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REFUGEE IDENTITIES AT THE MERCY OF LEGAL DETERMINATION

ROSÁRIO FRADA*

ABSTRACT

The Refugee Status Determination process bears immediate repercussions not only on the formulation of refugee narrative identities, but on how asylum-seekers construct their very sense of self alongside their relationship to their past and future. Yet, International Refugee Law provides no guidance over status determination procedures, establishing a legal void that confers disproportionate power to State discretion. In an epoch characterized by exclusionary non-entrée regimes propelled by a post-9/11 securitization logic, the myopic fixation on border control has generated a dehumanizing surveillance machinery that transformed the asylum system into a threatening opponent of refugee protection, eliminating individual subjectivity and undermining the fundamental prohibition of Non-Refoulement. Drawing insights from several testimonies, this article sheds light on the transformative identity experiences that refugees undergo when forced to navigate a labyrinthine system that prioritizes surveillance and drives the erosion of protection. It demonstrates that today's determination regime performs an alienating gatekeeping role that defines "Otherness" by forcing the disembodiment of the refugee and driving their narratives' standardization, objectification, and commodification, and suggests potential pathways for the reconfiguration of hospitality.

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INTRODUCTION

*“No one listens to you. No one gives you a chance to say what you are thinking. They always think they are right.”*¹

...

That an asylum-seeker frequently undergoes a transformative experience during their confrontation with legal status determination procedures is uncontroversial.² The pursuit to acquire refugee status for the purpose of international protection is intrinsically entwined with an intimate call for the recognition of one’s humanity and unique displacement reality, as well as for justice. As this recognition relies upon the narrative conveyed and the manner in which it is received, the Refugee Status Determination (“RSD”) process bears immediate repercussions not only on the formulation of refugee narrative identities, but on how asylum-seekers construct their very sense of self alongside their relationship to their past and future.

Yet, International Refugee Law (“IRL”) remains conspicuously silent on the guidance on, or regulation over, the status determination procedures that determine whether people seeking international protection are to be recognized as refugees, establishing a legal void that confers disproportionate power to State discretion. While the need for “fair and efficient” procedures to identify refugees per the grounds set out in the 1951 Convention relating to the Status of Refugees (“1951CSR”) is widely acknowledged,³ the adversarial relationship between asylum-seekers and host States has challenged the precision and credibility of

1. Heaven Crawley, *‘No One Gives You a Chance to Say What You Are Thinking’: Finding Space for Children’s Agency in the UK Asylum System*, 42 AREA 162, 166 (2010).

2. Matthew Zagor, *Recognition and Narrative Identities: The Legal Creation, Alienation and Liberation of the Refugee* 1 (Jan. 7, 2014) (unpublished research paper No. 11-22) (on file with ANU College of Law).

3. EUROPEAN COUNCIL ON REFUGEES AND EXILES, GUIDELINES ON FAIR AND EFFICIENT PROCEDURES FOR DETERMINING REFUGEE STATUS 1, 9 (1999), <https://www.refworld.org/docid/3decd90d4.html> [<https://perma.cc/KK2W-8KLT>]; UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, CONCLUSIONS ADOPTED BY THE EXECUTIVE COMMITTEE ON THE INTERNATIONAL PROTECTION OF REFUGEES: 1975-2009, at 88 (2009), <https://www.unhcr.org/my/sites/en-my/files/legacy-pdf/578371524.pdf> [<https://perma.cc/4VK7-ZVG4>]; UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, HANDBOOK ON PROCEDURES AND CRITERIA FOR DETERMINING REFUGEE STATUS AND GUIDELINES ON INTERNATIONAL PROTECTION, at 143, 251, U.N. Doc. HCR/1P/4/ENG/REV. 4 (2019) [hereinafter, UNHCR Handbook], <https://www.unhcr.org/media/handbook-procedures-and-criteria-determining-refugee-status-under-1951-convention-and-1967> [<https://perma.cc/7736-X43C>]; 1951 Convention Relating to the Status of Refugees, art. 1, July 28, 1951, 189 U.N.T.S. 137 [hereinafter, 1951CSR]. Entered into force on April 22, 1954, 1951CSR and has been supplemented by the Protocol relating to the Status of Refugees, which entered into force on October 4, 1967. Together, they form the cornerstone of international refugee protection. UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, CONVENTION AND PROTOCOL RELATING TO THE STATUS OF REFUGEES, introductory note, 1 (2010), <https://www.unhcr.org/media/convention-and-protocol-relating-status-refugees> [<https://perma.cc/RHT5-EJJ5>].

asylum decision-making.⁴ In an epoch characterized by exclusionary *non-entrée* regimes propelled by a post-9/11 securitization logic,⁵ the myopic fixation on border control has generated a dehumanizing surveillance machinery that transformed the asylum system into a threatening opponent of refugee protection, eliminating individual subjectivity and undermining the fundamental non-derogable prohibition on forcible return or *Refoulement* enshrined in Article 33(1).⁶

Several examples demonstrate the fractured state of the RSD system and its urgent need for repair.⁷ In 2004, Amnesty International exposed a disconcerting reality within the UK's asylum landscape: one in every five asylum refusal decisions was overturned on appeal, with 84% being reversed due to case owners' erroneous negative assessments of applicants' credibility.⁸ Although IRL underlines the international obligation to protect people from persecution, a fundamental question arises: *which procedural elements, particularly within first-instance asylum decision-making, are obstructing the adherence to the foundational principle of the 1951CSR, Non-Refoulement?*⁹

