



AMERICAN UNIVERSITY OF BEIRUT

THEORIZING THE REFUGEE

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# AN ABSTRACT OF THE THESIS OF

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Building on a Foucauldian theoretical framework, this study explores the politically and historically contingent emergence of the “refugee” category and examines the framework and practices through which the category is governed.

The main questions the paper tackles are: how did the refugee category emerge and come to be considered as natural and necessary? What circumstances led to its institutionalization? And how do the foundations of the category factor into the governance of its bearers? The paper is divided into three principal sections. The first two I attempt to contextualize the refugee category – to uncover the political and historical dynamics that led to its emergence and entrenchment.

I propose that the category is deeply embedded in modernity: it is intrinsically tied to the nation-state and the notion of citizenship; and it is the product of a process of regimentation and institutionalization that rose out of a set of circumstances specific to the twentieth century. After contextualizing the category, I describe some of the (broad) rationalities and (narrow) technologies deployed for the purpose of governing the refugee.

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# CHAPTER I

## INTRODUCTION

The world as it stands is composed of territorially bound nation-states largely inhabited by their own citizens. This statement is a rather simplistic description of a highly complex landscape. Nevertheless, the nation-state arguably remains the standard mode of political organization with the citizen as its primary, protected constituent part. The world's population today is estimated at 7.4 billion individuals, the vast majority of whom are politically, legally and otherwise tied to one of 200 or so sovereign (or contested) political entities that take up the bulk of the earth's land mass. The inhabitants of sovereign states that occupy the geographical span of the earth are, then, citizens, in the classic sense of being individuals who, according to the Merriam-Webster dictionary, "legally belong to a country and have the rights and protection of that country." Those who fall outside of this definition are assumed not to have ever had access to the "rights and protection" of a specific country, or to have somehow lost or forgone those rights due to specific circumstances. The non-citizens of the world fall into two principal definitional categories: the stateless, who have never had the benefit of being citizens, and the refugees, who have lost the ostensible entitlements of their state membership. The latter are at the center of this study.

In 2014, the United Nations High Commissioner for Refugees (UNHCR), the principal agency tasked with dealing with displacement for the past six decades, estimated the world's refugee population at 19.5 million individuals, 14.5 million of



whom fall under its mandate, with the others (Palestinian refugees) falling under the mandate of the United Nations Relief and Works Agency (UNRWA). Roughly speaking, one out of 380 individuals in the world is a refugee. Refugees make up a little over 0.25% of the world's population. The world's refugee population is equivalent to that of a single nation-state – Romania or Niger, for example. Yet, despite the relatively uncommon incidence of 'refugeeness' as a phenomenon, the displacement of populations across state borders occupies a highly visible spot in world affairs. Refugee movements tend to elicit fear and xenophobia, draw consideration and empathy, prompt international collaboration and action; these instances tend to be highly disruptive ones. That the refugee should figure so prominently in international politics – and the unfolding European migration/refugee crisis stands testament to the significance of refugee issues – can be attributed to the fact that the phenomenon challenges stable notions of citizenship, of membership in bounded political communities. However, it can also be said that part of the explanation for the refugee category's purchase lies in the fact that, as an aberration from the established norm, it reinforces the centrality of citizenship – it proves its indispensability in the modern world. It is our contention that the refugee category is relational in this sense: it is a construct that serves to delineate and administer a category of people whose circumstances have placed them outside the protective confines of citizenship. The refugee as a concept, then, is deeply rooted in modernity: it is a category contingent upon an arrangement in which the state/citizen combination prevails while notions of universal rights are discursively profuse and partially practiced. How the refugee factors into the process of configuring and reconfiguring the citizen-subject as a practical reality within the statist order is my main point of interest.

## A. The Theoretical Underpinnings of the Thesis

In the following study, we attempt to contextualize the concept of the refugee, to theorize its emergence and expediency, and to highlight its deployment. The study as a whole can be said to be motivated by Foucauldian notions, though it does not necessarily build a coherent Foucauldian argument. We touch upon the notions of ‘eventalization’ and ‘problematization’ to stress the historical contingency of the refugee concept and theorize it as an “exception” that reinforces a reigning statist order. However, a Foucauldian ‘toolkit’ can help develop our analysis of the refugee category in a number of ways beyond denying its self-evidence and that of the related category of the citizen. Foucauldian notions can help us place the refugee within “power’s sphere of intervention” and “knowledge’s field of control”<sup>1</sup>, and build a critical framework that exposes both the (broad) rationalities of the refugee regime and its complex configurations, and those seemingly routine techniques and technologies that enable the administration of territorialized (and de-territorialized) populations.

Before we go onto to very briefly map out the sections of this paper, it would be useful to provide a cursory overview of the principal theoretical notions that animate our study. Clarifying the general direction of his project, Foucault writes that the purpose of years’ worth of research was “to create a history of the different modes by which (...) human beings are made subjects.” He states that his work has dealt with “three modes of objectification that transform human beings into subjects.”<sup>2</sup> The first of these modes, Foucault explains, is that of inquiry: the endeavor to study, know, and

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<sup>1</sup> Michel Foucault, *The History of Sexuality: An Introduction* (Knopf Doubleday Publishing Group, 2012), p. 142.

<sup>2</sup> Michel Foucault, “The Subject and Power,” in *Michel Foucault: Beyond Structuralism and Hermeneutics*, ed. Hubert Dreyfus and Paul Rabinow (Chicago: The University of Chicago Press, 1982), 208–28.

categorize the individual. The second is what he refers to as “dividing practices”: the construction of dualities that divide the subject inside himself or from others – the mad and the sane, the sick from the healthy, the normal from the abnormal. The third is centered on the processes through which a human being turns him- or herself into a subject.

As Foucault saw it, the ‘subject’ was at the core of his research project and the reason behind a conceptualization of power that broke with its standard interpretation as centralized, sovereign or legitimate. The basic elements of the Foucauldian canon (incorporating Foucault’s works and those of scholars that went on to elaborate his concepts) revolve around his central assumption about the nature of power: that it is a productive force. Foucault’s point of departure in both *Discipline and Punish* and the first volume of the *History of Sexuality* is a critique of dominant conceptions of power as a negative force that serves primarily to limit and deny. In *Discipline and Punish*, he clearly states this position:

We must cease once and for all to describe the effects of power in negative terms: it ‘excludes’, it ‘represses’, it ‘censors’, it ‘abstracts’, it ‘masks’, it ‘conceals’, In fact, power produces; it produces reality; it produces domains of objects and rituals of truth. The individual and the knowledge that may be gained of him belong to this production.<sup>3</sup>

In his first volume of *History of Sexuality*, Foucault conceives of power not in terms of its determination, its origin or its essence. It is not a property localized in an institution, subordinated to a structure, whose mode of action is instrumental, repressive and constraining. Power is a strategy comprising “relations of truth, one that is realized

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<sup>3</sup> Michel Foucault, *Discipline & Punish: The Birth of the Prison* (Knopf Doubleday Publishing Group, 2012), p. 194.

through techniques that constitute both individuals and knowledge”<sup>4</sup>. Foucault clarifies this point in his critique of the “repressive hypothesis”. He confronts the argument that sexuality had been repressed during the Victorian period while capitalism expanded and the bourgeoisie took root as the ruling class, arguing that since the eighteenth century there has been a “veritable explosion” of discourse pertaining to sex. Instead of being repressed, sex was classified, specified, categorized, and quantified. Basically, within a historically specific discursive field, sex was rendered administrable. It was incorporated within a larger discourse<sup>5</sup> pertaining to the general well-being of a growing population. It was rendered optimizable. The deployment of sexuality took place in various discursive sites and fields: psychiatry, medicine, demography, biology, and politics. “The primary concern of the deployment of sexuality” in Foucault’s words “was not the repression of the sex of the classes to be exploited, but rather the body, vigor, longevity, progeniture, and descent of the classes that ruled. It has to be seen as the self-affirmation of one class rather than the enslavement of another.”<sup>6</sup>

Without delving into a lengthy discussion on Foucauldian thought, what we need to keep track of are the tools he uses to gain an understanding of the proliferation of power and the formation of the subject. Some of the most useful tools for the purpose of analyzing the governance of refugees are: (i) the notion of power-knowledge which holds that “power and knowledge directly imply one another” and that “there is no power relation without the correlative constitution of a field of knowledge, nor any

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<sup>4</sup> Dany Lacombe, “Reforming Foucault: A Critique of the Social Control Thesis,” *The British Journal of Sociology* 47, no. 2 (1996): 332–52, doi:10.2307/591730.

<sup>5</sup> Lara Lessa, “Discursive Struggles Within Social Welfare: Restaging Teen Motherhood,” *The British Journal of Social Work* 36, no. 2 (2006): 283–98. Discourses here should be understood as “systems of thoughts composed of ideas, attitudes, courses of action, beliefs and practices that systematically construct the subjects and the worlds of which they speak”

<sup>6</sup> Foucault, *The History of Sexuality*, p. 123.

knowledge that does not presuppose and constitute at the same time relations of power”<sup>7</sup>; (ii) ‘disciplinary power’ as an objectifying, categorizing and programming force; (iii) bio-politics, which encompasses the various regulatory techniques that bring life into the domain of power and lead to the administration of individuals and populations; and (iv) ‘governmentality’. The latter is particularly relevant for our purposes and merits more explanation. Foucault’s post-*Discipline and Punish* work can be divided into two main projects: the first is centered on political rationalities and the genealogy of the state while the second is concentrated on the genealogy of the subject. The problem of government, addressed in many of his lectures and articles, can be conceived as the bridge between the two projects: it connects Foucault’s notion of the “technologies of the self” with his notion of “technologies of domination” and the subject with the formation of the state.<sup>8</sup> This is where the concept of governmentality comes in. The neologism that links the act of governing (*gouverner*) to prevalent modes of thought (*mentalité*) indicates that it is impossible to study existing or past technologies of power without addressing the political or social rationalities underpinning them. Government here should not be taken in its strict political sense, but should be understood as a more comprehensive dynamic between the various forms of power and the processes of subjectification. The notion of government is therefore quite wide. It encompasses the political and administrative, as well as the religious, philosophical, psychological and personal spheres. It is the “conduct of conduct” whether it relates to the self or to others. Foucault’s conceptualization of power does not exclude consensual, legal or violent forms. Rather, it treats those elements as

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<sup>7</sup> Foucault, *Discipline & Punish*, p. 27.

<sup>8</sup> Thomas Lemke, “Foucault, Governmentality, and Critique,” *Rethinking Marxism* 14, no. 3 (September 1, 2002): 49–64.

instruments of power, not as its basis or source. As Nikolas Rose puts it, governmentality should be looked at as the “formulation and justification of idealized schemes for representing reality, analyzing it, and rectifying it. As a kind of machinery or apparatus for rendering reality thinkable in such a way that is amenable to political programming.”<sup>9</sup>

## **B. Overview of the Thesis**

Informed by Foucauldian bent, this study aims to explore the politically and historically contingent emergence of the refugee category and, from there, examine the framework and practices through which the category is governed. The main questions we try to tackle then are: how did the refugee category emerge and come to be considered as natural and necessary? What circumstances led to its institutionalization? And how do the foundations of the category factor into the governance of its bearers? The paper is divided into three principal sections. In the first two, I attempt a sort of “eventalization” of the refugee category. In other words, I try to breach the “self-evidence” of the category and to uncover some of the “connections, encounters, supports, blockages, plays of forces, strategies, and so on, that at a given moment establish what subsequently counts as being self-evident, universal and necessary.”<sup>10</sup> I do that by proposing that the category is deeply embedded in modernity: it is intrinsically tied to the nation-state and the notion of citizenship (chapter II); and it is the product of a process of regimentation and institutionalization that rose out of a set

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<sup>9</sup> Nikolas Rose and Peter Miller, “Political Power beyond the State: Problematics of Government: Political Power beyond the State,” *The British Journal of Sociology* 61 (2010): 271–303.

<sup>10</sup> Michel Foucault, “Questions of Method,” in *The Foucault Effect: Studies in Governmentality*, ed. Graham Burchell, Colin Gordon, and Peter Miller (Chicago: The University of Chicago Press, 1991), 73–86.

of specific historical and political circumstances (chapter III). In the final chapter, we attempt to tie some of these connections to governmental rationalities and technologies.

To be a little more specific, in the first chapter, we attempt to de-naturalize the “refugee” concept by pointing to the contingency of the category, presenting it as the ‘other’ of the citizen. We highlight the territorialization and nationalization of the state and its development into a bounded, exclusionary space as the political basis for the emergence of the “refugee” category. We go on to discuss the problematization of the refugee within the international order and its conception as an aberration from the standard of the right-bearing citizen, and we briefly discuss how that problematization contributes to the re-production of the latter.

