The Refugee in Europe

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Abstract

This paper suggests a theoretical and methodological heuristics for the analysis of the specific situation of asylum seekers in Europe with the focus on reception centers in Germany. It should be shown that the situation of asylum seekers in Europe can be conceived as a result from translation relations between global and local political and juridical targets of the European refugee regime, the organization reception centers and formations of groups between the asylum seekers.

Keywords: European refugee regime, reception centers, translation, milieus, refugees

Los Refugiados en Europa

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Resumen

Este artículo sugiere una heurística teórica y metodológica para el análisis de la situación específica de los demandantes de asilo en Europa en el caso de los centros de recepción de Alemania. Debería mostrarse que la situación de los demandantes de asilo en Europa podría concebirse como el resultado de las relaciones de traducción entre los objetivos jurídicos de los representantes políticos globales y locales del régimen europeo de refugiados, la organización de centros de recepción y la formación de grupos entre los demandantes de asilo.

Palabras clave: regimen europeo de refugiados, centros de recepción, traducción, ambientes, refugiados

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The momentum of forced migration contributes to a great number of public discussions not only about the relevance of the external EU frontiers, but also about the standardization of reception regulation and the situation of asylum seekers in reception centers. The variety of discussions exhibits that one has to consider a number of factors to reflect well founded and critically on the efficiency of present practices and structures of reception regulations for asylum seekers. Relevant factors are, for example, the specific reactions of both the asylum seekers and the organizations of reception centers to the implementation of juridical and political targets. To answer the question for the concrete efficiency of present practices and structures of reception regulations for asylum seekers one has to analyze the impact of juridical and political targets on the micro level of reception centers. The following pages should present an outline of possible heuristics for a such an analysis.

One methodological hypothesis of this paper is that the impact of juridical and political targets on the micro level of reception centers can be analyzed through a reconstruction of translation relations[1]: These are translation relations between directives of refugee politics and the local organizations of reception centers, between reception centers and other organizations and actors in their environment, between group formations and individual persons. These translation relations form the specific situation of the refugee in Europe. It is a situation of tensions (e.g. between collective and individual criteria for the reception or between pluralized and precarious inclusion profiles of the asylum seekers) resulting from the specific juridical and political location of EU refugee politics[2].

The European Refugee Regime

As a consequence of the "Common European Asylum System" the harmonization of a EU asylum law has been formally fulfilled – under strange conditions: the fulfillment of the supranational harmonization has been fulfilled in the silent agreement that the term refugee would have a stable meaning that can be adapted to and translated in every national legal system of EU member states. This Asylum System can be shortly described as an official narrative of the European Refugee Regime. The European

Refugee Regime can be seen as a macro constellation of the structures concerning European refugee politics and asylum law. Part of this constellation is the whole official discourse on refugee politics and refugee law in Europe, all political decisions, contracts etc. Since there is an actual impact of EU decisions on the member states' affairs with regard to the regulation of migration to the EU, this can be called a regime. But in contrast to a concept that understands a regime as a macro structure, which is influencing meso and micro levels top down, we should find a concept of regimes that consequently links macro structures with the micro level without preferring an analytical primacy for either one.

Refugee Studies still seem to handle the International Refugee Regime (IRR) as a top down concept. Analyses of the historical emergence of the IRR (Loescher, 1994), of the relation between global governance and the IRR (Barnett, 2002) and the position of the UNHCR within international cooperation (Betts, 2008) define with regard to the regime definition by International Relations (Krasner, 1983a; Kratochwil & Ruggie, 1986; Barnett, 2002, p. 238; Loescher, 1994, p. 352) as a whole of the norms and rules governing the actions of states and individuals with regard to the protection of refugees and of the organizations representing these rules and norms. They focus on the question, through which measures the organizations of the UNHCR can impose sufficiently the instutionalization and coordination of the protection of refugees in contrast to the regulation of border politics concerning the political security of a single national state. They conclude that the UNHCR should fit out capacities for the strengthening and stabilization of cooperations with other organizations, that it should adopt its organizational structures to forms of global governance and that it should canalize state affairs for the benefit of the norm of protection. This conclusion shows a problematical presupposition: UNHCR would be able to handle as an actor to use the norms of international refugee law without any change of the meaning of the norms. Taking into account the analytical difference between macro and micro, DiMaggio and Powell define regimes as transindividual units that cannot be reduced to motives of action. They ask for the permanence and the homogeneity of organizational structures and practices. The recent strategy of explanation for the permanence and homogeneity can be found in the neoinstitutional account of

