

Who is a refugee?

Reflections on social classifications and individual consequences

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Abstract

“Refugee” is not a set category expressing a universal and timeless definition. Instead, it is a relational one reflecting the outcome of social negotiations. The methodical reflections on social classifications and individual consequences emphasize the logic of institutional categories of immigration policies and the international refugee regime. To develop a deeper understanding of forced migration, we have to ask who is a “refugee” and who not and by what classification process. National policy has its own procedures for refusing or granting asylum. These procedures try to verify whether a migrant fits the official definition of a person considered a refugee. The article uses Germany to exemplify these measures. Qualitative research is employed to show that these procedures have a strong influence on refugees’ experiences.

Keywords: Forced migration, social classification, refugee, qualitative research.

Introduction

Institutional and political classifications are the result of historical developments and social perceptions of order. Immigration policies classify immigrants into various categories, which provide the basis for state-run welfare and constitutional actions. Based on an analysis of forced migration, this article argues that such hierarchical classifications in the host countries must explicitly and systematically be included in the research process. While labor migration is a well studied subject, we know little about forced migration, which is generally an issue reserved for legal and political studies as well as human rights organizations, such as the UNHCR. The topic has also found some consideration in social theory and political philosophy.¹ Re-

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¹ Bauman (2005), Agamben (2001), and Arendt (1943, 2008) belong to the few studies in political philosophy but also in sociology that look into the political and social figure of the refugee. Bauman, Agamben, and Arendt’s work count among the prominent theoretical analyses of refugees that underline the idea of having no rights. Each of those authors considers the figure of the refugee against specific social contexts. In Bauman’s critique of globalization, the refugee takes a prominent role: refugees belong to the “collateral casualties” of modernity. Agamben’s focus is on the political order of the nation state, which denies human beings autonomous space. The historical contexts of Hannah Arendt’s reflections are the periods after the First and the Second World War. Millions of people became refugees and nation-

search on forced migration has only in the past few years established itself as a field within the sociology of migration (Castles 2003, Black 2001, Hein 1993, Scherschel 2007). Black (2001) gives an overview of the links with and impact on refugee policy. Castles (2003:17) notes that the sociology of migration has developed in the context of voluntary migration. He argues that we need a sociology of forced migration because it is a central aspect of social transformation in a globalized world.

According to some scholars, the main weakness of refugee studies lies in the absence of sufficient theoretical reflection on the institutional attributions that define refugees as such in the first place (Mallki, 1995). They see a cause for this in the lack of distance between the academic preoccupation with refugees and the political institutions in charge of protecting refugees. In this vein, Black (2001: 58) emphasizes, “Despite its status as an academic field of study, the development of refugee studies has always been intimately connected with policy developments.” Inhetveen (2010: 141) points out that authors, such as Zolberg/Suhrke/Aguiar (1989: 33), strongly warn against simply adopting the definitions of the international refugee regime for social science analyses.

The article seeks to take this objection seriously and starts from the vantage point that “a refugee” is a historical and politically contingent classification. To develop a deeper understanding of forced migration, we have to ask who is a “refugee” and who not and by what classification process.

In a first step, I will undertake some methodical reflections on the processes of social classification involved in determining a refugee. For this purpose, I refer to studies that trace the historical origin of the label refugee as well as the classification and bureaucratic procedures commonly used today (e.g., Morris 2006, Mallki 1995, Zetter 1991, 2007, Szecepanikova 2010, Inhetveen 2010). Secondly, I will discuss how social classifications influence the lives of migrants, referring to the experience of a young Kurdish woman who fled her home country. Qualitative analyses will show that the procedures designed to verify whether somebody fits the official definition of a refugee or not are a strong part of the refugees’ experiences, which they have to deal with.

Refugee as an object of policy

Migration regimes create institutional classifications that establish a social hierarchy in modern societies. They create a transnational stratification system that establishes certain rights for migrants regarding access to labour, education, and social services (Brubaker 1989, Mohr 2005, Morris 2006, Kofmann 2008, Scherschel 2009). With their immigration policies, the na-

less. She discusses the absolute lack of refugee rights, especially in her well-known chapter “The Origins of Totalitarianism” (2008) about the aporias of human rights.

tion states respond to various demands: They seek to organize and facilitate the integration of long-term immigrants, create a single European market, and attract select groups of highly qualified immigrants. At the same time, those policies serve to regulate compliance with international humanitarian conventions, shield against poverty-driven migration, and monitor immigrants residing in the country in question (Mohr 2005: 385). Asylum policies must be viewed in the context of humanitarian obligations. Historically speaking, they have their roots in the institutionalization of the protection of refugees in the wake of the Second World War.