In the second chapter, we provide a historical overview of the transformation of the “refugee” concept within an expanding refugee regime into a fully institutionalized, readily deployable category that facilitates the management of displacement and acts to bolster the existing international order. While the first chapter theoretically situates the refugee category within the framework of the nation-state, the second attempts to anchor its regimentation and formalization within a specific historical period, and tie it to particular historical circumstances and dynamics. Focusing largely on the developments that characterized the first half of the twentieth century (First World War, inter-War period, Second World War), we explore how the refugee category gained discursive and practical traction at the juncture of changing immigration practices, competing geopolitical interests, and a shifting political landscape. Under an overarching tension between state tendencies toward insularity and a growing sense of obligation to individual rights, the refugee definition expands from

broad, particularistic conceptions to individuated, universal ones that fit neatly within the statist system and facilitate the management of forced population movements.

After theorizing the refugee as a “problem” within the statist order and historicizing the category’s evolution and regimentation, the third chapter delves into some aspects of the governance of refugees on both macro and micro levels. We discuss the statist rationality that informs the framework of intervention that aims to temporarily administer the refugee “problem”, re-integrate the “aberrant refugee” into the normal statist order, or preserve that order so as to avert the refugee “problem” all together. We then zoom into specific practices and technologies that effectively produce the refugee as a knowable, governable entity. While it does so in a cursory manner, the third chapter attempts to link the predominant statist rationality to the ‘microphysics’ of refugee governance by pointing to examples of routine practices and technologies that contribute to the construction of refugee subjectivity and to the conduct of refugee individuals and populations.

### **C. The Limitations of the Thesis**

Some caveats must be highlighted: this study does not offer novel theoretical perspective on the refugee category. The aim, rather, is to build a foundation upon which a more elaborate study can take place on how refugee subjectivity is discursively and practically constructed, how it is deployed to govern forced population movements, and how it works to reinforce the centrality of the state-citizen framework. For the past five years, I have been working for the United Nations High Commissioner for Refugees in Lebanon in various capacities. Over the course of that duration, I have been part of a seemingly ever-expanding effort to respond to the Syrian refugee crisis,



one of the largest instances of forced population displacement since the Second World War. Within the context of the ‘Syria emergency’, a highly diversified arsenal of strategies, processes, and techniques have been and continue to be deployed to manage the displaced. Syrians who found themselves crossing their country’s border into the neighboring states have been confronted with a slew of objectifying and subjectifying procedures that have rendered them susceptible to intervention and that have, to a large extent, preserved their liminal position. At the same time, we have seen that very same population challenge the existing order, territorial boundaries and all, by taking to the sea with a view of willfully overcoming their marginal status. The resultant ‘migration crisis’ has sent the international community scrambling to contain the perceived danger; it has reinvigorated the dichotomy of “insider” vs. “outsider”, “self” opposed to “other”; it has disturbed long-stagnant notions of citizenship, individual rights, and sovereignty; and it has certainly modified the refugee category in ways that are yet to be determined. I hope that the following paper will form the basis of a larger study which, through an examination of the response to the ongoing Syrian refugee crisis, will clarify some of the abovementioned themes.

## CHAPTER II

### THEORIZING THE “REFUGEE”

#### A. Introduction

This chapter aims at examining the political foundations of the “refugee” category. There is a broad tendency in both academic and humanitarian circles to decontextualize and naturalize the “refugee”; a bent to join “moments of exile into an abstract and seemingly ahistorical category”<sup>11</sup>. Our intention here is to contest that tendency by laying down a critical map establishing some of the connections that led to the emergence of the refugee as a universal, necessary and unproblematic category. Ideally, building a genealogy of the category “refugee” would go a long way in uncovering these connections. Such an undertaking is, however, outside the scope of this study. What we rely on instead is the Foucauldian notion of ‘problematization’ (which we come back to toward the end of the chapter). De-naturalizing the figure of the refugee would entail, in Foucauldian terms, “disentangling and re-forming the (power and thought) relationships”<sup>12</sup> within which and from which that figure emerged. Explaining ‘problematization’, Foucault states that it makes possible the transformations of “difficulties and obstacles of a practice into a general problem for which one proposes diverse practical solutions”. Problematization, he goes on, “responds to these difficulties, but by doing something quite other than expressing them

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<sup>11</sup> Patricia Tuitt, “Rethinking the Refugee Concept,” in *Refugee Rights and Realities: Evolving International Concepts and Regimes*, ed. Frances Nicholson and Patrick Twomey (Cambridge: Cambridge University Press, 1999), p. 113.

<sup>12</sup> Michel Foucault, *Power*, ed. James D. Faubion, trans. Robert Hurley, 1 edition (The New Press, 2001), p. XXXV.

or manifesting them: in connection with them, it develops the conditions in which possible responses can be given; it defines the elements that will constitute what the different solutions attempt to respond to.”<sup>13</sup> Elaborating the notion a little further, Colin Gordon sees that the “‘transactional’ domain at the frontier of political power and what ‘naturally’ eludes its grasp constitutes a space problematization, a fertile ground for experimental innovation in the development of political technologies of government.”<sup>14</sup> Building on that notion, we argue in this chapter that the refugee, falling outside the sphere of the nation-state (and, in a manner, eluding its grasp), is problematized in opposition to the citizen – a process that renders him a site for statist intervention and functions to reinforce a prevailing “culture of territorialization”.

## **B. The “Refugee”: A Modern Construct**

There is no doubt that the migration of people, in its various forms, has been a fundamental factor of human existence. Whatever its drivers – be it linked to changes in environment, to a search for resources, or to a fear of a given threat – the movement of people has been instrumental for the survival and evolution of humankind. However, prior to the advent of modernity, throngs of people fleeing their places of residence to evade oppression, disease, famine or other blights were not considered to be commonly experiencing a type specific of victimization. In fact, prior to the emergence of particular circumstances (modern warfare; the territorially-bound nation-state; the notion of citizenship) the category of “refugee” had little value. In the words of Lippert,

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<sup>13</sup> Michel Foucault, “Polemics, Politics, and Problematizations,” in *Ethics: Subjectivity and Truth*, ed. Paul Rabinow, vol. 1 (New York: The New York Press, 1994), 118.

<sup>14</sup> Graham Burchell, Colin Gordon, and Peter Miller, eds., *The Foucault Effect: Studies in Governmentality*, 1<sup>st</sup> edition (Chicago: University Of Chicago Press, 1991), p. 141.

“there were no refugee movements, practices, or refugees until the late- nineteenth or early-twentieth centuries in precisely the same sense that there was no sexuality until the eighteenth or human beings with multiple personality disorder until the late-nineteenth centuries”<sup>15</sup>.

Population movements due to persecution – particularly the forced movement of religious minorities – did occur before the 19<sup>th</sup> century. The involved populations could, to a certain extent, be considered precursors of the concept of the modern refugee. The term “refugee” is believed to have been originally coined to designate the Huguenots<sup>16</sup>; aptly so, since this specific case is as accurate a historical forerunner to the modern refugee as possible. The Huguenots were “a large mass of persons fleeing the consequences of a government’s actions against its own very valuable subjects, decreed in peacetime and without any provocation on their part, after nearly a century of mutual accommodation”<sup>17</sup>. The flight of over 200,000 Protestant Huguenots in the years following the revocation of the Edict of Nantes was a product of early statecraft through the pursuit of ideological unity<sup>18</sup> and political homogeneity. It represented, according to Soguk, a wider “shift in practices of government by which the absolute state would begin to acquire the characteristics of a modern centralising state”<sup>19</sup>. During that age, though, the category of “refugee” was still loose; as loose as the

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<sup>15</sup> Randy Lippert, “Governing Refugees: The Relevance of Governmentality to Understanding the International Refugee Regime,” *Alternatives: Global, Local, Political* 24, no. 3 (1999): 13.

<sup>16</sup> Michael Marrus, *The Unwanted: European Refugees from the First World War Through the Cold War* (Temple University Press, 2002). This applies generally to the emergence of the term in the English language. No clear evidence on the historical context of the coming-into-use of the term is available.

<sup>17</sup> Aristide R. Zolberg, “The Formation of New States as a Refugee-Generating Process,” *The Annals of the American Academy of Political and Social Science* 467 (1983): 24–38.

<sup>18</sup> *Ibid*

<sup>19</sup> Nevzat Soguk, *States and Strangers: Refugees and Displacements of Statecraft* (U of Minnesota Press, 1999), p. 71.

borders that separated the various component parts of a relatively open Europe. Numerous population flights would unfold as Europe underwent systemic changes over the course of the 17<sup>th</sup> and 18<sup>th</sup> centuries and as borders became more rigid and the practices therein more exclusionary. It was not until around the time of the French Revolution that the term ‘refugee’ started to acquire a certain discursive traction – though not yet in common use – and became “a general term referring to a category of people ‘such as leave their country in times of distress’”<sup>20</sup>. The Revolution produced its own population flows. The fleeing aristocrats and monarchists were dubbed *émigrés*, “a signal of the dignity and respect accorded to their position and one that seemed to refute their desperate situation”<sup>21</sup>. The *émigrés*’s flight was prompted by political divergences that underscored the emerging trend of defining states on national grounds. The state became ideologically defined and the citizen emerged as its principal component. In the words of Haddad, “as the absolutist state gave way to the territorialised state and the territorialised state gave way to the nationalised state, so a specific concept of territory as a bounded, exclusionary space was articulated.”<sup>22</sup> The entrenchment of the sovereign, territorially-bound nation-state, a process that began unfolding with the Treaty of Westphalia, was epitomized in the 1789 French Revolution (and, to the same extent, the American Revolution). The French Revolution brought to the fore the principal of citizenship: “A particular people for a particular place. A people with a right to that place and claims to govern it whether themselves or

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<sup>20</sup> Diana Wong, “The Semantics of Migration,” *Sojourn: Journal of Social Issues in Southeast Asia* 4, no. 2 (1989): 275–85.

<sup>21</sup> L. Barnett, “Global Governance and the Evolution of the International Refugee Regime,” *International Journal of Refugee Law* 14, no. 2 and 3 (April 1, 2002): 238–62.

<sup>22</sup> Emma Haddad, “The Refugee: The Individual between Sovereigns,” *Global Society* 17, no. 3 (July 1, 2003): 297–322.

through proxies. A people made one by history, distinct from other peoples, with mutual obligations by virtue of their shared distinction”<sup>23</sup>.

### **C. The Nation-State as the Foundation for the Emergence of the “Refugee”**

It is worth exploring in further detail the emergence of the nation-state as one of the primary conditions for the appearance of the “refugee” category. The creation of territorially defined states simultaneously created exclusionary identities<sup>24</sup>. Bounded states – be they defined by territorial, ethnic, linguistic, religious or other factors – tend to function on the organizing principal of internal versus external. Who belongs to a given state and who does not, evolved to become the principle element defining it and distinguishing it from other states. In reference to French Revolution, Faerer writes:

Without the "other," without the "foreigner," there could be no citizen. When all were subjects, no one in theory had rights. If subjects were themselves without rights, the foreigner's lack of them was neither a denial nor a distinction. The declaration of common citizenship was a declaration of shared rights, shared not promiscuously, however, shared among the people of France. And so it was also a declaration of who did not and could not share, if Frenchness were to mean anything.”<sup>25</sup>

The concept of citizenship, although articulated in universal terms during the French Revolution, was quite particular and entailed concrete rights and membership to a specific state that contrasted with the more abstract rights of the outsider and his or her lack of tangible membership to a category other than that of the outsider<sup>26</sup>. Taken with the expanding nationalization of the state, the concept of rights being practically confined to the realm of individual nation-states is at the source of population

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<sup>23</sup> Tom J. Farer, “How the International System Copes with Involuntary Migration: Norms, Institutions and State Practice,” *Human Rights Quarterly* 17, no. 1 (1995): 73.

<sup>24</sup> Haddad, “The Refugee”, p. 301.

<sup>25</sup> Farer, “How the International System Copes with Involuntary Migration,” p. 74.

<sup>26</sup> Haddad, “The Refugee” p. 302.

disenfranchisement once states launch into homogenizing projects or experience one form or another of breakdown.

The consequences of the nation-state being the sole guarantor of the purportedly universal '*droit de l'homme*' were addressed by Hannah Arendt in *The Origins of Totalitarianism*. Centering the discussion on minorities and the stateless in the age of the entrenchment of the nation-state, Arendt observes how the question of human rights was "quickly and inextricably blended with the question of national emancipation; only the emancipated sovereignty of the people, of one's own people, seemed to be able to insure them."<sup>27</sup> According to Arendt, the dangers of tying rights to nationality were veiled by the fact that the emergence of the nation-state coincided historically with the development of a "comity of European nations" – abiding by a set of practical considerations and tacitly recognized common interests – that initially constrained the full operationalization of national sovereignty.<sup>28</sup> The European continent, underwent a rude awakening when it became clear that once that tie between a person and a state was broken, the person became human in the barest sense of the word<sup>29</sup>; "without a profession, without a citizenship, without an opinion, without a deed by which to identify and specify himself (...) representing nothing but his own absolutely unique individuality which, deprived of expression within and action upon a common world, loses all significance."<sup>30</sup> This revelation came about with the post-World War I liquidation of multinational empires (namely, Austria-Hungary and Russia) and the "adoption of the nation-state formula to organize political life in

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<sup>27</sup> Hannah Arendt, *The Origins of Totalitarianism* (Houghton Mifflin Harcourt, 1973), p. 291.