This becomes increasingly complicated when one learns that in 2019, 75% of asylum claims in Nice were refused on the basis that alleged narratives of trauma were "unconvincing" or "not detailed enough."¹⁰ The institutionalized chronic suspicion that defines asylum-seekers as deceitful makes evident that failing to construct an imaginative persuasive story that fits the narrow confinements of the refugee regime and its monolithic discourse may lead to a

4. See generally Jef Huysmans, *The European Union and the Securitization of Migration*, 38 J. COMMON MKT. STUD. 751, 751-77 (2000); Anthony Messina, *Securitizing Immigration in the Age of Terror*, 66 WORLD POL. 530, 531-34 (2014).

5. See generally Ole Waever, *Securitization and Desecuritization*, in ON SECURITY 46-87 (Ronnie Lipschutz, ed., 1995); Didier Bigo, *The (in)Securitization Practices of the Three Universes of EU Border Control: Military/Navy - Border Guards/Police - Database Analysts*, 45 SEC. DIALOGUE 209, 212-14 (2014).

6. 1951CSR, *supra* note 3, at art. 33. The principle of *Non-Refoulement* has been coined as the cornerstone of refugee protection and is considered part of customary international law. It states "[n]o Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion." *Id.*

7. See, e.g., Crawley, *supra* note 1, at 163; FREEDOM FROM TORTURE, BEYOND BELIEF: HOW THE HOME OFFICE FAILS SURVIVORS OF TORTURE AT THE ASYLUM INTERVIEW (2020).

8. JAN SHAW & MIKE KAYE, A QUESTION OF CREDIBILITY: WHY SO MANY INITIAL ASYLUM DECISIONS ARE OVERTURNED ON APPEAL IN THE UK (Amnesty International, 2013), https://www.amnesty.org.uk/files/a_question_of_credibility_final_0.pdf [<https://perma.cc/F3ZS-ZJG4>].

9. See James Hathaway & Michelle Foster, *Failure of State Protection*, in THE LAW OF REFUGEE STATUS 361 (2d ed., 2014).

10. Emily Reid, *The Asylum Story: Narrative Capital and International Protection*, METROPOLITICS (Feb. 2, 2021), <https://metropolitics.org/The-Asylum-Story-Narrative-Capital-and-International-Protection.html> [<https://perma.cc/KF7M-EJ9S>].

legally sanctioned return to countries of persecution.¹¹ Subsequently, the asylum system becomes plagued by the narrative identities refugees—neither powerless nor impotent¹²—must fabricate to present a tactical story of persecution, trauma and potential death that negotiates the legal structures that would typically exclude them.¹³

Approaching first-instance asylum decision-making as a fervently contested, politically charged and dynamic space where the imperatives of objective legal instruments and human interactions intersect, this article argues that current RSD procedures perform an alienating gatekeeping role that defines “Otherness” by forcing the disembodiment of the refugee and driving their narratives’ standardization, objectification, and commodification. By doing so, it identifies potential pathways to empower refugees, counter politics of invisibility, and uphold minimum standards for fair and accessible procedures that uphold the 1951CSR as a “living instrument.”¹⁴ Although research on RSD exists, it does not scrutinize the inter-subjective practices within providing an account of persecution, instead focusing on the impact of Post-Traumatic Stress Disorder (“PTSD”) on memory recall and asylum officers’ inadequate training.¹⁵ Drawing insights from several testimonies, this article sheds light on the transformative identity experiences that refugees undergo when forced to navigate a labyrinthine system that myopically prioritizes surveillance and drives the erosion of protection.

I. NAVIGATING PROTECTION: COMPLEXITIES IN SELF-NARRATIVES AND CREDIBILITY ASSESSMENTS

Although a comprehensive analysis of IRL is beyond this article’s scope, a basic understanding of the regime’s core definition and the widely acknowledged minimum standards for fair and effective determination processes is required. A useful starting point for understanding RSD practices is the 1951CSR, credibility assessments, and the United Nations High

11. Nando Sigona, *The Politics of Refugee Voices: Representations, Narratives, and Memories*, in *THE OXFORD HANDBOOK OF REFUGEE AND FORCED MIGRATION STUDIES* 369, 373-74 (Elena Fiddian-Qasbiyeh et al. eds., 2014).

12. Zagor, *supra* note 2, at 13, 18.

13. WAI CHEE DIMOCK, *RESIDUES OF JUSTICE: LITERATURE, LAW, PHILOSOPHY* 9 (1st ed., Univ. Cal. Press 1996).

14. *Sepet (FC) and another (FC) v. Secretary of State for the Home Department* [2003] UKHL 15 [11] (Lord Bingham) (House of Lords 2003).

15. Hannah Rogers, et al., *The Importance of Looking Credible: The Impact of the Behavioural Sequelae of Post-Traumatic Stress Disorder on the Credibility of Asylum Seekers*, 21 *PSYCH., CRIME & L.* 139, 140 (2015); Juliet Cohen, *Questions of Credibility: Omissions, Discrepancies and Errors of Recall in the Testimony of Asylum Seeker*, 13 *INT’L J. REFUGEE L.* 293, 304 (2001); Jane Herlihy, Laura Jobson, & Stuart Turner, *Just Tell Us What Happened to You: Autobiographical Memory and Seeking Asylum*, 26 *APPLIED COGNITIVE PSYCH.* 661, 661-76 (2012).