The institutionalization of modern asylum rights was a reaction to the refugee disaster of the First and Second World Wars. As Mallki (1995: 497-498) wrote, "(...) As far as has been possible to determine, it is in the Europe emerging from World War II, that certain key techniques for managing displacements of people first became standardized and then globalized. This does not mean there were no refugees or techniques for managing them before World War II (...). People have always sought refuge and sanctuary. But "the refugee" as a special social category and legal problem of global dimensions did not exist in its full modern form before this period."

Our present-day understanding of "refugee" is shaped by those human rights policies as have been laid down in the Universal Declaration of Human Rights, and the Geneva Convention on refugees² and the subsequent protocols. This notion of a refugee is highly selective, both historically and from a contemporary viewpoint. Inquiring into the historical understanding of what a refugee is, Marfleet arrives at the following conclusion:

"The Convention Relating to the Status of Refugees, the Geneva Convention, was shaped by similar concerns. Since it was approved in 1951 the Convention has often been seen as a model statement of asylum rights. (...) In fact the agreement set out a narrow and partisan approach. (...) when the agreement was finalised it was applied only to those who had become refugees in Europe and only as a result of events occurring before 1 January 1951. In addition, the Convention viewed the refugee as a person denied specific civil and political rights: there were no references to economic and social rights. The key issue was that of persecution. (...) It perceived refugees to be victims of the oppressive, totalitarian regimes, with the implication that the guilty parties were to be found east of the Iron Curtain. It was not intended to embrace refugees in general, groups of dis-

² To date, the Geneva Convention on refugees is the authoritative body of international law for the protection of refugees. The United Nations Convention relating to the Status of Refugees of July 28, 1951 and the Protocol relating to the Status of Refugees of January 31, 1967 define a refugee as a person who "owing to wellfounded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

placed people, or those fleeing from international or internal conflicts. Most important it did not mention a 'right' to asylum. Contrary to many later interpretations it was not a statement of universal rights in the form of unconditional entitlements of displaced people" (Marfleet 2006: 146).

In spite of the various protocols subsequently added to the Geneva Convention, the definition of refugee that it rests on still considers only a part of the people fleeing worldwide. The definition neither captures internal flows of refugees within a country, as in Darfur, nor refugees seeking to escape the consequences of environmental catastrophes.

70

"Refugee" is neither a fixed nor unchangeable classification expressing a universal, enduring condition. However, political declarations and national asylum legislation imply just that. On the contrary, the notion of refugee deals with a contingent classification that is the result of social negotiations. Labeling someone as a refugee is a powerful process by which policy agendas are established and people are conceived of as objects of policy (Zetter 1991, 2007).

A sociology of forced migration must systematically raise the question as to who is perceived as the "desired refugee." Such a perspective involves considering the political, cultural, and social context of asylum policies in the host countries.

Apart from Mallki (1995) and Zetter (1991, 2007), there are only few analyses of the mechanisms involved in "making a refugee." The studies by Szczepanikova (2010) and Inhetveen (2005, 2010) are undoubtedly an exception in this respect. In her empirical research on the transformation of the legal construction of refugee in the post-communist Czech Republic, Szczepanikova finds that the legal-political construction of the refugee "has shifted from a stake in defining political identity and affiliation with the world of 'civilised' nation into an instrument of migration management and control" (Szczepanikova, 2010: 27). In her analysis of two refugee camps in Zambia, Inhetveen (2005, 2010: 141-164), on the other hand, demonstrates how refugees reinterpret, reformulate, and utilize the label refugee.

Nowadays, international and European declarations flow into national asylum and immigrant legislation; however, decisions about their implementation are left up to national jurisdiction and are structurally linked with the nation state's monopoly on violence (Brunkhorst 2002). National policy has its own procedures for refusing or granting asylum.

A restrictive immigration policy has strictly reduced the chances of being granted asylum over the past years. Since the 1990s, these increasingly restrictive measures to control migratory processes have been put into place all over Europe. Because national differences exist, I will use Germany to exemplify these measures. The goal of deterrence has determined German asylum policy since the 1980s. Asylum seekers' rights are strictly limited to a basic standard of living – and the basics are defined lower than the basic standards granted German recipients of social services. During the asylum

process, they have either no or only limited access to the labor market, no general freedom of movement, and generally no entitlement to integration programs, such as language courses. A majority of the studies concerned with the accommodation arrangements asylum seekers are subject to in Germany (Henning/Wießner 1982, Dünnwald 2002, Behrensen/ Groß 2004, Täubig 2009) conclude that the housing facilities provided to that group display key features characteristic of total institutions (Goffman 1961). There are many procedures to check whether someone is really a refugee – i.e. meets the national conventions – and actually comes from the country that he or she claims to be from. Linguists, for example, help to clarify if someone really speaks the dialect of the region where they claim to be from (Scheffer 2002). Doctors check the bones and teeth of young migrants to prove their age. Refugees under 16 years old may not be deported. All these tests have their own logic and limitations.³ Generally speaking, political perceptions of the cultural, political, or religious proximity/distance to political and cultural systems in the refugee's country of origin play a large role in the acceptance procedure.⁴