<sup>28</sup> *Ibid*, p. 278.

<sup>29</sup> What Arendt refers to as the "abstract nakedness of being nothing but human" harks forward to Agamben's notion of the refugee developed in *Sovereign Power and Bare Life*

<sup>30</sup> *Ibid*, p. 302.

regions containing ethnically mixed populations”<sup>31</sup>. The tremendous tensions that arose from the homogenizing processes of nation-building generated two principal victim groups. The first were national minorities who found themselves barred from regular legal protection afforded more and more exclusively to ruling national groups. The presence of minorities was further understood as a destabilizing element impeding the “achievement of full sovereignty”<sup>32</sup>. The second group were the stateless, a category Arendt qualified as the “most symptomatic” in contemporary politics<sup>33</sup>; “legal freaks” who only started receiving attention once their ranks swelled with the masses of denationalized refugees forced out by the standardizing steamroller of statecraft<sup>34</sup>. Starting with the First World War, these included millions of Russians, Armenians, Germans, and Spaniards among others. The organizing principal of the nation-state not only led to the expulsion and invalidation of vast populations – populations that today would fit neatly within the refugee category – but also precluded their effective reintegration into any other nationalized territory they might find themselves on. This “liminality” of those caught outside of the “national order of things”, as Liisa Malkki terms it<sup>35</sup>, can be considered as the political basis for the elaboration of the “refugee” category.

#### **D. The “Refugee”: A Problem in an Evolving International Order**

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<sup>31</sup> Zolberg, “The Formation of New States as a Refugee-Generating Process,” p. 28.

<sup>32</sup> Ibid, p 29

<sup>33</sup> Arendt, *The Origins of Totalitarianism*, p. 277.

<sup>34</sup> Ibid, p. 278.

<sup>35</sup> Liisa Malkki, “National Geographic: The Rooting of Peoples and the Territorialization of National Identity Among Scholars and Refugees,” *Cultural Anthropology* 7, no. 1 (April 8, 2013): 34.



As mentioned above, the evolution of the rights-bearing “citizen” and its organic integration within the nation-state framework were highly dependent on exclusionary practices: the citizen, who belongs on a certain territory, as opposed to the “other”, the “foreigner”, who does not. Building on Arendt, Emma Haddad posits that the concepts of “refugee” and the sovereignty of the nation-state thrive on a categorical interdependence. She takes her analysis a step further to state that refugees are “one category of outsider invented to reinforce imagined nation-states”<sup>36</sup>. In an international system based on distinct sovereign states, the refugee – not belonging to a specific nation-state – is an exception. As an exception, the refugee is discursively and practically conceived as abnormal, even as a threat to the existing international order.

This state of exception was discussed at length by Agamben, who runs with Arendt’s idea that the refugee is unprotected within that citizen-state-territory trinity, since rights are only attributable to citizens. In *Sovereign Power and Bare Life*, Agamben declares that “in the system of the nation-state, the so-called sacred and inalienable rights of man show themselves to lack every protection and reality at the moment in which they can no longer take the form of rights belonging to citizens of a state”<sup>37</sup>. However, instead of decrying the co-optation of rights by the nation-state system, Agamben asserts that these very rights are themselves a function of that nation-state order:

Declarations of rights represent the originary figure of the inscription of natural life in the juridico-political order of the nation-state. The same bare life that in the ancien régime was politically neutral and belonged to God as creaturely life and in the classical world was (at least apparently) clearly distinguished as *zōē*

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<sup>36</sup> Haddad, “The Refugee” p. 306.

<sup>37</sup> Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life* (Stanford University Press, 1998), p. 68.

from political life (bios) now fully enters into the structure of the state and even becomes the earthly foundation of the state's legitimacy and sovereignty.<sup>38</sup>

Without delving too deep into Agamben's *Homo Sacer* project, the author considers the refugee a product of sovereign power crystallized in the nation-state order. At the risk of oversimplifying Agamben's thesis, one of the critical aspects of sovereign power as he sees it is its ability to declare a "state of exception" – meaning to decide on who is included and who is excluded from the juridical order. Quoting Schmitt, Agamben writes that "the sovereign decision on the exception is the originary juridico-political structure on the basis of which what is included in the juridical order and what is excluded from it acquire their meaning."<sup>39</sup> The refugee is found within this "state of exception" where laws and rights are suspended. The citizen being the "norm", the "exception" in this sense is whatever lies outside the citizen-state-territory trinity<sup>40</sup>, or, sticking closer to Agamben, at the very fringes of the existing order, in a zone of "interstitiality". An exception, to Agamben, is a type of exclusion. What is being excluded, however, has a very distinct relation to the rule: "the exception does not subtract itself from the rule; rather, the rule, suspending itself, gives rise to the exception and, maintaining itself in relation to the exception, first constitutes itself as a rule."<sup>41</sup> Agamben refers to this inclusion by virtue of exclusion as a "relation of exception". Accordingly, it is the suspension of citizenship which gives rise to the refugee. In this "state of exception", the other (the refugee) plays a critical role in defining the self (the citizen): "the refugee allows the concept of the 'citizen' to have

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<sup>38</sup> Ibid, p. 62.

<sup>39</sup> Ibid, p. 11

<sup>40</sup> Haddad, "The Refugee", p. 306.

<sup>41</sup> Agamben, *Homo Sacer*, p. 10.

significance”<sup>42</sup>; this is similar to the manner in which the concept of “madness” affirms and reinforces that of “sanity”. The concept of the refugee, then, occupies a critical position in the “narrative of modern political life”<sup>43</sup>, as Soguk terms it. “The refugee’s presence is so problematized as to privilege – to render most proper and most desirable – the hierarchy of state-citizen-territory.”<sup>44</sup> This point merits deeper treatment. Within the international (post-Westphalian) order<sup>45</sup>, the sovereign state is largely taken for granted; it is “self-evident” in Bourdieusian terms. Similarly, the sovereign state’s *raison d’être* – the citizen-subject – is understood as simply existent. However, both the state and the citizen are contingent elements held in a process of continuous production through various practices of governance. The production and reproduction of the citizen is one of the fundamental problems of the sovereign state, as Soguk sees it:

It is a problem of how to inscribe, stabilize, and render effective a certain figure of the citizen that the modern state would represent and on the basis of which the modern state would claim to effect its sovereignty, its power, and indeed its right to rule over a territorial inside – the domestic community of citizens.<sup>46</sup>

The management of this “problem” – the process of rendering the citizen-subject a practical reality – unfolds through the various practices of statecraft. The function of the refugee within the practices of statecraft and the wider affirmation of a “culture of territorialization” is our point of interest here. This function may be part of the reason why the category of the refugee gained purchase and became as adaptable and resilient as that of the citizen and the modern state. To clarify the refugee-citizen inter-linkage,

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<sup>42</sup> Haddad, “The Refugee”, p. 10.

<sup>43</sup> Soguk, N., *States and Stranger: Refugees and Displacements of Statecraft*, p. 18

<sup>44</sup> *Ibid*

<sup>45</sup> One must acknowledge the rising challenges to the statist international order posed by increasing interdependence and the various processes now included under the globalization umbrella. Reference to a statist order should not be understood as a claim to its inevitability, stability or permanence.

<sup>46</sup> *Ibid*, p. 40

Nevzat Soguk deploys the notion of “problematization” we briefly went over at the beginning of the chapter. He specifies that problematization does not only function to formulate the field of possible practical interventions, but “assimilates and absorbs the difficulties by recognizing (conceptualizing) them as specific problems in the ontological and epistemological terms of the practice itself.”<sup>47</sup> Problematization, then, has a controlling, assimilationist, even neutralizing capacity. By rendering the outsider (in this case, the refugee) problematic, a field of intervention is constituted that “recuperates a host of statist images, identities and meanings”<sup>48</sup>. It is within that field that various overlapping discursive, performative, disciplinary and governmental practices emerge for the specific end of regimenting the refugee problem. Perceived as pathological within the “sedantariist metaphysics embedded in the national order of things”<sup>49</sup> the category of refugee emerges as manageable within the confines of that order and through its evolving practices.

## **E. Conclusion**

We started this chapter by arguing that the “refugee” is both semantically and practically a modern construct, that could not have developed prior to the territorialization of the nation-state and the emergence of the concept of citizenship. In the words of Liisa Malkki, “there is no ‘proto-refugee’ of which the modern refugee is a direct descendent, any more than there is a proto-nation of which the modern nation is a logical, inevitable outgrowth.”<sup>50</sup> We went on to develop that idea, arguing that the

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<sup>47</sup> Soguk, *States and Strangers*, p. 50.

<sup>48</sup> *Ibid*, p.51

<sup>49</sup> Malkki, “National Geographic,” 31.

<sup>50</sup> Liisa H. Malkki, “Refugees and Exile: From ‘Refugee Studies’ to the National Order of Things,” *Annual Review of Anthropology* 24 (1995): 497.

integration of the notion of citizenship (and the rights entailed by membership) into the framework of the exclusionary nation-state was at the base of the emergence of the refugee category: once that bond between the bearer of rights (citizen) and the guarantor of right (state) is severed, a person falls into the “abstract nakedness of being nothing but human”, to use Arendt’s turn of phrase. We then argued that, effectively being the product of the suspension of citizenship, the refugee category plays a fundamental role in maintaining the privileged position of the state-citizen-territory hierarchy – a position that is further solidified by the various practices at play in governing the refugee.

To recap then, falling outside the citizenship norm, the refugee is problematized; he is conceived as an aberration that could potentially disrupt the reigning order. It is through this problematization that the refugee emerges as an administrable, knowable, adjustable figure. Furthermore, it is by becoming administrable that the concept of the refugee began to crystallize into its modern humanitarian and legal forms. However, the coming into being of the refugee as “other”, in all its practical and discursive detail, did not become necessary until the modern world experienced its first massive waves of human displacement with the First World War. In the following chapter we attempt to historically situate the regimentation and institutionalization of the refugee category, focusing on the development of a unified legal/political label that fits within the statist scheme of things.

## CHAPTER III

# THE REGIMENTATION AND INSTITUTIONALIZATION OF THE “REFUGEE”

### A. Introduction

In the previous chapter, we elaborated the theoretical foundation of the category of “refugee”, tying it to the exclusive practices of the modern nation-state and its prevalence as the primary political unit in the international order. In the following section, I will provide a brief historical overview of the circumstances out of which took shape the regimentation of the refugee category and a unified conception of the “refugee” emerged.

As we mentioned in the preceding the chapter, while the term “refugee” appears to have been introduced into usage around the end of the seventeenth century – in reference to the Huguenots and other populations that were subjected to religiously motivated mass expulsions – the category only began to gain discursive and practical weight once state-formation, combined with modern (i.e. industrialized, total) warfare, gave way to the truly massive waves of human displacement<sup>51</sup>. Prior to the First World War, population flows did not compel political actors to perceive them in unified terms as problems or threats that merited any kind of special attention. Furthermore, the ambiguity of borders prior to the entrenchment of the modern territorialized state meant persons forced to leave their places of residence, in addition to being of little

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<sup>51</sup> Michael Marrus, “Introduction,” in *Refugees in the Age of Total War*, ed. Anne Bramwell (Unwin Hyman, 1988), p. 4.

consequence economically or socially<sup>52</sup>, did not fall into a category perceived as disruptive to a given political order.

## **B. The Inter-War Period, Changing Practices and the Regimentation of the “Refugee”**

### ***1. Shifting Immigration Practices***

The inter-war period was not the first to witness massive population flows. According to Claudena Skran, in the years leading up to the Great War, over one million Europeans were emigrating annually to the United States alone due to conflict, religious persecution and lack of economic opportunities among other reasons<sup>53</sup>. Practically speaking, immigrant-receiving countries – the New World – were acting as “safety-valves,” freely taking in Europe’s surplus population. However, the massive population flows generated during the first quarter of the twentieth century, and specifically during and immediately following the Great War, came in conjunction with the spread of immigration restrictions. Most immigrant-receiving countries, including the United States, Canada, Australia, Brazil, Argentina, Britain and others, started imposing stricter, more particular entry policies. Skran makes the link between the end of free global migration and the rise of nationalist doctrines, among other factors. Many of the aforementioned countries adopted immigration policies “designed to maintain a specific ethnic or racial composition.”<sup>54</sup> At the same time, regulatory devices, such as

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<sup>52</sup> This is a contentious point. As Nevzat Soguk clarifies, displaced people in pre-modern times might have been “instrumental in certain developments in host societies.” Soguk, *States and Strangers*, p. 64.

<sup>53</sup> Claudena M. Skran, *Refugees in Inter-War Europe: The Emergence of a Regime* (Clarendon Press, 1995), p. 21.