decoupling (Meyer & Rowan, 1977). For Meyer and Rowan, formal organizations are characterized through differentiations between their structural elements in forms of subunits and their activities (Meyer & Rowan 1977, p. 356). This would lead to a minimization of evaluation and control of the organizational practice developing intra-organizational conflicts and a loss of legitimization to the outside. Decoupling implicates the reproducibility of formal structures because external elements would exist in an "organizational language" and on "vocabularies of structure" (Meyer & Rowan, 1977, p. 349). In their concept of world culture, Meyer et al. broaden the concept of decoupling to the discovery that states and organizations would adjust their programs in their explication and hence lead to a global spreading of cultural values and their meanings (Meyer, Boli & Thomas, 1987, p. 19; Meyer, Boli, Thomas & Ramirez, 2005). The earlier account for decoupling is a helpful alternative to the regime definitions of IR, while the latter seems to keep the representationalist assumption, as mentioned above, alive. In her study of the political order of refugee camps, Katharina Inhetveen defines the international refugee regime with regard to Meyers and Rowan's decoupling concept (Inhetveen, 2010, p. 24) as an "institutionalized system consisting of 1) tacit and explicit rules and norms focusing on refugee related actions of individual, organizational and governmental actors, 2) organizational actors concentrating on these refugee related actions and 3) operational practices concentrating on refugees" (Inhetveen, 2010, p. 17). Inhetveen keeps distance from the representationalist account (Inhetveen, 2010, p. 37). She assumes that refugee camps adjust their programs and their official organizational structure while they exhibit local peculiarities on the level of daily practice that prevent the assumption of global adjustment of stable norms. Here she brings a more hermeneutically and pragmatically instructed view into play. The actors rather refer to "divergent horizons of interpretations" in the "heterogeneous order of refugee camps" (Inhetveen, 2010, p. 22). And one horizon of interpretation is the refugee regime: "the international refugee regime occurs as a dominant horizon of interpretation, but even so do national, organizational and religious affiliations and different references to the original area of the refugees. Also the actors' different external relations are relevant as their social spheres of reference, e.g. relations to mother

organizations, to financiers or politically defined actors" (Inhetveen, 2010, p. 22). From this perspective, organizations like refugee camps do not apply rules and norms in a representationalist way. They cannot help but interpret norms in the horizon of their own practices and to relieve them of their original context. Hence, changes on the macro level do not cause changes on the micro level without any circumstance. This perspective is very near to the theoretical assumptions that should be followed in this paper:

Normative guidelines and principles by federal organizations are usually followed by an application under constraint in organizational practices; but the modus operandi of the application of generalized guidelines depends on the pragmatic contexts. As being based on situational practices and their indexicality, the applications cannot represent the norms in a linear way. Applications of explicit norms can be conceived as translations. From the perspective of the pragmatist translation theory (Renn, 2006) such translations itself are used with reference to tacit norms of language usage within the horizon of a specific milieu: they are "interferences", necessarily meaning changing translations of specific terms from one context to another.

For example, the term *refugee* underlies different, partly antagonistic and conflicting manners of use. A short look to the media allows an insight to one – certainly not surprising - presupposition: some manners of use of the term refugee exhibit an interesting primacy of the term refugee in contrast to ethnic categories in the description of the affiliation of asylum seekers. On the one hand it is an avoidance of the dangers of stereotyping persons in forms of more or less unambigous categories: stereotyping other persons in forms of ethnic categories tends to seperate people on the basis of a supposed lineage of kinship. On the other hand it conveys vagueness and uncertainty in dealing with the european refugee problem: The humanitaristic usage of the term refugee which tends to avoid ethnic categories as the primal form of affiliation tries to define persons on the basis of globally understandable needs and seeks to victimize persons as refugees, asylum seekers etc. (even on the level of UNHCR refugee camps, which are obliged to international law).

