious persecution must be considered to be “a refugee of special humanitarian concern” which entitles him or her to a priority for entry under the terms of 207(a)(3) of the INA equal with any other of “special concern.” However, such refugees would be **in addition to**, and never displace, other refugees slated for resettlement.

Some Concerns

Any Allies? Speaking of leadership, is there even one other country that will join with us? Long experience shows that unilateral sanctions don’t work. Could there not be in the law a requirement that it would only go into effect when ten other Western democracies pledge an equal effort?

Will ORPM Fail When it Succeeds? If success means ending religious persecution, this measure is likely to fail. Such persecution is deeply embedded, in varying degrees, in many, many societies. And, short of war, it is far beyond the capacity of American law to eradicate it.

Some category 1 countries may view this legislation as an invitation to drive out the religious groups they don't like — this bill, if passed, might actually promote the persecution it is supposed to discourage. Category 2 countries may react with angry denials — this bill, if passed, could prove to be a major foreign policy disaster.

It is a bitter pill to swallow, but with our military protection no longer needed and our defense establishment in decline, our moral demands will be increasingly viewed as interference. "Where do you Americans — awash in drugs, crime, gambling and illegitimacy — get off moralizing with us?" they may protest.

As if to underline the nature of the conflict, Russia's State Duma has once again passed (unanimously), and President Yeltsin has signed,

***"Look up 'field day'
in your dictionary and
you will find it defined as
'U.S. immigration law.'"***

legislation to restrict the rights of minority religions — this despite an appeal by Vice President Gore and a Senate threat to cut off all aid. For, as the Patriarch of the Russian Orthodox Church so delicately put it, "North American standards of religious freedom cannot be applied to Russia." Category 1?

Astronomical Numbers. If, on the other hand, success is measured in refugees, this legislation is sure to be a triumph. The FRPA has no numerical limits. Suppose, for example, a "forced mass settlement" were directed toward us. All the Baha'is, all the Christians, all the moderate Muslims, all the Tibetan Buddhists, and all the others who are listed as persecuted would be eligible to come here and probably would. Am I missing something or are we talking about tens of

millions of people? Is it hundreds of millions?

We Need These People Where They Are. Religious minorities exert a leavening influence upon the majority group, an antidote to paranoia. Moreover, many Christian and Buddhist minorities represent truly ancient and historic communities. It is lunacy to promote their deracination and decimation.

WHY? Several Constituencies Clamor for It

Bureaucracy. This legislation creates a new office (the ORPM) that prepares annual reports, coordinates with four executive departments, and reports to eight congressional committees. This office will inevitably oversee new programs to distribute new government money to old private organizations operating on behalf of a new constituency. Another office; more money; more power — this is a bureaucrat's dream.

The Lawyers. Look up "Field Day" in your dictionary and you will find it defined as: "U.S. Immigration Law." Like most legislation, this bill probably started out in someone's law office. The four pages of red tape imposed on officials that deny refugee status to a religious claimant are one indication.

More evidence of lawyerly logic is the broad scope of the bill — all persecuted religious communities in all countries and regions. That pretty much covers everyone, doesn't it? Consider that a category 2 country is defined as one in which the government does not sanction religious persecution but "fails to take serious and sustained efforts to eliminate" it. That probably excludes Australia, Canada, and the Benelux countries from coverage. I say "probably" because I see possible problems in the Outback, between Quebeckers and Crees, and among the Flemish and Walloons. We may have to list these countries after all!

The Churches. The people who are involved with refugee programs are decent and caring people and many are volunteers, but considering the modern church's obsession with rendering unto God that which is Caesar's, it is difficult to ignore the fact that this bill will bring in more government money and create more paid jobs.

Some polls show that church-goers are more likely than most Americans to favor reduced levels of immigration. How many of them know the extent to which the Washington offices of their denominations — what Roy Beck refers to as the

“15 Public Policy Pulpits”¹ — support and actively lobby for increased immigration and refugee admissions?

WHY? The U.S. Culture May Require It

Captives of Memory. Americans are bombarded daily with tube’s-eye versions of the unspeakable atrocities and privations visited upon refugees around the world. They remind us of similar tragedies in the Europe of our past and that many of us are descended from ancestors who escaped such horrors by coming here. We feel guilt at our good fortune and compelled to fulfill the poet’s counsel regarding these “huddled masses.”

All the Other Constituencies. The real power in this bill may be its scope. There are a lot of Americans who don’t like a lot of things that are going on in the world. And it is hard to accept the fact that the U.S. is powerless to do anything about them. Even though what we want is “so right,” we are compelled by political and economic interests to look the other way.

We don’t like slavery in Sudan, human rights violations in Saudi Arabia, religious persecution in China, and war in Chechnya. But the President sends up his annual requests for waivers. And these waivers squeak past a regretful Congress. Because we need the good will, the oil, the minerals, the trade, the money.