After a highly debated amendment of Germany's Basic Law in 1992, refugees are no longer allowed to enter the country via the land route.⁵ The number of asylum applications is currently at a very low level; the rate has dropped from its peak of 438,191 applications in 1992 to about 27,700 applications in 2009 (Asyl in Zahlen 2010, Asyl in Zahlen 2008). The recognition rate is considerably lower. At the present, the asylum system in Germany is an expression of a restrictive selection policy that aims to prevent people from seeking asylum.

³ Medical examinations to determine age are very controversial since they fail to accomplish their purpose with sufficient precision.

⁴ While the German justice system, for example, regarded criminal prosecution by communist regimes as a means of pursuing the "political goal" of safeguarding power, it judged torture in Turkey (a NATO country) as a "customary means" of maintaining order in the country and not "relevant for asylum" because the torture did not target the political ethos of those tortured (Nuscheler 2004: 142).

⁵ In the wake of a political compromise between the major political parties in Germany, additional paragraphs were added to the article of the Basic Law recognizing the right of asylum ("Persons persecuted on political grounds shall have the right of asylum."). Nuscheler (2004: 148-151) gives a detailed assessment of the changes. The key issue is the so-called safe third country clause: "(2) Paragraph (1) of this Article may not be invoked by a person who enters the federal territory from a member state of the European Communities or from another third state in which application of the Convention Relating to the Status of Refugees and of the Convention for the Protection of Human Rights and Fundamental Freedoms is assured. The states outside the European Communities to which the criteria of the first sentence of this paragraph apply shall be specified by a law requiring the consent of the Bundesrat. In the cases specified in the first sentence of this paragraph, measures to terminate an applicant's stay may be implemented without regard to any legal challenge that may have been instituted against them."

In recent years, German policy makers have responded to the problem of successive temporary permits to remain in Germany (known as *Ketten-duldungen*)⁶ by adopting provisions in 2006 and 2007 governing the right to stay (so-called *Bleiberechtsregelungen*) and establishing hardship review committees in 2005. Those provisions may award the right of permanent residence under certain conditions. The hardship review committees comprise representatives of the state, the churches, charities, and refugee organizations; they may issue a recommendation to grant foreigners facing deportation the right to remain in Germany. Within the framework defined by both institutional changes (provisions on the right to stay and hardship review committees), a positive evaluation is for the most part issued, or the right of permanent residence awarded, if there is evidence of “successful integration.” Successful employment, good knowledge of the German language, and educational qualifications are the measure. The two new institutional arrangements introduce criteria of economic and educational utility into asylum policy, which ought to be based on human rights considerations. There is a need to investigate as to what extent such institutional changes open the door to introducing economic principles in asylum policy as has been observed in various other policy fields. The two-faced nature of such provisions lies in the fact that asylum seekers and those with temporary residence status are first excluded from participation in key areas of society over a number of years – by impeding, if not outright prohibiting, access to the labor market and denying the right to education and social participation. Then, in order to obtain permanent residence status, evidence of integration is demanded, which the applicants can hardly provide (Scherschel 2011).

So far, I have focused on the level of legal regulation. I will now turn to a case study to illustrate how regulations affect refugees.

The impact of social classifications on migrant lives

Qualitative research can show how refugees see themselves and what impact the restrictive asylum system has on their lives. I will present the experiences of Mila⁷, who is an interviewee in an ongoing research project. She has the legal status of a recognized refugee. Mila is a Kurdish woman and belongs to the Alevi, a persecuted religious minority. She has been living in Germany since she was nineteen. She is the daughter of a Kurdish family

⁶ Falling under these provisions are persons whose bids for asylum have been rejected and yet cannot be deported for humanitarian reasons or on grounds of international law. Hentges/Staszczak (2010: 97) point out that this status can be granted for very different reasons. For instance, such temporary protection may be extended to persons who are victims of non-state persecution but, due to the former legal situation in Germany, have not been recognized as refugees.

⁷ Some information about the interviewee “Mila” has been changed in order to protect her anonymity. Quotes from the interview have been translated.

of migrant workers. Her father was a lawyer who felt oppressed by the Turkish government. He seized the opportunity to migrate during the labor migration in the 1970s. We are used to distinguishing between labor and forced migration. However, the migration of Mila's father shows that both can be linked. He does not fit the typical German stereotype of poorly educated migrant workers.