<sup>54</sup> *Ibid*, p. 25. It should be noted that nationalist doctrines were part of the reason restrictive immigration policies started being implemented. Changes in domestic economies and the rise of social welfare systems also contributed significantly to curbing immigration.

the passport and visas, started being widely adopted throughout the world. The establishment of restrictive immigration policies therefore plugged that proverbial valve, confining the growing refugee population to Europe<sup>55</sup>. In addition to the fact that they amplified the visibility and the impact of the refugee problem in Europe, restrictive immigration practices fostered a categorical differentiation between refugees and migrants. Referring to the context in the United States, Aristide Zolberg contends that given continued domestic concerns over the fate of religious minorities, “the closing of the immigration door led to a distinction between refugees and ordinary immigrants that had hitherto been absent from American institutional practice.”<sup>56</sup> The divergence between practical insularity and a budding sense of obligation toward fellow human beings was (and remains this very day) vital to the development of the refugee category.

## ***2. The Displaced as a Threat to be Managed***

In addition to the number of displaced individuals in inter-war Europe being enormous, the legal status of many of them was, to say the least, confounding. The plight of the estimated 1.5 million refugees who fled the Bolshevik Revolution and Russian Civil War is often mentioned in histories of the inter-war period. Having been denationalized by the newly established Soviet government, they were effectively stateless; they had no prospect of return to their country of origin; they could not travel beyond countries of first asylum; they could not work or benefit from social services or resources reserved for citizens or protected foreigners. They fell into an area that did

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<sup>56</sup> Aristide R. Zolberg, Astri Suhrke, and Sergio Aguayo, *Escape from Violence: Conflict and the Refugee Crisis in the Developing World* (Oxford University Press, 1989), p. 34.



not correspond with the assumptions of the reigning international legal system rendering them utterly desperate and destitute<sup>57</sup>. The challenge of population displacement was, therefore, not limited to the political imagination of Europe. The millions displaced by statecraft, warfare and the dissolution of empires were perceived as posing a practical threat to the very viability of receiving states. The realization of this threat or, better yet, its articulation during the inter-war era, impelled a burgeoning intergovernmental effort to define and govern it. Contrasting the displaced populations of the inter-war period with their historical predecessors, Soguk states:

No longer were they largely cast as objects of charity, people who needed help and got it because they were few in number and not seen as a threat. No longer were they generally seen as objects of desire in the mercantilist sense (...) Massive human displacement, now identified as a refugee problem with certain characteristics, did not bode well for the fundamental task of statecraft. (...) Such movements had to be regimented, and they were.<sup>58</sup>

### ***3. The Rise of Professional Humanitarianism***

Importantly, the beginning of this regimentation came in conjunction with a general shift in the very nature of humanitarianism. During the Great War and in its immediate aftermath, the old, charitable humanitarianism, qualified primarily by an ethic of empathy rooted in Christian values, started to give way to a more secular, professional form of humanitarianism that was increasingly transnational in character<sup>59</sup>. In addition to the growth of an expert class of humanitarians, the post-war era witnessed the expansion of a humanitarian narrative that focused on the rights of the

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<sup>57</sup> James C. Hathaway, *The Rights of Refugees under International Law* (Cambridge University Press, 2005), p. 85.

<sup>58</sup> Soguk, *States and Strangers*, p. 185.

<sup>59</sup> Bruno Cabanes, *The Great War and the Origins of Humanitarianism, 1918-1924* (Cambridge University Press, 2014); Barnett, "Global Governance and the Evolution of the International Refugee Regime"; Emma Haddad, *The Refugee in International Society: Between Sovereigns* (Cambridge University Press, 2008).

victims of the war – the veterans, the refugees, those suffering from famine and others<sup>60</sup>. These rights, and the novel categories of individuals to whom they were ascribed, were often articulated in a cosmopolitan language – one that transcended the boundaries of the nation-state, the entity seen by many as the primary source of the Great War. The tension between rights movements informed by a cosmopolitan pacifism rising from the shock of war and the principle of state sovereignty was palpable even at the very inception of the former.<sup>61</sup>

#### ***4. The International Regimentation of the Refugee Problem***

The first efforts to regiment and institutionalize the problem of displacement came with the appointment of the League of Nations High Commissioner for Refugees (LNHCR) in June of 1921 – formally, the “High Commissioner on behalf of the League in connection with the problems of Russian Refugees in Europe”. The involvement of the League of Nation came at the request of multiple humanitarian organizations struggling to find solutions to the problem of Russian refugees. The High Commissioner for Refugees, a Norwegian explorer and diplomat by the name of Fridtjof Nansen, was initially tasked with defining the legal position of refugees, organizing their repatriation to their countries of origin or their resettlement to third countries, and coordinating the efforts to assist refugees in the countries they had fled to.<sup>62</sup> According to Soguk, the activities of LNHCR “facilitated a reconfiguration of the practical, legal, and institutional content of the field of human displacement.”<sup>63</sup> Prior to

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<sup>60</sup> Cabanes, *The Great War and the Origins of Humanitarianism, 1918-1924*, 6.

<sup>61</sup> Cabanes, *The Great War and the Origins of Humanitarianism, 1918-1924*. p. 74-75 for examples

<sup>62</sup> Ibid, p. 149

<sup>63</sup> Soguk, *States and Strangers*, 121.

the establishment of the League of Nations, the protection of individuals found outside the jurisdiction of their national states was governed by bilateral agreements largely based on the principal of reciprocity. The League of Nations built on those bilateral agreements to establish what Hathaway refers to as the first system of “collective surrogacy”<sup>64</sup>. In Hathaway’s words:

The concern of the international community was transformed from simply the facilitation of national protective efforts, to direct engagement as the source of residual protection for those whose interests were not adequately safeguarded by national governments.<sup>65</sup>

Collectively establishing a framework to deal with mass displacement, however, went beyond fledgling conceptions of human rights and international accountability. For states on the receiving end of wave upon wave of displacement, the regimentation of the refugee problem was essential to maintaining the integrity of the citizen as a category representing the primary holder of rights and beneficiary of state protection. The abovementioned “collective surrogacy” was activated through various treaties to “respond to the legal incapacity of refugees by providing them with substitute documentation.”<sup>66</sup> Furthermore, “representatives of the High Commissioner were authorized by states to perform tasks normally reserved to states of nationality, such as establishing identity and civil status, and certifying educational and professional qualifications”<sup>67</sup>. One of the first, and most effective instruments of this collective surrogacy was the creation of certificates of identity for Russian refugees, later known as “Nansen Passports”. These identity certificates acted to distinguish their bearers as refugees and conferred upon them certain rights and responsibilities similar to (but not

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<sup>64</sup> Hathaway, *The Rights of Refugees under International Law*, 83.

<sup>65</sup> Ibid

<sup>66</sup> Ibid, p. 85

<sup>67</sup> Ibid

the same as) those conferred by states upon their citizens. These documents were initially agreed upon and recognized by European states for Russian refugees. Their use was later expanded to include Armenians, Assyrians, Turks and other nationalities.

### ***5. Budding Efforts toward a Unified “Refugee” Category***

It should be mentioned here that the League’s High Commissioner for Refugees and the various commissioners that followed during the inter-war period were temporary in character. The problem they were tasked to deal with was perceived as transient<sup>68</sup>. The very conception of the refugee was, concomitantly, very specific and followed a “category-oriented approach that identified refugees according to group affiliation and origin.”<sup>69</sup> In a sense, refugees had not yet taken on universal characteristics. Their recognition as refugees was largely based on their nationality. The refugee problem, however, proved more intractable than initially expected. Accordingly, an effort to bring more stability to the category was starting to sprout. The two major legal instruments of the inter-war period, the 1933 and the 1938 refugee conventions, though still running with particular conceptions of the refugee<sup>70</sup>, did just that. Referring to the 1933 Refugee Convention as “one of the earliest examples of states agreeing to codify human rights as matters of binding international law”<sup>71</sup>, Hathaway states:

[The Conventions] opened the door to a new way of thinking about the human rights of aliens. Aliens’ rights had previously been conceived to respond to a fixed set of circumstances, namely those typically encountered by traders and

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<sup>68</sup> Barnett, “Global Governance and the Evolution of the International Refugee Regime,” p. 242; Zolberg, Suhrke, and Aguayo, *Escape from Violence*, p. 20.

<sup>69</sup> Marrus, *The Unwanted*, p. 90.

<sup>70</sup> The 1933 Convention applied to Russian, Armenian, Turkish, Assyrian, Assyro-Chaldean, and Turkish refugees; the 1938 Convention applied to German refugees.

<sup>71</sup> Hathaway, *The Rights of Refugees under International Law*, p. 87.

other persons traveling or residing abroad in pursuit of commercial opportunities. Many risks faced by refugees in foreign states were, however, different from those which typically confronted business travelers. The Refugee Convention of 1933 met this challenge by setting a rights regime for a subset of the alien population, tailored to its specific vulnerabilities.<sup>72</sup>

What we note here is the codification – in *binding* international law – of a “subset” of aliens. This exercise in categorization, this articulation of the differences between the circumstances and rights of refugees and those of other aliens was essential to the emergence of the category. An important legal innovation was inserted into the text of the 1938 treaty which stipulates that a person would be excluded from refugee status if he had left Germany for “reasons of purely personal convenience”<sup>73</sup>. While the treaty still tied refugee status to nationality – a refugee, in accordance with its text, is first and foremost, a person fleeing Germany – it compelled its members to consider the reasons that motivated each person’s flight. The determination of refugee status thus started to be narrowed down to the individual level. To quote Wong, it is around that time that the discourse became channeled into refugee status: “of interest here was no longer the question ‘what is a refugee?’ but ‘who is a refugee?’”<sup>74</sup> Furthermore, an emphasis on the *political* causes leading to flight was beginning to permeate definitions of the refugee. Quoting a 1939 study on refugees, Zolberg writes that the refugee “is distinguished from the ordinary alien or migrant in that he has left his former territory because of political events there, not because of economic conditions or because of the economic attractions of another territory.”<sup>75</sup> A person *claiming* to be a refugee, had to make his case, effectively differentiating himself in the process from other migrants.

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<sup>72</sup> Ibid

<sup>73</sup> League of Nations, *Convention concerning the Status of Refugees Coming from Germany*, 10 February 1938

<sup>74</sup> Wong, “The Semantics of Migration,” p. 280.

<sup>75</sup> Zolberg, Suhrke, and Aguayo, *Escape from Violence*, 20.

Logically, his *claim* might have been rejected, leading to his exclusion from refugee status and the rights and privileges it entailed. The determination of refugee status on an individual basis would become a cornerstone of the emerging refugee regime, especially following the formulation of an internationally recognized definition of the refugee. Assigning status on an individual basis would also open the door to the creation of wide-ranging bureaucracies specialized in the formulation and application of legal instruments, a system that would become instrumental in the crystallization and evolution of the refugee category.

It is worth noting that the era under consideration here is that of the Great Depression and of the rise in nationalist doctrines. With most countries in the Western hemisphere suffering under the economic squeeze, the tendency was to further restrict access to already scarce resources, not expand it. The 1933 Convention was ratified by only eight states. The 1938 Convention did not fair much better. However, these conventions would form the foundation upon which future legal instruments were built. The inter-war period was pivotal in the development of the refugee category in that it “distilled the concept of refugee from the European historical experience to date and made it concrete by creating a set of specialized agencies”<sup>76</sup> and, for the first time, a set of international legal instruments.

## **C. The Second World War, the Cold War and the Crystallization of the Refugee Category**

### ***1. Second World War Displacement and Categorical Refinement***

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<sup>76</sup> *Ibid*

The upheaval created by the Great War compelled affected states to seek collective solutions to the problem of displacement – be they legal, financial or material – which contributed to the development of the first internationally agreed upon conceptions of the refugee. The second set of European crises of the twentieth century, the rise of fascism and the Second World War, would reinforce both the agencies and the legal instruments dealing with refugees. Around thirty million Europeans were displaced during the Second World War. The focus of institutions dealing with the displaced during and immediately following the Second World War was to assist and repatriate them. The United Nations Relief and Rehabilitation Administration (UNRRA) was established through U.S. and British efforts for those very purposes. The mandate of the agency was “assisting in caring for, and maintaining records of, persons found in any areas under the control of any of the United Nations who by reason of war have been displaced from their homes and, in agreement with the appropriate governments, military authorities or other agencies, in securing their repatriation or return.”<sup>77</sup> Not long after the cessation of hostilities, UNRRA had helped return over seven million displaced individuals to their home countries<sup>78</sup>. The UNRRA’s people of concern, however, were not referred to as refugees. The organization was not mandated to deal with persons who could not or did not wish to return to their countries of origin.<sup>79</sup> A large number of individuals that fell into this category originated in Eastern Europe generally and the Soviet Union more specifically. With Cold War tensions starting to brew, the issue of this residual

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<sup>77</sup> Goran Melander, “The Concept of the Term ‘Refugee,’” in *Refugees in the Age of Total War*, ed. Anne Bramwell (London: Unwin Hyman, 1988), p. 8.

<sup>78</sup> Barnett, “Global Governance and the Evolution of the International Refugee Regime,” p. 245.