Commissioner for Refugees' ("UNHCR") Handbook on Procedures and Criteria for Determining Refugee Status ("UNHCR Handbook").¹⁶ These provide the concepts, categories, and institutional procedures through which asylum-seekers must innovatively navigate and recount their narratives.¹⁷

When applying for international protection, claimants must show they meet the refugee definition articulated under Article 1A(2) of the 1951CSR.¹⁸ This states the term "refugee" shall apply to any person who:

*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.*¹⁹

The narrative-driven nature of the determination regime highlights the essential connection between refugee protection and the act of sharing one's personal account: refugees are obliged to communicate their displacement experiences within a legal context and in an unknown legal language in which "the duty of hospitality is formulated."²⁰ Within such narrow confines, speech as a precondition for attaining legal status may be considered the first source of violence confronted by refugees upon crossing international borders; Carver argues it operates as a translation process that shapes asylum-seekers' identities in alignment with the (post)colonial authority's "coding system."²¹ Accordingly, narrative becomes a mandatory act of revelation utilized to construct the asylum-seeker's identity within the confines of a (Western) framework of permissible and familiar politico-legal subjectivity. As Barsky affirms, it is through the imperative of disclosure that the identity encapsulated in refugee status is granted legitimacy and solidified - as this status inherently carries and assumes a narrative bounded by State recognition.²² As a result, under the nation-State's ideology the asylum-seeker's identity becomes located in a "state of

16. See generally UNHCR Handbook, *supra* note 3.

17. *Id.* ¶¶ 28-29.

18. 1951CSR, *supra* note 3, at art. 1.

19. *Id.*

20. JACQUES DERRIDA & ANNE DUFOURMANTELLE, OF HOSPITALITY 15 (Rachel Bowlby trans., Stanford Univ. Press, 1st ed. 2000). According to the authors, IRL is premised on permitting nations to hold the keys and interrogate, becoming masters in their own houses. *Id.*

21. Natasha Carver, *The Silent Backdrop: Colonial Anxiety at the Border*, 32 J. HIST. SOCIO. 154, 164-65 (2019).

22. See generally ROBERT BARSKY, CONSTRUCTING A PRODUCTIVE OTHER: DISCOURSE THEORY AND THE CONVENTION REFUGEE HEARING (Jacob L. Mey, et al. eds., 1994).

suspension,” in which one’s self-disclosure abilities are constrained by the demand for coherent and acceptable narratives.²³

Equally as significant as the refugee definition’s role in shaping refugee narratives is the procedural and institutional context within which they must be told.²⁴ Although legal determination processes are unregulated, it is widely established that they must be necessarily fair, accessible, and efficient to meet the 1951CSR’s obligations and follow the principles of international instruments posited by judges and jurists.²⁵ To ascertain asylum-seekers’ eligibility as refugees and safeguard *Non-Refoulement*, most legal frameworks entail a rigorous legal procedure which, due to a prevailing culture of mistrust, has evolved into a substantial post-migration stressor.²⁶ Central to this process is the credibility assessment, which Kagan asserts is the “single most important step” in determining whether people seeking international protection may be returned to countries in which they claim to face severe human rights risks.²⁷

The accuracy of credibility assessments is hindered by the bifurcated standard of establishing a “well-founded fear of persecution” requiring an assessment of both a subjective fearfulness and an objective risk.²⁸ As most refugees lack tangible evidence substantiating their identities and experiences,²⁹ and available information is frequently constrained, the “human problem” of refugee credibility assessments arises: adjudicators must often ascertain applicants’ plausibility in the absence of corroborative evidence beyond the claimant’s own narrative.³⁰ Kagan posits “credibility-based decisions in refugee and asylum cases are frequently based on personal judgment;” subjective decision-making processes elevate the susceptibility to biases and inaccuracies, quickly turning the evaluation of the subjective fear element into a shortcut for a negative determination.³¹

In making decisions, officials transcend the role of mere evidence analyzers; their decisions shape the (re)conceptualization of knowledge and truth within

23. Imogen Tyler, *Welcome to Britain: The Cultural Politics of Asylum*, 9 EUR. J. CULTURAL STUD. 185, 189 (2006).

24. Zagor, *supra* note 2, at 5.

25. Statute of the Int’l Ct. of Just. art. 38; Exec. Comm. on the Int’l Prot. of Refugees, Off. of the U.N. High Comm’r for Refugees, *Conclusions Adopted by the Executive Committee on the International Protection of Refugees*, 178 (Dec. 2009).

26. Katrin Schock et al., *Impact of Asylum Interviews on the Mental Health of Traumatized Asylum Seeker*, EUR. J. PSYCHOTRAUMATOLOGY, Sept. 2015 at 7.

27. Michael Kagan, *Is Truth in the Eye of the Beholder? Objective Credibility Assessment in Refugee Status Determination*, 17 GEO. IMM. L.J. 367, 367 (2003).

28. 1951CSR, *supra* note 3, at art. 1A(2); UNHCR Handbook, *supra* note 3, ¶¶ 37-42.