But the problem is that, if once a person comes to Europe to seek for asylum, she or he has to present his- or herself in terms of ethnic categories. This is just a side-effect of the European Refugee regime, that can be

outlined as follows: semanticly the European Refugee regime is oriented towards the notion of a common European identity in terms of shared norms etc. it has to draw and redraw again its boundaries against highly stereotyped groups of people: hence the European refugee regime ignores the notion of statelessness in the refugee definition from the Geneva Convention of Refugees. But besides this problem of law, as we shall see, the problem lies in the organizational practices in the regulation of reception of asylum seekers. They force the tensions between individual and collective categories for reception and between precarious and pluralistic inclusion profiles and so probably have specific effects on the asylum seekers' affiliations to communities.

Labeling Refugees

The status of refugees concerning the Geneva Convention of Refugees (GCR) (UNHCR, 2010) is a legal label on the level of semantics: A label for juridical persons As a legal label it subjectifies the term refugee. It is mainly articulated in Art. 1 A (2) GCR[3], the definition of refugees; the principle of non-refoulement (Art. 33) and the principle of non-penalization (Art. 31). The Convention defines refugees as follows:

> 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 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.

The mentioned "well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion**"** subjectifies the term refugee: it defines a status of a single legal subject and this status has to be authenticated in terms of the credibility of the subjective motives for refuge (Nuscheler, 2004, p. 188). Therefore legal inquiry of the subjective facts and circumstances is crucial for the

recognition or the denial of properties of refugees. The refugee definition does not implicate the geographical change per se but the unability of the state of origin in assuring fundamental rights and protection as the basic feature for the category of refugees.

From the Schengen agreement on all further agreements, contracts and treaties for common asylum politics of the EU achieved the harmonization of the national asylum politics in the EU-States (Neumann, 1993; de Jong, 2000; Nuscheler, 2004, p. 177). This process of harmonization implicated an increasing institutionalization and legalization of the third country regulation as a core condition if the common asylum law oft he EU. This institutionalization and legalization of the third country regulation implicated different processes of the adaption of the refugee definition to EU law. The reception of the refugee definition in the European asylum law can be described briefly by 4 steps: 1) The Amsterdam Treaty from 1999 obliges every EU State to common formulations of common guidelines concerning the Asylum Process, Conditions of Reception and Refugee Properties with reference to the Geneva convention (van Krieken, 2000). 2) DUBLIN II led to an optimation of the regulation of the primal competency for the asylum application to the end, that the competent EU state can be rapidly determined and that the abuse of asylum can be avoided (Recast Directive, 2003). 3) The system EURODAC (Council Regulation (EC) No 2725/2000) was introduced for the execution of DUBLIN II. EURODAC is an information pool to validate the legality or illegality of the current or the former stay of an asylum seekers in a EU State. This information pool is a biometric database for comparing fingerprints and for verifying if an asylum applicant has previously claimed asylum in another EU State, or if an asylum applicant has been previously apprehended when entering EU territory unlawfully. EURODAC should make it easier for EU States to determine responsibility for examining an asylum application and facilitates the application of DUBLIN II. Furthermore there is 4) the Qualifications Directive (Directive, 2011), confirming the reception of the GCR in European Law and which should ensure a stronger commonality of the EU-States in the use of criteria for the identification of persons. The refugee definition runs as follows: "[...]a third country national who, owing to a well-founded fear of being persecuted for reasons of race, religion,

nationality, political opinion or membership of a particular social group
[…]"**.** It notes that "Member States may introduce or retain more favourable
standards for determining who qualifies as a refugee or as a person eligible
for subsidiary protection, and for determining the content of international
protection, in so far as those standards are compatible with the Directive"
(Art. 3). Effects of these four steps can be seen as effects of the interrelation
between both normative orders on the semantic level: Mainly the
contradiction between EU Border-Control, which is based on the third state
principle, and refugee protection (GCR) is being discussed in law studies.
The europeanization of normative obligations to the refugee status led to a
kind of pseudo-objectivation of the refugee status – it is an
instrumentalization of the protection against so called irregular migration,
which undermines the German asylum law.