Although Mila was born in Germany, she was raised by relatives in Kurdistan. Immediately after her birth, her parents sent her back. This decision was mostly influenced by the fact that her parents had to work so hard and had no time to care for her. Torture, murder, imprisonment, and the terror of the Turkish military are a strong part of her experience because she was suspected of being a Kurdish terrorist. With the help of smugglers and false documents, she escaped Turkey. When she first applied for asylum in Germany, officials rejected the application. Mila lived illegally for a while. With the support of an NGO, she made a second attempt and became recognized as a refugee. Although in Mila's case the asylum procedure took place many years ago, the interview reminded her of the process where the refugee has to prove that he or she fits the official definition of a person considered a refugee. On various occasions in the course of the interview, Mila makes it clear that she satisfies the criteria defining a refugee (political persecution, torture). She draws on the definition laid down in the Geneva Convention on refugees in describing the various stopovers in escaping to Germany:

73

"And in the meantime I was also in (name of the city), in (name of the region); I went to school there. And, besides, we're also Alevis. That is an important aspect since being both a Kurd and Alevi is a definite reason for being a political person. In any case, not just being political, but it is a reason to flee. Alevis have been oppressed and politically persecuted for centuries, until today."

Mila not only refers to the official definitions of the international refugee regime but has also developed her own notion of a refugee:

"To be a refugee is simply chance. It has a bit to do with violence. Whenever I think I am a refugee, or I was a refugee, always war and, injustice, and helplessness – all this is deep inside of me. After I think about it on several levels – it's war, it's injustice, but in the end, for me, it's also luck."

In Mila's descriptions, one can identify some elements of Hannah Arendt's (1943) concept of refugee. The feeling of being a bare human being as well as the experiences of fate and arbitrariness are among them. Mila conceptualizes escape as a process that contains several phases and stages. Escaping, in her eyes, can also be like climbing a ladder and finding your personal luck at the top. Mila often had to legitimize and explain herself. The influence of a strictly regulated asylum system surfaced during the interview interaction itself. Although she views her own situation in a positive light, the experiences during the time of flight but also with Germany's restrictive

asylum policy have led to resignation and strong doubts in her assessment of political rights and democratic structures:

“Well, I always saw Germany, I did know that Germany is a democratic country, a democratic state. That I knew. But once I got here, I went through my share of suffering and found out that it isn’t true. That has nothing to do with democracy.”

Similar results came out of a research project that used autobiographical accounts to study migrants from Iran. This study also showed the influence of the restrictive German asylum system on interview interaction (Thielen 2009). The refugees had different perceptions of the interaction during the interview. Similar to Mila, some of them appeared to be reminded of the asylum procedure. Others saw the interviewer as a social worker or a therapist. Seukwa (2005) describes still another side of the restrictive asylum system and its influence on refugees in his qualitative analyses. His research project with African youth determined a successful way of dealing with a restrictive migration system as well as the experience of violence and war. A habitus⁸ was created centered on the “art of surviving.” This habitus was developed by young refugees, necessitated by the fact that they must lead their lives under restrictive social conditions, which denies them of all relevant chances of participation until they have successfully been recognized as refugees. In this restrictive system, they develop strategies of survival that prove very helpful in the German asylum system as well.

Qualitative research can show that escape is embedded in social processes and social networks. Human rights initiatives, family support, living in the underground, smuggling, and the opportunity to become recognized as a refugee are all parts of this social framework of an individual experience of flight. Although migrants develop strategies for dealing with these restrictions, qualitative research shows that their lives are nevertheless substantially shaped through the (specific) realities of the restrictive asylum system.

Conclusion

Refugees are the result of several processes of social construction and classification. Migration regimes create hierarchical systems of rights. In fact, millions of people worldwide escape war, political persecution, and natural disasters and are never recognized as refugees by the given conventions. Up until now, there were hardly any studies about these recognition procedures.

The reconstruction of a personal experience of escape provides not only a subjective view but also a lot of characteristics of the social background of escape. Speaking about escape is influenced by the migration regime, which

⁸ Seukwa uses Bourdieu’s concept of habitus.

is reflected in the interview. Qualitative research takes place against the background of a restrictive asylum procedure.

From a methods point of view, we must develop a relational understanding of categories to avoid that migration studies simply reproduce official doctrine. Refugees challenge the way we think about modern societies and the normative assumptions of belonging and not belonging. Forced migration also challenges the position of the researcher and the role of migration studies in a globalized, hierarchical world. We have to reflect on the powerful classifications within migration regimes. An analysis of how refugees become an object of policy and what the individual consequences of the procedures are for their lives should be helpful in taking this dimension of power into consideration.

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