29. See UNHCR Handbook, *supra* note 3, ¶ 196.

30. Niamh Kinchin & Davoud Mougouei, *What Can Artificial Intelligence Do for Refugee Status Determination? A Proposal for Removing Subjective Fear*, 20 INT’L. J. REFUGEE L. 1, 8 (2022).

31. Kagan, *supra* note 27, at 367.

the refugee regime, underscoring the importance of understanding RSD in the context of subjectivity, institutional practices and the construction of knowledge, as signaled by Jubany and Hamlin.³² Potentially, the vulnerability of the asylum system resides precisely in its reliance on subjective determinations and the use of Artificial Intelligence (“AI”) in RSD could address bias and improve consistency and fact-finding.³³ However, Molnar indicates refugees are frequently utilized as testing grounds for new, unregulated technologies deployed in “opaque zones of technological experimentation” that minimize accountability and maximize coercion.³⁴ Not only does the collection of sensitive data give rise to additional protection needs and risk the further entrenchment of exclusion, but AI’s inability to verify whether decisions were rightfully made hinders the ability to improve its accuracy.

It is worth noting that neither the 1951CSR nor the UNHCR Statute explicitly address credibility as a necessary condition to secure protection, potentially because despite its practical significance, credibility must not overshadow the essence of the refugee definition. Subsequently, denying the provision of an entirely honest account should not constitute a reasonable justification for refusing international protection.³⁵ Perceived as having “high persuasive authority,”³⁶ the UNHCR Handbook departs from the inherently vulnerable position in which asylum-seekers are placed, recognizing the reservations one may have to “speak freely” and provide a “full and accurate account” before “any authority.”³⁷ As applicants “may not be able to support [their] statements by documentary or other proof,” the UNHCR Handbook promotes a “shared duty” to evaluate relevant facts between the applicant and the examiner.³⁸ In doing so, it acknowledges the examiner’s need to cultivate trust and aid in the expression of one’s “opinions and feelings.”³⁹ Nevertheless, this approach has not been universally respected by those whose duty is to advance the principles of the rule of law.⁴⁰ Consider the contrasting perspective exemplified by a statement from a UK Immigration Officer:

32. REBECCA HAMLIN, *LET ME BE A REFUGEE: ADMINISTRATIVE JUSTICE AND THE POLITICS OF ASYLUM IN THE UNITED STATES, CANADA, AND AUSTRALIA* 183 (2014); Olga Jubany, *Constructing Truths in a Culture of Disbelief: Understanding Asylum Screening from Within*, 26 INT’L SOCIO. 74, 81 (2011).

33. Kinchin & Mougouei, *supra* note 30, at 31-32.

34. Petra Molnar, *Territorial and Digital Borders and Migrant Vulnerability Under a Pandemic Crisis*, in *MIGRATION AND PANDEMICS: SPACES OF SOLIDARITY AND SPACES OF EXCEPTION* 45, 59 (Anna Triandafyllidou ed., 2022).

35. *See* Kagan, *supra* note 27, at 414.

36. *R v. Secretary of State for the Home Department, ex parte Adan / R v. Secretary of State for the Home Department, ex parte Aitseguer*, (Dec. 19, 2000), [2001] 1 All E.R. 593, Lord Steyn.

37. UNHCR Handbook, *supra* note 3, ¶ 196.

38. *Id.*

39. *Id.* ¶ 200.

40. *See id.* ¶ 202.

*"Sometimes we will just be looking to tear that person's claim to pieces . . . that is the IO's (Immigration Officer's) job."*⁴¹

Refugees encounter manifold challenges not solely arising from the imperative to recount potentially distressing experiences, which may be inherently traumatic in itself,⁴² but from the necessity to convince immigration officials of the authenticity of their narratives, because in an immigration system increasingly characterized by detention, deportation, and "rigid juridical structures," the veracity of their true stories might not be deemed sufficient.⁴³ Ultimately, the institutionalized neglect of asylum-seekers' distinct vulnerability and the contextual structures in which they are enmeshed have subverted the development of fair and equitable avenues essential for international protection.

II. THE DISEMBODIMENT OF THE REFUGEE AGAINST A TIDE OF DISBELIEF

In an increasingly self-articulating society, asylum-seekers' identities are molded by the stories they present about their selves to the individuals and establishments around which their lives revolve. Perceiving authority decisions as unfair and arbitrary due to asylum systems' reductive focus on truth, asylum-seekers often construct novel identities that expose the systemic tensions embedded within an inconsistent asylum system. Consider the case of Caroline, whose family faced persecution due to her parents' political affiliations, having had their house ransacked and her brother beaten.⁴⁴ Despite fleeing to the United States due to a well-founded fear of persecution, a clerk suggested a fabricated story:

*"'Why don't you say you were circumcised?' Caroline told her that female circumcision wasn't practiced in her country. So, she learned how to play a rape victim."*⁴⁵

Caroline's case suggests State-centric asylum systems favor tailored narratives that fit pre-established ideas of refugeeness over freely expressed identities and experiences. As Zagor posits, this is potentially where "the narrative competition" (or cooperation) between the refugee, the advocate and the decision-maker commences.⁴⁶ One's original story is ultimately subjected to bureaucratic dictates, driving loss of control, standardization, and disaggregation

41. HEAVEN CRAWLEY, *BREAKING DOWN THE BARRIERS: A REPORT ON THE CONDUCT OF ASYLUM INTERVIEWS AT PORTS* 50 (1999).

42. Karen Brounéus, *Truth-Telling as Talking Cure? Insecurity and Retraumatization in the Rwandan Gacaca Courts*, 39 *SEC. DIALOGUE* 55, 71 (2008).