Interferences between the norms of the refugee status on the levels of
different semantics of law and on the organizational level lead to
contradictive imperatives of inclusion for personal and collective identities.
Besides the legal label it suggests a humanitaristic implication of basic
explicable needs. The refugee definition not just endows persons with rights
– it also has humanitaristic implications that stylize persons as vulnerable
and deterritorialized victims. This humanitaristic normalization is a defining
feature of organizations like reception centers. International reception
centers are organized by the UNHCR for „rules of access to and allocation
of ressources" (Zetter, 1991, p. 44). Following Zetter, the labeling process
can be described as a process of stereotyping by criteria of disaggregation,
standardization and the formulation of distinct categories in the notion of
generalized basic needs. In its extent of generalization it suggests neutrality
towards the personal identity of the persons concerned (Zetter, 1991, p. 45;
Wood, 1985, p. 7). So once a person has the refugee status he or she can be
affiliated to the social group that has fundamental basic needs. A further
implication of this labeling process can be seen in the victimizing function of
the refugee status (Zitelmann, 1988; Harrel-Bond & Voutira, 1992;
Lammers, 1999; Rajaram, 2002; Haddad, 2004; Horst, 2006).

The research about the relevance of political administration in gaining
access to resources for humanitarian aid agencies emphasizes particularly
the process of labeling refugees as a stereotyping process of bureaucratic

ascription of identity (Zetter, 1991; Mazur, 1988; Haddad, 2004; Malkki, 1992). Demands for the stabilization of bureaucratic procedures, and, therefore, demands for the transformation of the individual story into a case, lie in the loyalty and conformity with the stereotype. Beneath the subjectifying function of the refugee status, the undermining of personal individuality is crucial for the labeling process. Another important implication of the victimization is the emphasis on deterritorialized uprootedness of identities (Binder & Tosic, 2003; Haddad, 2004; Scalettaris, 2007). One side effect of this emphasis can be seen in the "pathologization of uprootedness" (Malkki, 1992, p. 32), representing the typical refugee as a problem. Sociopolitical conditions for displacement, then, are not the main problem, but rather the „bodies and minds" of the people categorized as refugees.

For Malkki, the principle of daily classification of asylum seekers as persons having a national identity underlies the "national order of things" (Malkki, 1992, p. 37; Malkki, 1995, p. 5). Following the ritual concepts of Victor Turner and Mary Douglas, she denotes the status of refugees within this national order of things as "structural invisibility" and "danger of pollution" (Malkki, 1995, p. 7). Malkki conceives structural invisibility as consequence of the reception of asylum seekers in special organizations: In the moment of reception they receive a liminal status, getting forced into a liminal state as "border crossers" (Turner) between their position in their homelands' social structure and their future position that is imaginative and uncertain. In this liminal state they can be a latent danger for the societal orders of the host land – and this is a possibly forcing the regulation of a reinclusion. Malkki characterizes this liminal state as a two side medal for the refugees: just because it is a liminal state, one has to consider that there is the possibility of "creative subversion and aberration" (Malkki, 1995, p. 8) of the national order of things.

Following Malkki (1992), Gupta and Ferguson conceive the notion of uprootedness as highly co-constructed by discursive mechanisms of exclusion based on the notion that the refugee's identities would be extensions of a prior, natural identity rooted in locality and community" (Gupta & Ferguson, 1992, p. 7). One important insight of Guptas and Fergusons attempts to of postcolonial theory of identity lies in their