<sup>79</sup> Guy S. Goodwin-Gill, “The Politics of Refugee Protection,” *Refugee Survey Quarterly* 27, no. 1 (January 1, 2008): 8–23

population led to open conflict between the Soviet Union and Western Allies and eventually crippled the organization<sup>80</sup>. In 1946, the UNRRA was replaced by the International Refugee Organization (IRO), a temporary intergovernmental organization tasked with dealing with the “last million” refugees in Europe<sup>81</sup>. The USSR never became a member of the IRO, maintaining that the organization was “protecting traitors and serving US policy”<sup>82</sup>. In its constitution, the IRO specified that, in order to be of concern to the organization, refugees and displaced persons – the constitution made a definitional distinction between the two categories – had to be repatriable, or had to express “valid objections” to return to their state of origin. These valid objections could be on the grounds of “persecution because of race, religion, nationality or political opinions”<sup>83</sup>. It was the first time the term “persecution” was used in an international legal instrument in reference to refugees – a usage some see as permeated by the political considerations of the time.<sup>84</sup> In a sense, the IRO’s definition of the refugee was still categorical – it stipulated that refugees had to be a “victims or Nazi or fascist regimes”, “Spanish Republicans and other victims of the Falangist regime in Spain”, or “persons who were considered refugees before the outbreak of the second world war”<sup>85</sup>. Yet, it went a long way in the individuation of refugee status. Zolberg describes the organizations as a

major institutional innovation, shifting away from the collective approach that had marked previous international efforts toward a more individual one that was inherently more appropriate to a universalistic orientation. This was reflected

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<sup>80</sup> Barnett, “Global Governance and the Evolution of the International Refugee Regime,” p. 244.

<sup>81</sup> Zolberg, Suhrke, and Aguayo, *Escape from Violence*, p. 22.

<sup>82</sup> Barnett, “Global Governance and the Evolution of the International Refugee Regime,” p. 244.

<sup>83</sup> United Nations, *Constitution of the International Refugee Organization*, 15 December 1946, United Nations, Treaty Series, vol. 18, p. 3.

<sup>84</sup> Melander, “The Concept of the Term ‘Refugee,’” p. 9; Goodwin-Gill, “The Politics of Refugee Protection,” p. 18.

<sup>85</sup> Constitution of the International Refugee Organization



principally in its operational structure, founded on the notion of applicants who were to be processed by a specialized staff of "eligibility officers" in order to ascertain whether they came within the organization's mandate.<sup>86</sup>

## ***2. Distillation of a Practical Legal Category***

As mentioned above, the IRO was established as a temporary organization. Despite its capabilities, the organization was not able to repatriate or resettle the entire displaced population in Europe. In 1949, the Secretary General of the United Nations proposed the drafting of a convention that addresses the needs of all persons lacking international protection – i.e. both stateless persons who lack *de jure* protection, and refugees who lacked *de facto* protection.<sup>87</sup> Despite the initially holistic ambitions of the project, it was agreed early on to drop the ‘stateless’ and focus on ‘refugees’ whose needs were perceived to be more pressing and who were, as a category, more politically expedient for Western states leading the process<sup>88</sup>. This process led to the establishment of the United Nations High Commissioner for Refugees (UNHCR) in 1949 and to the formulation of the Convention Relating to the Status of Refugees in 1951. According to a General Assembly in December, 1950, the mandate of the High Commissioner included persons considered refugees under previous agreements and, largely fitting the definition adopted in the Convention that specified that a refugee is any person who

as a result of events occurring before 1 January 1951 and owing to well-founded 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

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<sup>86</sup> Zolberg, Suhrke, and Aguayo, *Escape from Violence*, p. 23.

<sup>87</sup> James C. Hathaway, "A Reconsideration of the Underlying Premise of Refugee Law," *Harvard International Law Journal* 31, no. 1 (Winter 1990): 144.

<sup>88</sup> *Ibid*, p. 150

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.<sup>89</sup>

One of the operational elements in this definition is the notion of ‘persecution’. A conception of the refugee that centers on the element of ‘fear of persecution’ is deliberately exclusive. The definition is *not* broadly humanitarian; it does not aim to embrace into the ranks of the ‘protected’ all those whose basic rights have been violated. It is focused in what can be interpreted as a practical manner – it seeks to solidify the *extraordinary* nature of refugee status so as to “preclude overwhelming numbers”<sup>90</sup>. It is also in keeping with the political leanings and interests of its Western drafters. UNHCR’s statute and the following convention, as was the case with the IRO’s constitution, emphasize the endangerment of civil and political rights as the foundation for refugee status. Theoretically, the denial of a person’s basic socio-economic rights, and his departure from his country of nationality as a result, would not make that person entitled to international protection. Such a person, except in cases when deprivation is directly and systematically linked to one of the five listed grounds, would be an economic migrant. The privileging of political and civil rights over socio-economic rights could be understood as calculatingly playing to the advantage of Western states and the disadvantage of the Easter Bloc at a time when Cold War tensions were soaring.<sup>91</sup> Affording refugee status under a definition in which ‘persecution’ is key also implies a degree of condemnation to the state governing the territory of origin. Since the 1951 Convention preserves the power of affording such status as an exclusive prerogative of host states, a given government may be more

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<sup>89</sup> UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137

<sup>90</sup> Zolberg, Suhrke, and Aguayo, *Escape from Violence*, p. 25.

<sup>91</sup> Hathaway, “A Reconsideration of the Underlying Premise of Refugee Law.”

inclined to recognize a refugee originating in an unfriendly state than a refugee originating in a sympathetic one<sup>92</sup>. The issue of selective and politicized deployment of refugee status is nowhere clearer than in U.S. immigration policy which, during the Cold War, favored the admission of individuals from the Eastern Bloc, and later Cuba and Indochina, aiming to “encourage defection of all USSR nationals and 'key' personnel from the satellite countries in order to inflict a psychological blow on Communism and, though less important, material loss to the Soviet Union insofar as the emigration pertained to professionals.”<sup>93</sup> That being said, UNHCR’s statute and the 1951 Convention were as much the product of Second World War anxieties as they were of Cold War politics and ideology. In the words of Daniel Steinbock, the drafter were “to a great extent, legislating about past events”<sup>94</sup> The Nazi persecutions, for one, figure prominently among motivating factors behind the definition of the refugee. In addition to defining who is (and who is not<sup>95</sup>) a refugee, the 1951 Convention lists a catalogue of rights refugees are entitled to, including the right to seek asylum and not to be penalized for doing so, the right not to be forcibly returned to their state of origin where they might face persecution, the right to due process, and other civil, political and socioeconomic protections that bring refugees closely into the fold of the state.

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<sup>92</sup> Zolberg, Suhrke, and Aguayo, *Escape from Violence*, p. 27; Hathaway, “A Reconsideration of the Underlying Premise of Refugee Law,” p. 169; Goodwin-Gill, “The Politics of Refugee Protection,” p. 17.

<sup>93</sup> Zolberg quoting a 1953 U.S. National Security Council memorandum on the “Psychological Value of Escapees from the Soviet Orbit”

<sup>94</sup> Daniel J. Steinbock, “The Refugee Definition as Law,” in *Refugee Rights and Realities: Evolving International Concepts and Regimes*, ed. Frances Nicholson and Patrick Twomey (Cambridge: Cambridge University Press, 1999), 13–36.

<sup>95</sup> The 1951 Convention specifies who is to be excluded from refugee status – those responsible for war-crimes, for example.

### ***3. The Cold War, the Expansion of UNHCR, and the Politicized Deployment of the “Refugee”***

Being a product of its time, temporal and geographic limitations were incorporated into the Convention; the instrument only covered refugee movements resulting from events “occurring before 1 January 1951” and gave signatory states the option to only recognize refugees originating in Europe. The limitations were set at the request of governments which were “unwilling to assume future obligations the extent of which could not be foreseen.”<sup>96</sup> However, soon after the founding of UNHCR and the drafting of the Convention, it became apparent that forced population displacement was not an issue that could be bounded. The 1956 Hungarian Uprising and subsequent Soviet invasion produced the first post-1951 mass exodus – a case in point. The crisis that led to an influx of over 200,000 Hungarians into Yugoslavia and Austria took place in the year UNHCR’s temporary mandate was set to expire. The organization, though initially allotted an extremely limited budget and understood to be temporary in character, was authorized by the General Assembly to coordinate the humanitarian response to a refugee influx clearly outside the dateline set by the 1951 Convention. The response to the Hungarian uprising is considered a pivotal moment in UNHCR’s history for, not only did the organization prove adept at coordinating relief efforts, it also proved politically nimble in appealing to both West and East in a moment of heightened tension. In two other precedential instances around the same time period, UNHCR circumvented political entanglements and responded to the flow of refugee from the newly established People’s Republic of China into (British) Hong Kong, and

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<sup>96</sup> Iain Guest, “The United Nations, the UNHCR, AND Refugee Protection: A Non-Specialist Analysis,” *International Journal of Refugee Law* 3, no. 3 (1991)

from Algeria into Tunisia and Morocco during the Algerian War of Independence. The UN General Assembly enabled UNHCR to respond through its “good offices” and without reference to the status of the displaced population – i.e. without recognizing fleeing Algerians as refugees and implying that the French government was persecuting its own subjects.<sup>97</sup> The notion of “good offices” furnished UNHCR with the latitude to provide emergency humanitarian assistance to individuals who did not fall within the scope of the Convention, but not to provide them with “international protection”. The legal definition of the refugee would become universal – at least in theory – with the adoption of the 1967 Protocol, shedding the temporal and geographical limitations imposed by the 1951 convention. In practice, however, the conception of the refugee would still be governed by national and geopolitical interests. To highlight the political motivations behind refugee recognition, Haddad lists statistics of the nationalities of refugees admitted to the United Kingdom between 1939 and 1980: “250,000 Polish nationals, 50,000 other eastern Europeans, 17,000 Hungarian nationals, 5,000 Czech nationals, and 19,000 south-east Asians”<sup>98</sup>. Haddad goes on to contend that, despite the ‘universalization’ of the concept of the refugee, in terms of solutions to non-European displacement, UNHCR – and, more generally, the global refugee regime – tended to focus on containment through assistance and employed repatriation as the main ‘solution’. This tendency contrasted quite starkly with an earlier Western propensity to resettle European refugees – what Coles referred to as the “exilic bias”<sup>99</sup>. As Randy Lippert indicates, refugee-ness became a moral-political tactic that helped underscore the distinction between the Eastern Bloc as an uncivilized, illiberal, refugee-producing

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<sup>97</sup> Gil Loescher, *Beyond Charity* (Cary, GB: OUP Oxford, 1996), p. 73,

<sup>98</sup> Haddad, *The Refugee in International Society*, p. 149.

<sup>99</sup> Hathaway, *The Rights of Refugees under International Law*, p. 90.

zone, and the West as a civilized, liberal, refugee-receiving (or –aiding) alliance.<sup>100</sup>

This distinction between refugee-producing and (nominally) refugee-receiving states would be maintained in contexts unrelated to the Cold War, from decolonization to growing developmentalism, bolstering a broadly liberal worldview while tacitly denouncing the deficiency of “under-developed” states.

#### ***4. Toward a Universal Conception of the Refugee***

Setting aside the highly qualified application of the refugee concept, the definition itself, even in its version expanded by the 1967 Protocol, remained highly individualized and focused on the notion of persecution in relation to civil and political rights<sup>101</sup>. Recognizing this conceptual predisposition and adapting to local circumstances, regional actors began contextualizing the refugee definition beyond the requirement of an individual well-founded fear of persecution. In 1969, the Organization of African Unity (OAU)’s Convention Governing Specific Aspects of Refugee Problems in Africa defined the refugee as

every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.<sup>102</sup>

The OAU’s definition is fitting of the circumstances of its time and environment. The individual’s fear of persecution, stated in the first Article of the convention, becomes one of a number of elements that could prompt his departure from his country of origin,

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<sup>100</sup> Lippert, “Governing Refugees,” 305.

<sup>101</sup> Hathaway, “A Reconsideration of the Underlying Premise of Refugee Law,” p. 162.

<sup>102</sup> Organization of African Unity (OAU), Convention Governing the Specific Aspects of Refugee Problems in Africa, 10 September 1969, 1001 U.N.T.S. 45

including acts perpetrated by foreign powers. Along a similar vein, in 1984, the Organization of American States (OAS) promulgated the Cartagena Declaration asserting that refugees are

persons who have fled their country because their lives, safety or freedom have been threatened by generalised violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.<sup>103</sup>

The Cartagena Declaration expressly sought to “enlarge the refugee concept”<sup>104</sup>. While the 1951 Convention was not amended after the 1967 Protocol, the formulation of regionally applicable definitions did provide room for laxer interpretations of the original definition. These regional instruments widened the possibilities of access to refugee status.