43. APRIL ANN SHEMAK, *ASYLUM SPEAKERS: CARIBBEAN REFUGEES AND TESTIMONIAL DISCOURSE* 21 (2011).

44. Suketu Mehta, *The Asylum Seeker*, *NEW YORKER* (July 25, 2011), <https://www.newyorker.com/magazine/2011/08/01/the-asylum-seeker> [<https://perma.cc/P57M-S6MR>].

45. *Id.*

46. Zagor, *supra* note 2, at 18.

in a non-participatory system.⁴⁷ Compounded by the standardization of a “credible” or “authentic” narrative, and the objectivism that strips the subjectivity of one’s story, obstacles to the production of a meaningful refugee narrative appear insurmountable.⁴⁸ In this perspective, IRL assumes a distancing gatekeeping function that safeguards sovereignty and defines an “Otherness” within which asylum-seekers and practitioners must live under exclusionary regimes.

Caroline not only obtained a ready-made story from a story shaper, but strategically memorized PTSD symptoms because claiming to have been sexually abused could be considered insufficient by officials who often expect persecution victims to display pronounced emotional reactions alongside their testimonies.⁴⁹ This expectation points to a broader dynamic wherein applicants must demonstrate their powerlessness to better their lives without the asylum-granting State, generating politics of preference for refugees who meticulously follow a defined script of a furnished horror story, and turning refugeeeness into a highly performative act.⁵⁰ Implicitly, Caroline’s body becomes a site that reflects the imposition of State power: the State enforces a desperate treatment of the body, which is erased as an integral part of knowledge production within the labyrinthine asylum system.

Malkki notices officials “trying to identify exemplary victims”; the myopic focus on verifiable facts and objective evidence turns wounds into a more accepted source of knowledge than “the words of the people on whose bodies those wounds are found,” failing to accommodate for the psychological effects produced by forced displacement.⁵¹ Such a hierarchy of evidence which shifts from the person to their visible wounds suggests the physical embodiment of an ideal-type victim bears more weight than oral testimonies—for asylum-seekers’ bodies bear the truth which the State looks for—and illustrates a paradox of vulnerability being used to authenticate claims. The constant depiction of despair and ideal victimization constructs a limitative discursive framework defining the “real” refugee as one in which human hardship gains popularity, and “impostor” as any person capable of reasoning.⁵² In this sense, the RSD process may be understood as a mechanism that prioritizes western bodies of knowledge over others, relying on a dangerous compassion that is divisive in its

47. *Id.*

48. *Id.*

49. Rogers et al., *supra* note 15, at 150.

50. See Theodore Way, *Talking Torture: Asylum Seekers and the Public Commodification of Personal Trauma* (Sept. 2011) (Ph.D. thesis, University of Southampton) (on file with University of Southampton).

51. Liisa Malkki, *Speechless Emissaries: Refugees, Humanitarianism, and Dehistoricization*, 11 *CULTURAL ANTHROPOLOGY* 377, 384 (1996).

52. *Id.*

reproduction of unequal power structures.⁵³ Ultimately, stories of trauma become a symbolic currency that may be exchanged for refugee status. If unavailable, refugees must develop a counterfeit or wait outside the economy.

This reveals a certain irony in the current asylum system under State-centric conditions: narrative occupies a space at the center of RSD, yet narrative is exactly what many refugee claimants have difficulty producing. This is not to affirm that asylum applicants fabricate false stories, but instead seeks to refer to the manners in which expectations adopted by asylum officers are reflected through applicants' conduct. Refugee discourse is so tightly controlled by adjudicative structures that claimants cannot represent their authentic selves to decision-makers, becoming disembodied Others with a story that is both fiction and reality, a pitiable, passive victim—drawing from insights of Arendt and Agamben, a life stripped bare.⁵⁴

One may argue the narrative shaping the refugee experience as mandated by IRL requires a collaborative effort among multiple players, often characterized by conflicting interests and perspectives. Thus, it might be perceived as a story the refugee is not always equipped to control. On one hand, this phenomenon may be perceived as aligning with the inter-subjective nature of the RSD process and the collaborative storytelling framework enshrined within IRL. As the UNHCR Handbook emphasizes, a collective responsibility exists in crafting the refugee narrative, a duty that becomes enriched through the involvement of lawyers, allowing for a more nuanced and contextually comprehensive depiction.⁵⁵ On the other hand, this collaborative approach may drive the disjunction between the refugee's original story—which the refugee believes should be the object of recognition—and the final narrative. By redefining and relocating their personality due to internalized assumptions that attaining asylum requires applicants to adopt identities defined by dominant power structures, refugees indicate that RSD is constructed as a site wherein individual subjectivities are modified not with direct coercion, but instead through ideological, intellectual, social, and political operations of power that discipline refugees. To be misrecognized in this way, as underscored by Fraser, is “to suffer both a distortion of one's relation to one's self and an injury to one's identity.”⁵⁶ This may partially explain the discontentment experienced by those navigating recognition regimes.