And so we create surrogates, like this refugee policy, as a sop to appease the many disappointed constituencies. It doesn’t have to make sense! That’s not its purpose. Thus does sanctimony stand in for sanctions.

American Ideology — To Be What We Are Not. Professor Walter Berns, writing for *The Public Interest* (Spring 1997), resurrected an early comment by Abraham Lincoln to the effect that the source of American unity was our hatred of Great Britain. This insubstantial foundation, Lincoln warned, would dissipate with time, leaving the country with an inadequate unifying structure. His fears were confirmed many years later when his Inaugural Address’ appeal to “mystic chords of memory” fell on deaf ears.

Professor Samuel Huntington, writing in the September/October issue of *Foreign Affairs*, extrapolates upon this theme. He contends that determining the national interest depends upon an awareness of who we are — our national identity. This, he estimates, is largely derived from two

closely-related elements: the values and institutions of the original settlers — Northern European and Christian — and an ideology based on universal principles such as liberty, equality, constitutionalism, and private enterprise.

In his view, an ideology “is likely to be a much

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more fragile basis for unity than a national culture richly grounded in history.” He concludes that American ideology causes us to find our national identity in reference to other countries — in what they are and we are *not*.

Thus, Great Britain, the monarchy we were *not* — and later, Europe, the backward, unfree, and socially immobile society we were *not* — helped define us. We were neither the oppressive Hun nor the murderous Nazis. And for these past 45 years, being the antithesis of godless communism was how we measured ourselves.

With the end of the Cold War, we have lost our enemy and, it seems, have little to fall back on when multiculturalists call. As one of John Updike’s now-famous characters put it: without the Cold War, what’s the point of being an American? Or as a young Latino remarked to columnist Georgie Ann Geyer, “America doesn’t give you anything to believe in.” Is this, as I fear, the “hollowness at the core” that some thinkers sense in America?

In the Cold War, the U.S. defended the entire non-communist world. Victory in this war was an immense achievement, not least because of the potential for nuclear devastation. Had America lacked the men, money, and will, the world might have sunk into another Dark Age. But in America one senses no pride in this great victory. Instead, the Viet Nam War still echoes through the halls of our memory, having spawned a generation of teachers, foundation operatives, and other culture-bearers who often see America and the Western canon as something utterly corrupt and deserving of destruction.

For any other nation, that war would be acknowledged as a serious mistake, but one such as would be inevitable in so vast an undertaking as

the Cold War. But in Viet Nam, unforgivably, we proved to be *like* other nations — morally unsure and less than invincible.

Maybe this “refugee from religious persecution” proposal, like the ones it would augment, is just another manifestation of an unconscious desire to find unity in what we are *not*? We are *not* totalitarian oppressors like Castro. We are *not* religious persecutors like the Sudanese! We are *not* proponents of forced abortion like the Chinese. And the refugees we bring in are physical evidence of that distinction.

Other popular ideas come to mind in this context: other countries are nationalist, we are multiculturalist; they strive for harmony, we seek diversity; they are insular countries, we are the “universal” one. What they are, we are *not*. What we *are*, in a sense, is what we are *not*.

Conclusions

What America tried to do in 1924, one might say, was to fill that “hollowness at the core” by greatly reducing immigration in the interest of developing a unifying common history. It is a goal we abandoned in 1965 and from which we would further distance ourselves if Congress adopted H.R. 2431. That legislation is not in the national interest.

It is evident that the vast majority of resettled refugees are no worse off than the millions they leave behind and that the programs are the object of considerable fraud and abuse. Even at today’s levels, we resettle a tiny, almost meaningless, fraction of the world’s refugees.

Refugees are admitted with no reference to job skills. They tend to compete with American workers at the bottom of the economic spectrum. They are exempt from welfare restrictions enacted in 1996. They are the object of numerous special appropriations to cover resettlement costs.

Recommendations

1. Congress should cap refugee and asylee admissions at 50,000 per year. With this limitation, administrators of our refugee programs would have to make choices — something that seems to be understood in all other human transactions.

2. Congress should resolve that ad hoc refugee legislation for commercial and ethno-political purposes is not in the national interest and that refugee policy is not an appropriate tool for advancing foreign policy initiatives nor an effective weapon for achieving human rights objectives.

3. Congress should consider taking a portion of the savings realized by cutting back on U.S. refugee resettlements and giving it to U.N. refugee programs. America is not a leading per capita contributor to that effort and according to the Commission on Immigration Reform, the initial cost of resettling a refugee in America is over \$10,000. It is estimated that the UN could maintain over 100 refugees for that amount. **TSC**

NOTE

¹ Beck, Roy, *Prophets & Politics: A Handbook on the Washington Offices of the U.S. Mainline Churches*, Washington, DC, Institute on Religion and Democracy, 1994, 193 pages.