From a definitional perspective – and here, we mean specific conceptions codified in international legal instruments – the refugee category was not modified much after the 1967 protocol. The regional instruments incontestably broadened the limits of the refugee definition by contextualizing it, but even the Cartagena Declaration and the OAU convention stuck close to the general outline of the refugee figure as it appears in the text of the 1951 Convention. In fact, some see that these regional instruments “not as expansions of the 1951 definition but rather as pragmatic implementation strategies for refugee determinations consistent with the underlying purposes of the Convention.”<sup>105</sup> It can be said with a high degree of confidence that the 1951 Convention and its Protocol remain at the very center of our conceptualization of

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<sup>103</sup> Regional Refugee Instruments & Related, *Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama*, 22 November 1984

<sup>104</sup> Ibid

<sup>105</sup> Alexander Aleinikoff, “The Refugee Convention at Forty: Reflections on the IJRL Colloquium,” *International Journal of Refugee Law* 3, no. 3 (1991): 619.

the refugee. These authoritative instruments are also the most widely acceded to – by 2015, 145 states were parties to the Convention and 146 to the Protocol.<sup>106</sup> From a regimentation standpoint, the machinery for dealing with forced population movements across territorial borders is undeniably shifting and evolving. The regime is, after all, a highly dynamic network of actors and institutions attempting to deal with a facet of human mobility that is gaining in momentum and complexity. States, which continue to be the central element in the equation, employ a variety of strategies that enable them to conform to, bend, or completely circumvent codified conceptualization of the refugee, and that includes finding new avenues of interpretation.

#### **D. Conclusion**

In this chapter, we provided a brief history of the regimentation of the refugee problem, highlighting the evolution of a unified institutional conceptualization of the refugee category. We saw that at a specific historical juncture, changing perceptions and immigration practices urged a differentiation between forced and ordinary migrants that started to seep into institutional structures. During the inter-war period, the sheer number of displaced persons and their perception as a threat to host states prompted the launch of a practical regimentation rooted in a novel form of professional, transnational humanitarianism that espoused values tinged with cosmopolitanism. Recognizing the legal incapacity of the displaced, a system of “collective surrogacy” developed to provide protection to those whose governments failed to do so. In tandem, a conceptualization of refugees as constituting a specific subset of aliens was emerging

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<sup>106</sup> UNHCR, “States Parties to the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol” (UNHCR, April 2015).



and being codified in international law. The refugee category evolved from being collective and particularistic, to becoming more individuated and universal. Following the Second World War, the regimentation process led to the distillation of a more stable definition of the refugee – one that integrated tidily into the ruling statist rational and proved conveniently deployable in an intensifying Cold War. The 1951 convention definition underwent an expansion of scope with the 1967 protocol and proved rather plastic in terms of regional contextualization. The regional instruments did not modify (or leave up to interpretation), however, was the spatial mobility component of the refugee definition. A refugee is a refugee because, for one reason or another, he flees his country and crosses an international border.<sup>107</sup> The concept continued to be intrinsically tied to the territorially bound nation-state. The most broadly institutionalized conception of the refugee then, necessarily contains an element of cross-border escape, be it from individual persecution or from generally violent circumstances. It is a malleable concept whose application depends on the domestic interests of receiving states, which brings us back to that tension that seems to inevitably arise from a notion of rights external to citizenship, a tension which, according to Hathaway, is due to “the incompatibility of the presumed solution to the

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<sup>107</sup> As a side note, a single group of refugees has been historically excluded from the system of “collective surrogacy”. Since the inception of the refugee regime, Palestinian refugees were treated as a unique population that, while aligned with the general conceptualization of the refugee, does not fall under the mandate of the 1951 Convention, its protocol or the statute of UNHCR. Palestinian refugees have, in fact, been legally and institutionally omitted from the international protection regime: article 1D of the 1951 Convention stipulates the treaty “shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance.” Palestinians were thus omitted from the most widely adopted refugee definition by virtue of being an UNRWA client group. The exclusion of Palestinian refugees from the refugee regime points to political and institutional interests at play in building the refugee category – interests that merit a dedicated study.

needs of refugees – secure exile – with the acute preoccupation of states to avoid cultural, ethnic, political, or economic disharmony within their own borders.”<sup>108</sup>

Through regimentation and institutionalization, a coherent label emerged which permits a certain filtration process, a control of movement across space – the government of the displaced – that upholds the interest of the nation-state. We have attempted in this chapter to “historicize” the refugee category and point to the various interests, positions and dynamics that led to its crystallization. We should reiterate once again the contingency of the refugee concept. The category of refugee cannot be divorced from the context in which it developed and became institutionalized for the purpose of governing a distinct group people within an order that privileges the territorially bound nation-state as the guarantor of rights.

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<sup>108</sup> Hathaway, “A Reconsideration of the Underlying Premise of Refugee Law,” p. 175.

## CHAPTER IV

### GOVERNING THE “REFUGEE”

#### A. Introduction

In the preceding chapter, I traced the historical development of an institutionalized conception of the refugee. The manner with which states dealt with those crossing into their borders due to a loss of rights associated with citizenship – or a loss of the protection of their own states – evolved from particularistic practices to a more universalistic definition of refugees. The evolution of the refugee concept was highly contingent on the interests and circumstances of the states implicated in the population movements of the twentieth century. The end product – a conception of the refugee that still stands today – was one that *contributes* to the preservation of a specific international order that positions the state as the primary guarantor of rights, and the citizen as their primary bearer. As Robyn Lui puts it, what is particular about refugees is “their inability to actualize either the formal or substantive expressions of modern citizenship.”<sup>109</sup> In the coming section, I discuss the international government of refugees through an established but dynamic refugee regime: the amalgam of knowledge, practices, institutions, legal instruments, bureaucracies, and programs that render the refugee governable. The chapter is divided into two major parts. The first looks at refugee governance through a relatively wide lens and describes the leading framework through which the refugee “problem” and its management are conceptualized. In other words, we elaborate the “field” through which practical

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<sup>109</sup> Robyn Lui, “The International Government of Refugees,” in *Global Governmentality: Governing International Spaces*, ed. Wendy Larner and William Walters (London: Routledge, 2004), p. 131.

interventions take place; the ‘rationalities’ that make the refugee intelligible. The second part zooms into that framework to leach out some of the “microphysics” of refugee governance – it focuses on some those practical interventions that inscribe the refugee category upon the displaced and enable their conduct.

## **B. The Rationality of Refugee Governance**

The institutionalized definition of the refugee, as we highlighted in the previous chapter, was formalized in the 1951 Geneva Convention. As Zetter argues, the Convention is the “point of departure” for refugee labels and its definition is the one “against which all forced migration labels are tested”<sup>110</sup>. The definition, in all its elasticity, is the product of an evolving refugee regime. The categorization and labelling of the refugee, or the development of the refugee as a “discursive fact”, are the basis of an exercise of subjectivation that enables governance. It can be argued that the refugee regime began prior to the institutionalization of the refugee label. It started with the problematization of a specific type of person and the response to the needs of such a person, typically destitute, through networks of philanthropic, non-state actors. It then grew during the inter-war period into temporary collaborative inter-governmental efforts to respond to population movements in geographically and temporally delimited instances. These efforts thoroughly anchored the refugee as an object of statist intervention through a series of inter-state treaties, and the establishment of a number of specialized organizations. A regime grew following the Second World War that established a terminological, legal, bureaucratic and programmatic infrastructure for

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<sup>110</sup> Roger Zetter, “More Labels, Fewer Refugees: Remaking the Refugee Label in an Era of Globalization,” *Journal of Refugee Studies* 20, no. 2 (June 1, 2007): 172–92

understanding (knowing), recognizing (or labelling) and responding to (governing) instances of population displacement across national borders. These collaborative efforts eventually became more permanent and universal.

By the late 1970s, the regime had developed into what Gallagher describes as a “large and complex system of international, regional and national responsibilities and relationships”.<sup>111</sup> The plethora of agreements, and governmental and non-governmental organizations that mushroomed in response to an expanding refugee problem that was progressively becoming global in character became more specialized and more compartmentalized. Its various components sought to build and standardize knowledge into the nature of forced population movements, to extend legal protection to refugees, to respond to emergencies, to raise funds, to lobby governments, to develop programs, and to engage in a range of other activities. Around each of those functions grew “a body of experience (...) incorporated in rules, regulations, contracts, agreements, and handbooks.”<sup>112</sup> The word regime has been mentioned a number of times throughout the study. In relation to refugees, we defined it above as the combination of knowledge, practices, institutions, etc... that render governable populations forced to flee across territorial borders. More specifically, we can think of a regime as an institutionalized network of collaboration that describes ‘what is’ and prescribes ‘what should be’.<sup>113</sup> The problematization of the refugee – as an aberration from the state-citizen system – covers part of the ‘what is’, a part that has been thoroughly institutionalized by legal,

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<sup>111</sup> Dennis Gallagher, “The Evolution of the International Refugee System,” *The International Migration Review* 23, no. 3 (1989): 584.

<sup>112</sup> Ibid

<sup>113</sup> Lui, “The International Government of Refugees” 122.

administrative and other components of the refugee regime. What we describe below is the general framework of the prescriptive end of the deal – the ‘what should be’.

In order to clarify the overarching rationality that animates refugee governance, we will attempt to draw a sort of diagram of the principal functions of the governance framework. If we were to conceptualize that framework, we would be able to split it along two major lines: the first is concerned primarily with the temporary management of the refugee “problem”; the second is concerned with resolving the “problem”. We also propose a third, more novel, function that generally seeks to avert the “problem” altogether.

### ***1. Managing the Refugee ‘Problem’***

In the preceding chapter (Chapter III), we mentioned a system of “collective surrogacy” that developed to provide international protection when states fail to provide their own citizens with an adequate measure of national protection (or “natural protection” as some authors term it<sup>114</sup>). International protection basically entails the provision of rights to those who fall within the scope of the refugee category – i.e. to those who are recognized by the refugee regime or their host states as refugees.

In theory, states within whose jurisdiction refugees might be found are bound (by contract or by custom) by collective standards to ensure the displaced have access to a set of substantive civil, political and economic rights in addition to asylum. Ensuring access to rights is practically linked to the provision of assistance and service: it goes without saying that the regime cannot work on ensuring access to human rights (e.g. access to courts, free exercise of religion, access to education, the right to work,

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<sup>114</sup> David Kennedy, “International Refugee Protection,” *Human Rights Quarterly* 8, no. 1 (1986): 34.

etc...) without first filling some of the more basic needs that tend to arise during instances of cross border displacement (the need for shelter, food, water, sanitation, healthcare, etc...). This can be thought of as the humanitarian component of international protection. It outwardly serves the purposes of saving lives and alleviating human suffering. International protection, then, is concerned primarily with emulating the role of the state whose protection is no longer available to or has been rejected by a given refugee. Theoretically, prior to the events that led to his flight, the refugee's state of origin was the entity responsible for his general social, political and economic well-being as a citizen. Within the existing regime, the practical suspension of his citizenship renders the refugee the responsibility of the international community and the receiving state. In the receiving state, the refugee would ideally benefit from rights similar to (but not necessarily equaling) those enjoyed by the citizens of that state, and would have access to the available public services. In line with the principle of burden sharing, the international community, through various various mechanisms and institutions, usually comes in to monitor the refugee's access to rights, and to assist the receiving state in meeting the refugee's basic needs. We can think of international protection as the *temporary* management of the refugee problem. The notion that the refugee is a temporary category is crucial to the functioning of the regime. International protection – the vicarious administering of rights and physical necessities – is always presumed provisional. Eventually, some sovereign state would have to reclaim the responsibility of protecting the “internationally protected”.

## ***2. Resolving the Refugee “Problem”***

The conceptualization of the refugee as a figure to be managed *temporarily* brings us to the second component of the governance framework: the search for solutions to the refugee problem. As appears in one of UNHCR's training manuals, "the ultimate objective of refugee protection is to seek durable solutions to the problem of people being forced to flee from their homes and to cross an international border."<sup>115</sup> Durable solutions – sometimes referred to as permanent solutions – can be thought of as institutionally applied methods aiming to reintegrate refugees into the framework of the sovereign nation-state, or "emplace" the displaced into their "proper place of belonging"<sup>116</sup>. Traditionally, reestablishing the severed bond between refugee and state has been pursued along three principal paths. The first is "repatriation" or, to be more exact "voluntary repatriation". Voluntary repatriation aims to facilitate the return of refugees to their countries of origin once the conditions that initially prompted their flight no longer exist. The second sought after solution is 'local integration'; the idea here is for countries hosting refugees to fully assimilate them into their own structures. Integration is highly dependent on the willingness and ability of host states to absorb existing numbers of refugees and grant them rights and access to services comparable to those of their own citizens. The third is 'resettlement', which entails the (usually) permanent movement of refugees to a third country. This solution is heavily dependent on the previously mentioned notion of burden sharing, being linked to the willingness of states not necessarily directly impacted by a given refugee crisis to systematically take in certain numbers of refugees and place them on the path to full rights.

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<sup>115</sup> UNHCR, "Reach Out Refugee Protection Training Project - Module 9: Durable Solutions," *UNHCR*, 2005, <http://www.unhcr.org/4371fa4f2.pdf>.

<sup>116</sup> Liisa H. Malkki, "News from Nowhere: Mass Displacement and Globalized 'Problems of Organization,'" *Ethnography* 3, no. 3 (2002): p. 3.