argument for the deterritorialization of identity. Similar to Hall they provoke an identity concept based on They describe these as borderlands. Also Arjun Appadurai (2005) claims for such a concept of identity. However, even if he did not work out a theory of identity, Appadurai gives the borderlands concept a clearer name. From his point of view, taking global movements of migration and refuge into account (–besides the global financial market, transnational media etc.), modernity is a complex project, which involves the production of (imaginative) projects that can form the social backdrop from groups. This means that deterritorialization of identity, while there is a more and more imaginative, constructional character of a narrow link between territory and culture, can lead to a group's tendency of re-ethnizising it's own identity, of giving back the lost narrow link between territory and identity. So, for Appadurai, the central cause of the deterritorialization of cultural identity lies in the diasporic public spheres (Appadurai, 2005, p. 35). The transnational, network-like orders of these spheres can build "ethnoscapes", in which culturally heterogeneous groups may tend to imaginative re-ethnizisings of a homogeneous cultural identity – and these ethnoscapes would increasingly influence the domestic and foreign policies of modern national states. So, for Appadurai, there are mutual impacts of political initializations of increasing border politics, of xenophobia pogroms etc. and even ethnic cleansing as reactions on refugee movements and increased dynamics of forced migration – and ethnoscapes as reactions of these movements on nationalist politics (Appadurai, 1998, p. 12; 2005, p. 191).

There are cases being discussed, where the demands of loyalty and conformity are getting used by the actors of refugee camps in a creative way –they can come into play as "political currency" (Zetter, 1991, p. 58) between the refugees and the hosts (Zetter, 1991; Inhetveen, 2010), and the value of the currency depends on the pragmatic interpretations of loyalty and conformity. So the meaning of loyalty and conformity (for the refugees *and* the hosts) can be dominated by an established interpretation of the refugees. Zetter (1991), Malkki (1995) and Inhetveen (2010) observe specific reactions to demands of loyalty and conformity with regard to the emergence of communities between the refugees. Through reinterpretations of the

demands of loyalty and conformity they can develop a particular collective identity for the articulation of (partly subversive) common political interests. All these fruitful insights raise the following questions: how are we able to analyze such tendencies? Which social processes have to be taken into account for such analyses? And how is the tendency of groups to re-ethnizising their identity linked to organizational practices of labeling? And how is the individual identity linked to the processes that can be described as attempts for subsuming individual experience under collective stereotypes? I will now try to concretize the mentioned insights with regard to our theoretical perspective and to the case of reception centers.

The Refugee in Europe

The uncertainty and, thereby, the vagueness of interpretations of the liminal state within an uncertain temporal horizon is crucial for the situation of asylum seekers.

We can assume that this position of asylum seekers in reception centers helps to simplify the organizational allocations of stereotypes (in forms of ethnic and national affiliations). Furthermore we can assume that the forms and effects of these stereotyping processes exert pressure on the asylum seekers to adapt their identity to the demands of identity. More abstract, this leads to tensions between individual and allocated criteria of reception and between precarious and pluralistic inclusion profiles of the asylum seekers. The tension between individual and allocated criteria of reception is getting forced by the stereotyping labeling process as mentioned above. The inclusion profiles of the asylum seekers are precarious just because of pressure to adapt their identity. In contrast to some common sense assumptions towards the traditional affiliation of the asylum seekers we have to assume that the people in the modern world society are more or less affiliated to many sorts of groups, organizations, networks etc. So they may interpret themselves in ethnic terms while they are part of many other affiliations –and they do not have to worry about their cultural identity while they can act out their plural inclusion profiles. But when they interpret themselves in ethnic terms, while this interpretation is pragmatically relevant one the one hand and is getting used as an "imaginary resource" for

"*suggested* communities" (Renn, 2014, p. 192) on the other hand, they can form a "desperate communitization" (ibd) –and this kind of communitization can exhibit an attractive offer for persons experiencing marginalization, loss of personal bonds, loss of trust in the political security etc., in the sum: experiencing a huge amount of pragmatic uncertainty that is probably being forced by the organizations of reception centers. In the case of the European Refugee Regime this tension can be concretized.