It thus becomes evident that asylum-seekers do not exclusively confront human rights violations in their countries of origin, but undergo the

53. Rose George, *Exile or Refugee? Lights in the Distance Overturns the Spurious Distinction*, THE NEW STATESMAN (May 23, 2018), <https://www.newstatesman.com/culture/2018/05/daniel-trilling-lights-dark-exile-refuge-%20borders-europe-review> [https://perma.cc/E6DA-RYKG].

54. GIORGIO AGAMBEN, HOMO SACER: SOVEREIGN POWER AND BARE LIFE 112.

55. See UNHCR Handbook, *supra* note 3, at 9.

56. Nancy Fraser, *Rethinking Recognition*, 3 LEFT REV. 107, 109 (2000).

disembodiment of the self when constrained by the preconceived expectations of the asylum system. The unequal dynamics underlying the asylum institution under State-centric conditions drive the disincarnation of one's own identity, transforming the asylum-seeker into someone who becomes distorted throughout displacement, who is in tortured isolation and who seeks to unlock the hidden reality that is not accepted by a system which grants hospitality on a highly selective basis. While disembodiment involves the essentialization of one's suffering, reducing complex stories to a singular narrative of trauma that overlooks resilience, agency, and potential contributions and transforming refugees into mere recipients of sympathy, it is the protective carapace that allows refugees to attain protection. What emerges is a dystopian relationship between asylum-seekers and the asylum institution, where the gap between thin stories and thicker lives is filled with suspicion.

Consequently, a shroud of epistemological ambiguity arises, wherein asylum officers' preoccupation with the veritable narrative of the refugee's experience eclipses their willingness to engage with the authentic narrative that the refugee earnestly seeks to convey. The dichotomy between the "true story" sought by asylum officers and the "real story" refugees wish to convey further accentuates the bifurcation of truth and experience, disrupting the alignment between the objective truth and the subjective reality that collectively constitute their experiences. Rather than protecting those in need and respecting *Non-Refoulement*, the asylum system perpetuates a homogenized notion of victimhood, overshadowing the diverse and often multifaceted aspects of refugees' unique displacement experiences.

Way provides an interesting approach to the disembodiment of the refugee, claiming that applicants are to sell themselves and their story to various audiences if they are to be granted asylum.⁵⁷ The process of "selling" oneself to attain protection generates the "commodification of trauma," in which torture survivors engage in several interactions that are similar to that of selling a product: through the process of self-narrative, one carefully depicts which features are to be promoted and omitted.⁵⁸ This commodification of trauma requires applicants to overemphasize violence and trauma if they are to convince immigration officials of their worthiness while diminishing strengths, success and aspirations. Not only does the imposed process of identity reconfiguration in the asylum system define applicants as mere symptoms in need of treatment, but it isolates asylum-seekers from their historical context.⁵⁹ Such dehistoricization condemns refugees to muteness, in turn defining them as

57. Way, *supra* note 50, at 26.

58. *See id.* at 27.

59. Jacques Leider, *History and Victimhood: Engaging with Rohingya Issues*, 20 INSIGHT TURK. 99, 113 (2018).

helpless beings who may survive exclusively with international assistance and who are to be tossed into the political arena.

The objectification and formalization of the refugee story, and consequent misrecognition—even when one’s refugee status is recognized—may contribute to a form of detachment from the narrative and subsequently from oneself. This phenomenon is particularly poignant within the context of asylum-seekers, for whom the inability to attain recognition may result in a pronounced diminution of personal, physical, and political agency. The ensuing estrangement from one’s own narrative drives a sense of lost self-ownership and ultimately freedom, impinging upon one’s autonomy whereby freedom is contingent upon self-possession.⁶⁰ This restrained state of being emerges as an inevitable outcome of what Butler elucidates as the selective mechanisms of power through which a subject is produced; the constitution of life itself cannot be referred to outside the operations of power.⁶¹ Individuals who do not conform to the normative benchmarks and fail to self-alienate become predisposed to inhabiting a barely livable world characterized by precarious existence. Alternatively, it may be that it merely reflects the multiplicity of the self we all bring into society; a manifestation of complexity and pluralism required to navigate the modern bureaucratic society as opposed to disempowerment and alienation.

III. THE NEXUS OF ENCOUNTER: THE REFUGEE AND THE HOST STATE MEET

The disembodiment of the refugee is a complex phenomenon rooted in the inherent limitations of an asylum system fixated on victim tropes, betraying its own intent and failing to uphold *Non-Refoulement*. Exposing the inherent tension between humanitarian intentions and systemic limitations urges for a comprehensive approach to RSD procedures, prompting a reevaluation of how narratives are received, evaluated, and adjudicated, as well as a shift away from monolithic notions of truth.

For Ricœur, to be rendered incapable of speech is to be excluded from the sphere of discourse in which the self as a feeling and speaking subject is disclosed and defined as fully human, implying that narrative may be considered a mechanism to achieve self-definition and recognition.⁶² Approaching IRL as a space in which politics of invisibility are countered would not only reinforce the role of international law as an instrument of hope—for as Dudai claims “without the use of international law, ‘human rights’ is a purely rhetorical device”⁶³—but would also reshape the landscape of hospitality. *Hence, in what*

60. Zagor, *supra* note 2, at 26.

61. See generally JUDITH BUTLER, *THE PSYCHIC LIFE OF POWER* (1997).

62. PAUL RICŒUR, *REFLECTIONS ON THE JUST* 77 (David Pellauer trans., Univ. Chi. Press 2007).

63. Ron Dudai, “Can You Describe This?” *Human Rights Reports and What They Tell Us about the Human Rights Movement*, in *HUMANITARIANISM AND SUFFERING: THE MOBILIZATION*

spatial realm should the interaction between the refugee and the host State find its optimal locus?