These three ‘solutions’ are fully integrated into the governance framework: the practices are referenced in international legal texts<sup>117</sup> and elaborated administratively. They are actively sought by UNHCR, governments and other actors implicated in forced population movement. Entire programs and bureaucracies are built around them. The solutions are adapted to contexts; they are prioritized or deployed in combination. In reality, the vast majority of states hosting refugees have no interest in absorbing them into their own populations; as for resettlement, it only offers prospects to a slim margin of individuals, being dependent as it is on the whims of non-affected states. There exists, then, a “return bias” that is formally articulated by UNHCR:

“Voluntary repatriation is usually viewed as the most desirable long-term solution by the refugees themselves as well as by the international community. UNHCR's humanitarian action in pursuit of lasting solutions to refugee problems is therefore oriented, first and foremost, in favour of enabling a refugee to exercise the right to return home in safety and with dignity.”<sup>118</sup>

*Home* is an operative term in the above-quoted text. In fact, it is a term that pervades discourse around the refugee. In addition to purely practical reasons for adopting repatriation as the preferred solution, the ‘return bias’ stems from the tendency to territorialize identity. In his study on voluntary repatriation, Warner points to a reductionist proclivity to romanticize notions of belonging to a community rooted on a bordered territory; he criticizes the nostalgic liberal idealization of a return to home that informs refugee policy.<sup>119</sup> Similarly, Malkki contends that our conceptualization of displacement is imbued with a “sedantalist metaphysics” that emphasizes the

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<sup>117</sup> General Assembly Resolution 428(V) establishing the statute of UNHCR calls upon governments to assist the “High Commissioner in efforts to promote the voluntary repatriation of refugees.”; reference to durable solutions is made in the 1951 Convention and its Protocol.

<sup>118</sup> UNHCR, “Handbook - Voluntary Repatriation: International Protection” (UNHCR, 1996).

<sup>119</sup> Daniel Warner, “Voluntary Repatriation and the Meaning of Return to Home: A Critique of Liberal Mathematics,” *Journal of Refugee Studies* 7, no. 2–3 (1994): 160–74.

importance of rootedness and “pathologizes uprootedness.”<sup>120</sup> Institutionalized solutions to the refugee problem are as rooted in the state system as the emergence of the category itself. As Haddad put it, “non-statist possibilities of solving the refugee “problem” are inconceivable in a world of sovereign states, just as the refugee is inconceivable outside a world of sovereign states”.<sup>121</sup> As we mentioned in Chapter II, the problematization of the refugee, its conceptualization as abnormal serves to privilege the citizen/nation/state hierarchy, to stabilize the “normal” position of the citizen. The fact that the institutionalized therapeutic interventions that aim to address the pathological nature of the refugee entail re-integrating him into the territorial state goes a long way to support that claim.

### ***3. Preventing the Refugee “Problem”***

The third component of the governance framework is one that cannot be seen as fully integrated into the refugee regime (yet). It is a rather recent tendency to conceive of the refugee “problem” as avoidable, given as it is rooted in a certain failure of sovereign state to assume its duties. Theoretically, the notion of prevention aims to preempt refugee phenomena by addressing perceived ‘root causes’ before they lead to forced migration; it consists of “initiatives which have the effect of averting the occurrence and recurrence of those conditions which force people to leave their usual place of residence.”<sup>122</sup> Out of line with the traditionally reactive nature of international protection, prevention is conceived along a more pro-active, even interventionist, line

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<sup>120</sup> Cited in note 38.

<sup>121</sup> Haddad, “The Refugee,” p. 321.

<sup>122</sup> Josep Zapater, “PREVENTION OF FORCED DISPLACEMENT: THE INCONSISTENCIES OF A CONCEPT,” *UNHCR*, April 2010.

to nip the disrupting (and often costly) effects of displacement in the bud<sup>123</sup>. Practically speaking, with a specific set of variables in mind, the systematic monitoring of risk areas and the collection and analysis of information take place to identify red flags<sup>124</sup> and put into motion response policies that aim to avert the flows. These policies range from initiating projects to address underdevelopment as a ‘root cause’<sup>125</sup> to engaging in “preventative diplomacy”. Notionally, the concept of prevention has gone far beyond raising red flags and engaging in conflict management. The notion of the ‘responsibility to protect’ (R2P) is a case in point<sup>126</sup>. Based on the conception of ‘sovereignty as responsibility’ R2P “advocates an enhanced role for the international community in relation to states who are unwilling or unable to protect their citizens from the most egregious crimes under international law.”<sup>127</sup> The implementation of R2P is basically built around a three-pillar strategy focusing on “the protection responsibilities of the state; international assistance and capacity-building; and timely and decisive response<sup>128</sup> – the latter could include the option of military intervention. The advent of the notion of the R2P has been hailed by many as a welcome incursion of international norms into the domain of sovereignty<sup>129</sup>. One could make the argument, however, that the R2P lies within a conceptual spectrum of interventions that aim to prop up the position of states perceived by the international order not to be adequately exercising

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<sup>123</sup> Ibid

<sup>124</sup> Joshua S. Martineau, “Red Flags: A Model for the Early Warning of Refugee Outflows,” *Journal of Immigrant & Refugee Studies* 8, no. 2 (May 28, 2010): 135–57.

<sup>125</sup> Lui, “The International Government of Refugees,” p. 130.

<sup>126</sup> We speak of R2P here as it relates to refugee situation, assuming that conflict and systematic abuses of human rights tend to produce cross-border movement.

<sup>127</sup> Cristina G. Badescu, “Gareth Evans, The Responsibility to Protect: Ending Mass Atrocity Crimes Once and for All,” *Human Rights Review* 12, no. 1 (March 2011): 133–35.

<sup>128</sup> Susan Harris Rimmer, “Refugees, Internally Displaced Persons and the ‘Responsibility to Protect,’” *UNHCR*, March 2010

<sup>129</sup> Ibid

their sovereignty – or a specific understanding of sovereignty. Like the R2P, other measures, including the building of capacities and the provision of financial assistance to affected states, aim to “help states help themselves.”<sup>130</sup> The point is, when applied to the context of forced population movement, the notion of prevention, like the other practices of the refugee regime, seeks, through various pro-active (and sometimes coercive) methods, to preserve the natural position of the sovereign state, the idea being to keep the individual’s links with his state extant (though not necessarily intact).

To recap, what we have described above, in a highly simplified manner, is a framework that enables a specific process of ordering: the refugee regime functions i) to administer the refugee “problem” through the (temporary) provision of humanitarian assistance and international protection; ii) to resolve the refugee “problem” by reinstating his links to a sovereign state (be it the state in which he originates or another); and iii) to prevent the refugee “problem” by maintaining the general health and viability of sovereign states. This governance framework, then, rests on what can be termed a statist rationality that appears to inform its various functions. It is in line with that rationality that the refugee is rendered thinkable and that practical interventions to govern the refugee are formulated. The relatively simple framework we described guides a highly complex system that Lui depicts as

a set of regulatory technologies that institutionalizes refugee issues, puts them on the international agenda, sanctions conduct, procedures, practices and norms, and socializes those who are participants.

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<sup>130</sup> This statement was used by the Secretary-General in reference to the R2P. United Nations, 2009. President of the 63rd session UNGA, Interactive thematic dialogue of the UN GA on the R2P, 23 July 2009.

In the following section, we discuss some of those “regulatory technologies” that practically render the refugee knowable and governable.

### **C. Technologies of Refugee Governance**

The refugee regime, in its complexity, serves the purpose of temporarily managing, resolving and preventing refugee situations. Refugee phenomena are made thinkable through a scheme which largely rests on the centrality of the nation-state. In order for the government of refugees to effectively unfold, the framework we described above is rendered operational through a set of practices, techniques and technologies, which effectively lead to the production of the refugee as a knowable, governable entity. In that regard, much is invested into conceptualizing the refugee as an ideal-typical figure, with predictable behavior and a generalizable character. A good example of this tendency can be found in the following statement by Barry Stein, a renowned refugee scholar:

(...) scientifically, it is possible to develop a perspective that sees certain consistencies in the refugee experience and refugee behaviour (...) Refugees should be seen as a social-psychological type whose behavior is socially patterned. Refugee problems should be analyzed from a general, historical, and comparative perspective that views them as recurring phenomena with identifiable and often identical patterns of behaviour and sets of causalities. Specific refugee situations should not be treated as unique, atypical, individual historical events but rather as a part of a general subject.<sup>131</sup>

#### ***1. Refugee Registration: A Governmental Practice***

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<sup>131</sup> Barry N. Stein, “The Experience of Being A Refugee: Insights from the Research Literature,” in *Refugee Mental Health in Resettlement Countries*, ed. Carolyn Williams and Joseph Westermeyer (Washington: Hemisphere Publishing Corporation, 1986).

The penchant for reductionism, flagrant in the abovementioned academic statement, appears in subtler ways throughout the refugee regime. It is especially visible in one of the primary practices of refugee governance: the process of registration. Registration is defined by UNHCR as the “recording, verifying, and updating of information on persons of concern to UNHCR with the aim of protecting and documenting them and of implementing durable solutions.”<sup>132</sup> The process is conceptually simple: in order for a person of concern to UNHCR<sup>133</sup> to access what the organization has to offer (international protection, assistance and services, durable solutions), that person has to make themselves known to the organization. The process lies at the very base of the refugee regime’s activities. In the same document containing the abovementioned definition, UNHCR goes on to describe registration as “a fundamental component of international protection”, one that “recognizes an individual to be someone of concern, or potentially of concern, to the High Commissioner”. It is the “first step in formalizing the protection relationship between the government and/or UNHCR and the refugee by allowing the refugee or asylum-seeker to avail themselves of the protection and assistance they need and permitting the government and UNHCR to provide protection and assistance.”<sup>134</sup> In addition, registration has a more cumulative component: it functions as the source of UNHCR’s information on its “population of concern”, akin to a central statistics bureau building a national civil registry. Through registration, information is aggregated with the purpose of informing policy, as clearly stated by the organization in one its field guides to registration:

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<sup>132</sup> UNHCR, “UNHCR Handbook for Registration: Procedures and Standards for Registration, Population Data Management and Documentation” (UNHCR, September 2003), p. 6.

<sup>133</sup> Here, UNHCR is considered as the representative of the refugee regime. In some cases, where the infrastructure is available, the process of registration is actually handled by host governments.

<sup>134</sup> UNHCR, “UNHCR Handbook for Registration”, p. 6.

Information (...) can enable all aspects of a refugee programme to be planned adequately. Most aspects of UNHCR's work can be addressed more effectively if there is reasonably accurate information on the population (...) The number of people requiring assistance defines the level of inputs required: general food needs, shelter, water, non-food items, health, sanitation. Who those people are defines special and particular needs: protection, education, community services (including special programmes for the handicapped, the elderly, the unaccompanied), special feeding programmes.<sup>135</sup>

The practice of registration, then, functions to enable refugee governance on two overlapping levels: that of the individual and that of the population. Within these two levels, various technologies are employed to produce a governable refugee.

## ***2. Registration as a Labelling Process***

The act of moving across a border alone does not automatically render a person a refugee, just like the fact of being born on a given territory (or to certain parents) does not automatically render a person a citizen. Both categories have to be administratively acquired. In fact, both categories have to be officially declared based on a set of conditions the individual in question has to meet. In the case of the refugee category, those conditions are usually set out in international legal instruments – some of which we have already discussed. A person who is forced to migrate across an international border has to be labelled a refugee by an official body, be it the receiving government or the UNHCR, in order to be able to access the benefits of the status. In other words, it is when faced with the appendages of the regime, that the refugee materializes into an object of policy. The bureaucratic pronouncement involved, which is in essence a decision to include a displaced person within the ranks of the refugee category, begins with registration (and formally culminates in refugee status determination). What is particularly relevant for our purposes are the technical

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<sup>135</sup> UNHCR, "Registration Guidelines: A Practical Guide for Field Staff" (UNHCR, January 1994)

components of this official contact between the putative refugee and the regime that contributes to refugee governance. The direct interaction between the refugee and representatives of the refugee regime usually takes the form of a registration interview during which the refugee is expected to cooperate with the clerk, disclosing his personal information and providing proof of his identity. A standard set of information is recorded for every individual or household. According to UNHCR field manuals<sup>136</sup>, depending on the context, the data set to be collected could include the applicant's name, sex, date of birth, place of origin, date of arrival, marital status, family links, education level, occupation/skills, religion, ethnic origin, and special protection and assistance needs. These categories are broken down further. Specific needs, for example, are partitioned into sub-categories that include “unaccompanied children, unaccompanied young women, isolated women, the physically disabled, the psychologically disabled, unaccompanied elderly, single heads of household (male or female) without support, victims of torture and violence, social or ethnic minorities who are isolated from the majority.”<sup>137</sup>

The categories and subcategories are telling: beyond gathering the minimum required “biodata” to determine age cohorts, ethnic groups and other sets, registration classifies refugees into sub-categories based on need. It effectively instills the registered individuals with pre-defined characteristics that render them sites of programmatic intervention. What unfolds through the registration process is a bureaucratically mediated categorization and classification exercise that overtly aims to make the population more manageable. This exercise leads to the distillation of

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<sup>136</sup> UNHCR “Handbook for Registration” and UNHCR “Registration Guidelines”

<sup>137</sup> *Ibid*



individual experiences, in all their complexity, into simplified, administrable cases with both broad and narrow labels. The notion of bureaucratic labelling can help support the claim that the registration process contributes to the construction of refugee subjectivity. In his influential study on the “bureaucratic identity” of refugees, Roger Zetter defines labelling as “a way in which people, conceived as objects of policy are defined in convenient images.”, a “process of stereotyping which involves disaggregation, standardization, and the formulation of clear cut categories.”<sup>138</sup> Through this process of differentiation, he claims, “individual identity is replaced by a stereotyped identity with a categorical prescription of assumed needs.” Based on the assumption that being included – i.e. being labelled a refugee – is the aim of those applying to the status, Zetter draws the conclusion that the label itself requires a certain level of conformity which ends up resulting in the “circumstances of ‘story’ [having] to be relinquished to the bureaucratic dictates of ‘case’.”<sup>139</sup>

### ***3. Biopolitical Technologies of Registration***

Zooming further into the process, it can be argued that some of the technologies used in the registration process – namely photographing and biometric recording – function as biopolitical tools that cement the acquisition of bureaucratically formulated subjectivities. According to UNHCR’s Handbook for Registration, “biometrics have been developed into automated methods of recognizing the identity or verifying the claimed identity of an individual based on a physical characteristic. The most common features that can be measured are the face, fingerprints, and the iris.” It is

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<sup>138</sup> Roger Zetter, “Labelling Refugees: Forming and Transforming a Bureaucratic Identity,” *Journal of Refugee Studies* 4, no. 1 (1991): 44.