Beneath the (as we could see) nationalist identity implications of the refugee definition there is another important feature of the European Refugee Regime that has an impact on the way persons affiliate themselves to ethnic collectives: A further, sociologically much more interesting cause for a contradiction between international and EU norms lies in the fact that the juridical competence for interpretation of German Residence Act (Aufenth.G.) in case of arrival of asylum seeking persons have federal states and municipalties, the Federal Agency for Migration and Refugees (BaMF). This competence depends on the contextueal usage of political and juridical semantics. It has to be concretized through organizations (Reception Centers). Organizations have a mediating function between systemical efforts of coordination and local contexts. They are relatively autonomous compared to systemical forms and milieu-specific forms of integration. The organizations of reception centers: are a tertium comparationis between systems of law and politics and milieus resp. persons. They are actively involved in actions of translation: their efforts lie in organizational decisions about the allocation of refugee properties through the use of the German Asylum Procedure Act (AsylVfG) and formal forms of intercourse with the inhabitants In the reception centers there is located the foreigner´s registration office, where organizational interpretation of the law in the first contact with asylum seekers take place. These interpretations take place with regard to the examination of national/ethnic identity, to the origin from a not certain third state and to the inner connection between causes of flight and date of flight. Shedding light on the contradictions between international and EU law on the semantic level, the assumption of an explicable inner connection between causes of flight and date of flight pseudo-objectifies the definition of refugee-status and undermines Art. 31 GCR (Non-Penalization). A crucial role plays here the usage of stereotypical semantics

and generalizations in the implementation of projects and programs, the simplification of juridical processes, and the informal kinds of intercourse with the inhabitants (e.g. conflict settlement) that implicate latent suspicions of concealing and dissimulation on the side of the asylum seekers.

The usage of stereotypical semantics in terms of ethnic affiliation implies a language use that applicates and forms categories for the definition of problems and for solution of problems. The classification of persons to ethnic and national identity and the latent suspect of concealing and dissimulation can be conceived as "subsumtion of single cases under conditions applying to stereotypical collectives" (Renn, 2007, p. 85). Such subsumtions function as "short cuts of communicative understanding" (Renn 2007: 84) and as a stereotyping "normalization of strangeness" (Renn, 2007, p. 84).

The experience of the organizational grasp at the person, through which the access to the vague humanitaristic norm of refugee status seems unavailable, forces the contradiction between the experience of the persons as individualized legal entities and the experience of stigmatization of themselves as representants of an ethnic community. The asylum seekers are exposed to a pressure of legitimation and translation under constraint. The pressure of legitimation and translation under constraint are providing stages and ways of performative self- articulation for the asylum seekers. The marginalization and anonymisation that is experienced within the interaction with an anonymous other being confronted with abstract semantic formulations of affiliation suggests orientation to simple reciprocal solidarity on the basis of a community. Furthermore it requires the maintenance of performative self-articulation with regard to stereotypical constructs of ethnic affiliation. However, they force them to a self-performance as a refugee in Europe in forms of stereotypes while they force the contradictive experience of plural profiles of inclusion and the precarious state of the situation within the European Refugee Regime.

Notes

[1] The notion of translation relations is strictly referring to the pragmatist theory of Joachim Renn (2006). Renn assumes a multiple differentiation between different units of integration for social actions and different forms of differentiation. Following this theory, the different units of integration, systems, organizations, milieus and persons are linked through

translations. It is a pragmatist notion of translation, which is partly based on the concept of the difference between tacit and explicit knowledge, meaning that tacit knowledge, as a milieu based incorporated knowing how (tacit) cannot be represented by knowing that (explicit). In his theory he establishes a guiding theoretical and methodological concept for qualitative sociological research. My research project on reception centers and forms of communitization is mainly instructed by this concept.

[2] Present contradictions between different claims towards the right refugee politics in Europe just display many different contradictive definitions of refugee on the roulette table of asylum politics (including the definitions of the state of international law, human rights, civil society etc. concerning the reception of refugees). The value of the stone you lay is dependent from the coincident narratives of daily politics. Since there are numbers even of official narratives (and not just one) of the European Refugee regime, it is no surprise that recent German politics tend to not knowing what the right narrative is, while recognizing the coincidence of the game.

[3] This article is a result of a contract compromise following the principle of consense between the member states (Nuscheler, 2004, p. 188). Actually the playgrounds for interpretation and application are very wide.

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