Ricœur's hermeneutical theory, rooted in the domain of meaning making, offers an insightful philosophical lens through which to comprehend the intricate dynamics that should underpin the interaction between the applicant, IRL and the asylum officer and help reshape the interpretation of refugee narratives for an enhanced system of protection.⁶⁴ At the heart of his philosophy lies a dialogic approach to interpretation, wherein understanding is forged through an ongoing interplay between the interpreter, interpreted and recipient, the historical and the fictional, and the descriptive and prescriptive.⁶⁵ These different horizons are then unified into one's personal narrative identity from which meaning emerges. In parallel, asylum interviews could provide a relational institutional space where the interweaving of diverse narratives produces a dialogical, enriched fabric of shared understanding. Such merging involves, as Ricœur suggests, a continuous oscillation between grasping the whole and attending to the intricate parts of the narrative, embracing the complexity of refugee narratives, contextualizing them within broader human experiences, and transcending simplistic categorizations.⁶⁶

At the core of his framework lies a profound reimagining of the asylum interview through a relational-dialogical approach; to emancipate rather than mute and disrupt the conditions within which refugees' struggles take place, decision-makers must contemplate an intricate reconstruction of refugee realities without losing sight of the multiple ways in which the human category has been inhabited. This would require a cadre of trained professionals capable of facilitating a holistic approach to asylum-seeking by sharing the duty to ascertain and evaluate all relevant facts together with asylum-seekers, as per the UNHCR Handbook.⁶⁷

Moreover, lawyers start from the assumption that their client has a "well-founded fear of persecution" and will tell the truth as soon as an opportunity is given, whereas immigration officials presume the opposite.⁶⁸ The inherent irony lies in the fact that the lawyer's method, characterized by meticulous cross-verification, relational adaptability and conversation dispersal across numerous

OF EMPATHY 245, 249 (Richard Ashby Wilson & Richard D. Brown eds., Cambridge Univ. Press 2009).

64. See PAUL RICŒUR, *THE COURSE OF RECOGNITION* 60 (David Pellauer trans., Harvard Univ. Press 2005).

65. See *id.* at 87; Zagor, *supra* note 2, at 14.

66. See generally PAUL RICŒUR, *INTERPRETATION THEORY: DISCOURSE AND THE SURPLUS OF MEANING* (1976).

67. UNHCR Handbook, *supra* note 3, ¶ 196.

68. Anthony Good, *Tales of Suffering: Asylum Narratives in the Refugee Status Determination Process*, 68 WEST COAST LINE 78, 87 (2011).

sessions,⁶⁹ appears considerably more efficient and potentially more successful in upholding *Non-Refoulement*. Central to this approach is the establishment of an independent documentation center equipped with updated and comprehensive data regarding countries of origin to enhance informed decision-making.

Importantly, *why is it more urgent to deport asylum-seekers rather than to identify mistakes that have inadequately refused asylum applications?* A fundamental shift towards a system of accountability is needed: one that prioritizes identifying and addressing wrong decision-making over hastening deportations. Only this way may a feedback loop be created that guides caseworkers in their future decision-making and prevents assessments purely grounded on prejudgments or political standings. Simultaneously, asylum-seekers must be brought into the conversation on RSD. Building a participatory regime will disrupt prevailing hierarchies, positioning refugees as active agents possessing agency, influence and rights.

These propositions find their inspiration in empirical data and interdisciplinary thought and are designed to create greater proximity within the refugee/host State encounter to foster a more egalitarian status for asylum-seekers—one where they are not cast as supplicants in a merciful hierarchy, but revealed as having agency, power and rights.⁷⁰ Evidently, in taking such steps, this article does not seek a panacea for structural asymmetries and political influences that preside the narrative-generating procedure, but a means to grant the refugee greater discursive authority in influencing a narrative process that, enabled by legal mechanisms, holds the promise of recognizing a substantive refugee identity.⁷¹ The goal of the suggested proximity is reflected in recommendations that privilege the acquisition of contextually relevant knowledge acquired in a dialogic hearing room where benefits of storytelling—beyond stone communication and towards corporeality—are shared.⁷² To transform the refugee/host State encounter into a more intelligent and humane engagement that safeguards the fundamental principle of *Non-Refoulement*, asylum officials must take a relational approach to asylum interviews, providing applicants with the opportunity to establish relevant aspects of their claims and collecting all relevant information required for a neutral and fair evaluation of their legal merits.⁷³

69. *Id.*

70. See CRAWLEY, *supra* note 41, at 83; JOHN M. CONLEY & WILLIAM M. O'BARR, RULES VERSUS RELATIONSHIPS: THE ETHNOGRAPHY OF LEGAL DISCOURSE 61 (1990); Zagor, *supra* note 2, at 31; SHAW & KAYE, *supra* note 8, at 35; Cohen, *supra* note 15, at 308; FREEDOM FROM TORTURE, *supra* note 7, at 40.