<sup>139</sup> *Ibid*, p.47

important to mention here that the deployment of biometric technology, in addition to acting to “fix” identity, also serves to weed out illegitimate registration and access to benefits. Preventing abuse and manipulation through, for example, multiple registration, is one UNHCR’s stated goals in utilizing biometrics<sup>140</sup>. Aiming to “better manage its global refugee population”<sup>141</sup>, UNHCR recently launched what it refers to as the Biometric Identity Management System, an integrated solution with a centralized data base that will “enable the agency’s 7600 employees to improve protection and support for an estimated 33.9 million refugees in 125 countries as they move across borders.”<sup>142</sup> In reference to the newly adopted global system, one UNHCR official stated that “biometrics will help refugees in the future as it ensures that once they've been through the system and enrolled with their fingerprints and irises, we'll always know who they are.”<sup>143</sup> While undoubtedly well-intentioned, this statement ominously alludes to a ubiquitous biopolitical ‘gaze’ that seeks to extend its control over the forcibly displaced. By linking identity to unalterable biological traits, biometrics come close to permanently inscribing the registered individual with an identity whose parameters are dictated by the refugee regime. It is in this regard that Btihaj Ajana argued that “biometric procedures contribute to the establishment of identity rather than merely the verification of a pre given one, that is to say, how biometrics is ‘not merely descriptive, but constitutive of identity’.”<sup>144</sup>

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<sup>140</sup> UNHCR “Handbook for Registration”, p. 98

<sup>141</sup> Accenture Consulting, “UNHCR: Identity Management System Uses Biometrics to Better Serve Refugees,” n.d. <https://www.accenture.com/us-en/success-unhcr-innovative-identity-management-system.aspx>.

<sup>142</sup> Ibid

<sup>143</sup> UNHCR, “UNHCR’s New Biometrics System Helps Verify 110,000 Myanmar Refugees in Thailand.,” *UNHCR*, June 30, 2015, <http://www.unhcr.org/55926d646.html>.

<sup>144</sup> Btihaj Ajana, “Recombinant Identities: Biometrics and Narrative Bioethics,” *Journal of Bioethical Inquiry* 7, no. 2 (April 1, 2010): 237–58.

#### ***4. Rendering the Refugee Knowable***

In addition to its role in inscribing the refugee category, the registration process acts as the refugee regime's primary source of information. Information gathered and classified through the registration process (and other processes), plays a pivotal role in the government of refugees. Data on individuals and households, aggregated as data on the refugee population, is the statistical basis for intervention – it contributes to the constitution of knowledge that is instrumental to the management of the refugee population in “its depths and its details.”<sup>145</sup> These aims are clearly highlighted by UNHCR, stating that it “contributes to coordination and informed decision-making in refugee operations by providing accurate, relevant and timely data and statistics. This key resource is used by all partners to respond to the needs of refugee populations.”<sup>146</sup> As we mentioned above, the registration process is one of classification. The aggregation of information extracted from individual cases not only reveals the demographic makeup of the population, but provides a breakdown of its needs, its regularities, its cycles, its consumption patterns, its shifting shape; effectively, it renders the population a visible, governable entity. In that sense, it can be argued that the information compiled through registration renders the refugee knowable in a manner that reinforces the category's status as an object of intervention.

In the above section, we shed some light on how certain technologies of the refugee regime contribute to the production of refugee subjectivity and to refugee governance. By categorizing and classifying the displaced, the registration process distills individual experience into manageable cases inscribed with standard

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<sup>145</sup> Michel Foucault, “Governmentality,” in *Power*, ed. James D. Faubion, vol. 3 (New York: The New York Press, 1994), p. 219.

<sup>146</sup> UNHCR Statistics and Operational Data Portal; <http://www.unhcr.org/pages/49c3646c4d6.html>

characteristics that facilitate intervention. Bureaucratic identities are cemented by fixing technologies (biometrics), and the bodies of the holders are rendered amenable to detection, observation, measurement, management and tracking. The information gathered and aggregated through the process of registration contributes a great deal to knowing and governing the refugees as a population. The information also works to facilitate the conceptualization of the refugee as a victim who requires assistance – a site of intervention.

#### **D. Conclusion**

What we attempted to do in this chapter is to deploy Foucauldian theoretical tools to highlight the workings of the refugee regime by: i) looking at the statist rationality that animates refugee governance through a framework for administering the problem of the displaced (temporary provision of rights and assistance), resolving it (reintegrating the refugee into citizenship), and preventing its occurrence (by propping up nation-states with the potential to produce refugee movements); ii) considering some examples of technologies (linked to the practice of refugee registration) that facilitate the production, knowledge, and governance of the refugee. We hinted at the link between the overarching rationality that informs the refugee governance framework and the actual technologies through which that rationality is rendered practicable, though the argument remained incomplete.

The example of registration, along with its ancillary technologies, is but one among many processes that systematically label, categorize and stereotype the displaced in order to facilitate their administration. The processes of refugee status determination, resettlement and assistance provision are other examples of mechanisms

that inscribe the refugee category in order to conduct those that come to depend on it. Connecting the governmental rationality at work with the “micro-physical” technologies of power can be effected by examining more thoroughly some of those processes that link up with the wider functions of the refugee regime framework: for example, linking modalities of assistance provision and fundraising to the temporary administration of the refugee “problem”; or, in a more straightforward manner, linking actual resettlement mechanisms (interview processes, criteria determination, etc...) to the implementation of one of the durable solutions. All in all, a more effective use of a Foucauldian theoretical framework would allowed us to draw a clearer link between the rationalities and the tactics of a system that problematizes, constructs and governs refugee at the levels of discourse and practice.

## CHAPTER V

### CONCLUSION

This study was divided into three principal sections. The first was concerned with theorizing the refugee and underscoring the political contingency of the category. The second sought to trace the crystallization of the category through historically specific processes of institutionalization and regimentation. The third focused on the political rationality underpinning refugee governance and described some of the governmental technologies through which this rationality is rendered practicable. The overarching theme, or rather, the argument supported in different ways by all three sections of the study is that the refugee category emerged out of, contributes to the stability of, and is conceptualized and governed through the state/citizen combination.

By way of summary, in Chapter II, we argued that the refugee construct is fundamentally tied to the territorialized nation-state and the emergence of the concept of citizenship. We contended that the foundation for the emergence of the refugee was the integration of the notion of citizenship into the framework of the exclusionary state and the fastening of rights to political membership. In addition, we argued that the refugee category's usefulness, its expediency, emanates from its problematization as the "other" to the citizen. So problematized, the refugee contributes to the maintenance of the natural position of the citizen within the statist order.

In Chapter III, through a historical overview of the regimentation of the refugee "problem", we traced the evolution of the refugee label into one that became highly individuated and reasonably universal. We saw that the institutionalization of

the category was dependent on a mixture of shifting perceptions, evolving practices and vested political interests. While there existed a certain tension between the sovereignty of the nation-state and the cosmopolitanism of notions of international rights, the refugee regime and the distilled refugee label take the sovereign state order for granted, as is clear from the cross-border mobility component of the various refugee definitions. The emergence of a coherent refugee label that internalized statist assumptions allows for the governance of the displaced in a manner that upholds the existing statist order.

In Chapter IV, we discussed the statist rationality that informs the governance of refugees. We described the framework that functions to manage the refugee “problem” through the temporary provision of humanitarian assistance and international protection. Within the same framework, the resolution of the “problem” is conceptualized and practiced in purely statist terms: the refugee ceases being a refugee by way of reintegration into a sovereign state. A third component of the governance framework seeks to prevent the refugee problem by maintaining the viability of sovereign states that might potentially wobble to the point of producing external displacement. It is in accordance with a statist rationality that the refugee is rendered thinkable. That same rationality delimits the field of practical interventions through which the refugee is governed. We then tried to approach refugee governance from a narrower angle by discussing some of the practices and technologies through which the refugee category is inscribed, and the refugee is rendered a knowable and governable. Through the practice of registration, refugees are labelled, their identities are bi-politically fixed, and they are rendered knowable and visible as individuals and as a population.

No doubt, a large number of questions related to the development of the refugee category and its deployment were not addressed in this study. The question of how global power dynamics factor into the generation and management of mass displacement, for example, was very cursorily addressed in the third chapter by pointing to the vested interests that animated the elaboration and regimentation of the refugee category. However, a lot more remains to be said about how North-South relations inform the global management of the refugee “problem”. For instance, it is worth noting that the global mechanisms of refugee governance are not the most equitable. Refugee flows have tended, for some time, to disproportionately affect states in the global South. While developing states have usually had little say in hosting refugees – they often found themselves faced with *de facto* displaced populations on their territories – developed countries, by virtue of their distance from locations of unrest, have had the benefit of choice in their engagement with situations of forced migration. In relative terms<sup>147</sup>, the latter states have had the luxury of determining, in a deliberate manner, when, where, and how to become involved in responding to refugee flows. The governments of developed states define, in accordance with their national interests, the number of refugees they take in through resettlement schemes, the amount of funding they set aside for responses to emergencies or development initiatives, which affected regions they target, and the specific types of programs they are willing to fund. The North-South dynamic, this uneven rapport, has significant implications on refugee related processes and merits further elaboration.

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<sup>147</sup> We say “in relative terms” since developed states also have to contend with *sur place* asylum claims. The number of refugees who reach their territory, however, pales in comparison to the number of those displaced in the immediate vicinity of their countries of origin.



Another issue to point out is that the study focused exclusively on the refugee category – only one among many other categories of human mobility. It should be acknowledged though that the refugee cannot be effectively examined without making reference to other people on the move. Looking at the internally displaced (IDP), for example, might be very revealing. The manner in which the IDP category developed and was institutionalized in parallel to that of the refugee could support the argument of the entrenchment of the principal of sovereignty when it comes to the management of population displacement. The fact that individuals effectively experiencing very similar circumstances – not being able to access the protection of their state – are treated so differently because some have crossed an international border while others have not, drives the sovereignty point home. Considering IDPs and other categories of people on the move can help highlight the arbitrariness of the refugee category, but it can also shed light on how refugee governance is becoming integrated into a highly complex global regime that seeks to administer all population flows. How this expanding system – what some authors have referred to as the “refugee regime complex”<sup>148</sup> – has impacted the conceptualization and governance of the refugee category should be addressed in further detail.

In a nutshell, while acknowledging some structural weaknesses and inconsistencies, what we attempted in this study is to use a Foucauldian toolkit to both theoretically and historically contextualize the refugee category in order to shed light on how the statist system reacts when confronted with mass displacements that tend to

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<sup>148</sup> In “The Refugee Regime Complex”, Alexander Betts points to the integration of refugee administration into an elaborate regime that incorporates travel, labor, security, development and human rights institutions.

be the result of a failure of sovereignty. What I elaborated, then, is not a novel outlook on the refugee question, but a prelude to a more extensive research project centered on the refugee category. With the theoretical base established, such a study could potentially focus on specific processes that produce refugee subjectivities. The point would not be to build a single, monolithic notion of refugee-ness. Rather, it would be to argue that, through contact with the appendages of the refugee regime, the diversity of subjectivities that are inherent in any population sub-set are effectively subsumed into pre-determined categories that enable governance. A consideration of the processes of refugee status determination or resettlement can be especially revealing. More specifically, by looking at the narrational aspects of these processes – how refugees articulate the events that led to their flight from their countries of origin and how their articulation is interpreted, judged and recorded by the representatives of the refugee regime – we could shed light not only on the role of the refugee regime in constituting refugee subjectivity, but also on the deliberate manner in which refugees attempt to fit their narratives into pre-packaged notions of refugee-ness.

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