71. Zagor, *supra* note 2, at 31.

72. Cohen, *supra* note 15, at 294.

73. See CONLEY & O'BARR, *supra* note 70, at 61.

CONCLUSION

Today's technologies of suspicion treat refugee stories as inherently problematic, turning determination institutions into highly asymmetrical places in which "Otherness" reigns and applicants' ability to engage in self-narration in their chosen way is hindered. By creating an institutional place in which monolithic ideologies of discourses of truth clash with asylum-seekers' multidimensionality, claimants are forced to confront and overcome their linguistic and epistemic vulnerability. In the face of such a structural power imbalance, it appears unsurprising that asylum claimants lose control over their own narratives and its outcome. This very passivity is part of the governing narrative about "refugees" employed and imposed institutionally by the determination regime which creates a disposition towards a certain construction of knowledge.⁷⁴ As Dimock rightly asserts, just as legal justice is haunted by what it fails to encompass, the current refugee regime is haunted by the stories refugees must suppress and the subsequent imaginative worlds they must inhabit.⁷⁵ Not only does this unravel the dangers of creating a legal subjecthood that reduces humanity to a legal status, but it suggests acquiring a legal status does not necessarily equate to being accepted as fully human.

While it is true that the fabrication—in part or entirely—of displacement stories—justified or not—generates hardship for decision-makers who must frequently identify the risk on return, an improved approach focused on identifying risk rather than falsehood would not necessarily identify lies as fatal to one's claim, but as the starting point for further investigation. Rather than reappraising refugees and characterizing them as underserving of protection, minds must be revived to remember that the fundamental purpose of asylum is not to differentiate between morally desirable people, but to protect persons from serious harm. Politicians frequently claim that refusing "bogus" claimants is urgent to maintain the asylum system's integrity.⁷⁶ On the contrary, the demand for utmost truthfulness has overshadowed the fundamentally humanitarian rationale of asylum.

It is the ability to comprehend excluded narratives, to refuse the linearity of legal representations and to encompass the extra-legal components of refugee realities that combats the perpetuation of the human subject as unreachable and remote. To shift away from a labyrinthine asylum system that obstructs protection, the heterogeneity of refugee identity must not be ignored. Legal reasoning is not conclusive, and the law is not monolithic; a limitless

74. Simo Määttä et al., *Linguistic, Psychological and Epistemic Vulnerability in Asylum Procedures: An Interdisciplinary Approach*, 23 DISCOURSE STUD. 46, 47-52 (2021).

75. WAI CHEE DIMOCK, *RESIDUES OF JUSTICE: LITERATURE, LAW, PHILOSOPHY* 9 (1st ed., Univ. Cal. Press 1996).

76. See Eric Neumayer, *Bogus Refugees? The Determinants of Asylum Migration to Western Europe*, 49 INT'L STUD. Q. 389, 406 (2005).

understanding of human suffering must be encouraged to avoid reductionism that risks losing sight of the multiple ways in which the human category has been inhabited and claimed. Jurisprudence shows the potential of this legal codification: *Jordan v. State Constitutional Court* allowed for identity specificities,⁷⁷ and *Naz Foundation v. Delhi and Others* not only facilitated the integration of values but showed they may be applied in different contexts.⁷⁸ This could serve as an instrument that creates a space where ideas that oppose conventional decision-making may be articulated, wherein the refugee realm could be perceived as a site of reimagination and possibility, where Boltanski's "excess of unfortunates" ceases to exist.⁷⁹

To hold inclusive cognitions that combat the antagonism instructing today's politics of preference that alienate refugees from themselves, is to stir compassion towards the fragmented, multiple, and incomplete nature of the displacement experience, accepting what might be invisible to our well-trained ethnocentric gaze. Current securitization frames drive restrictive approaches to refugee protection and social policies.⁸⁰ To reinvent our frame through enlarged acceptance is to allow the 1951CSR to triumph as a living instrument capable of accommodating displacement's multidimensional realities. Placing acceptance in direct dialogue with identity, fragmentation, unfamiliarity, creativity, and survival generates a dynamic site for new possibilities where refugee protection and legal boundaries are continuously disrupted, reconstructed and enhanced.

Yet, although this analysis makes clear that the State's monopoly over epistemic authority in RSD reproduces its domination, it leaves some significant questions behind. *Is unrestrained self-narration truly central to disrupting the hegemonic ways in which States define the meaning of refugee mobility? Would the reconfiguration of structural imbalances entrenched in the RSD institution pave the way for granting asylum-seekers larger discursive control over their own narratives, creating an asylum-screening process that prioritizes embodied over disembodied knowledge? Could the conscious elevation of embodied knowledge lead to a realm where refugees' narratives are not just voiced but authentically internalized, challenging the foundations of the refugee/host State interaction and enhancing the role of refugee law as an instrument of hope?* Limited research on the narrative identities conveyed during RSD procedures means a multitude of truths beyond existing paradigms are still to be uncovered.

77. See *S v. Jordan and Others*, 2002 (6) ZACC 22 (CC), ¶ 83 (S. Afr.).

78. See *Naz Foundation v. Govt. of NCT of Delhi and Others*, (2009) 160 DLT 233 (India).

79. LUC BOLTANSKI, *DISTANT SUFFERING* 155 (Graham Burchell trans., Cambridge Univ. Press 1999).

80. Bigo, *supra* note 5, at 211-15.