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2022 / 2023

Clarisse Fagard

The Good Ukrainian, the Bad Syrian, the Ugly Afghan (and the Forgotten Ones)

Reframing Migration Governance through Michel Foucault's and Hannah Arendt's Legacies

European Master's Programme
in Human Rights and Democratisation

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Foreword

The European master's Human Rights and Democratisation (EMA) is a one-year programme established in 1997 as a joint initiative of ten universities which now has participating universities in all EU member states, Switzerland and the United Kingdom, and with support of the European Commission. Based on an action- and policy-oriented approach to learning, it combines legal, political, historical, anthropological and philosophical perspectives on the study of human rights and democracy with targeted skills-building activities. The aim of the EMA programme is to prepare young professionals to respond to the requirements and challenges of work in international organisations, field operations, governmental and non-governmental bodies, and academia. As a measure of its success, EMA has served as a model of inspiration for the establishment of seven other EU-sponsored regional master's programmes in the area of human rights and democratisation all over the world. Today these programmes cooperate closely in the framework of the Global Campus of Human Rights, which has its headquarters in Venice, Italy.

Up to 90 students are admitted to the EMA programme each year. During the first semester in Venice, they learn from leading academics, experts and representatives of international and non-governmental organisations. During the second semester, they are hosted by one of the 43 EMA participating universities to follow additional courses in an area of specialisation of their own choice and to conduct research under the supervision of the university's EMA Director or their academic colleagues. On suc-cessful completion of the requirements of the degree, students are awarded the European master's degree in Human Rights and Democratisation, which is jointly conferred by seven EMA univer-sities who accredit the programme.

Each year the EMA Council selects five theses, on the basis of:
1. Originality of the research topic, and its relevance and importance (including its contribution to the promotion and implementation of human rights and democratic values);
2. Innovation with respect to argument, methodology, and theoretical approach, including case studies;
3. Exceptional knowledge of the academic literature and excellent capacity for critical analysis;
4. Clarity of structure, language and argumentation of a publishable standard with minimum revisions

The EMA awarded theses of the academic year 2022/2023 are:

— Dierynck, Jozefien, *Voices Unheard, Stories Untold. A Qualitative Content Analysis of Gender Bias in War Reporting and Human Rights Journalism as a Viable Alternative.* Supervisor: Antonis Gardikiotis, Aristotle University of Thessaloniki.

— Fagard, Clarisse, *The Good Ukrainian, the Bad Syrian, the Ugly Afghan (and the Forgotten Ones). Reframing Migration Governance through Michel Foucault's and Hannah Arendt's Legacies.* Supervisor: Graham Finlay, University College Dublin.

— Kali, Yamuna, *Beneath the City's Shining Facade, Discrimination and Death in the Sewers. An Analysis of India's Right to Life Obligations to Eradicate the Caste-Based Practice of Hazardous Manual Sewer Cleaning.* Supervisor: Michel Rouleau-Dick, Åbo Akademi University.

— Rentroia Pacheco, Sara, *Mind the Gap: Incorporating Human Rights into the Curricula of Undergraduate Business Programmees.* Supervisors: Carmen Márquez-Carrasco and Laura Garcia Martin, University of Seville.

— Shynn, Daniel George, *When the Land No Longer Provides. Human Rights and the Status of "Climate Refugees" in the Sahel.* Supervisor: Matjaž Nahtigal, University of Ljubljana.

The selected theses demonstrate the breadth, depth and reach of the EMA Programme and the passion and talent of its students. We are proud of the range of topics as well as the curiosity and research skills demonstrated by this year's cohort. On behalf of the Governing Bodies of the EMA programme, we applaud and congratulate these graduates for their work.

Prof. Manfred Nowak
Global Campus Secretary General

Prof. Thérèse Murphy
EMA Chairperson

Dr Orla Ní Cheallacháin
EMA Programme Director

Biography

Clarisse J. Fagard is a Belgo-Italian graduate of the Global Campus of Human Rights, with a Bachelor's degree in Law and a Master's degree in Human Rights and Democratisation. Committed to issues relating to the rights of marginalized populations and the Theory of Vulnerability, her work explores legal-philosophical alternatives to promote equitable policies, strategies, and services. She specializes in Mental Health and focuses on reevaluating policies related to torture, degrading and inhumane treatment through the lens of Mental Health Philosophy.

Abstract

The war raging in Ukraine compels more than ever to confront the impasses and divergences of current migration policies. The present study provides a philosophical perspective on the refugee status and seeks to address the contradictions inherent to the latter policies. By drawing upon four major refugee movements, it reviews the emergency responses deployed in their wake, exposing asylum policy inequities and differential treatment of refugees on the basis of their situation.

Building on the work of Michel Foucault and Hannah Arendt, the study delves into the concepts of governmentality, power, subjectivity, agency, biopower and biopolitics. Through the interlacing of the two authors' perspectives, the paper will attempt to reveal subtle connections and suggest avenues for reflection on the paradoxes and problems inherent in their respective theories. The thesis comprises four parts, which successively explore the notion of biopower and its applicability to refugees, the concept of biopolitics and the influence on migration policies, Gilles Deleuze and Félix Guattari's enlightenments to a revisited appreciation of biopolitics, and lastly the constructing of a political space of resistance for refugees.

Through a theoretical approach and an exploration of key concepts such as refugees, migrants, asylum, freedom and citizenship, it is hoped to raise reflexive stances on current dilemmas among policymakers in the migration field. The study further proposes a forward-looking approach to exploring alternative representations of refugees, possibly aimed at shifting migratory policies.

Ackwnowledgements

To Dr Finlay, I am profoundly grateful for your consistent guidance, unwavering support, and invaluable mentorship. Your reminder that embracing risks is always more rewarding than squandering chances drove every step on this journey.

To my family, flatmate, friends and fellows. Your promptings, presence and inspiration have been invaluable in overcoming the many Arendtian and Foucauldian hurdles along this path.

To the Portuguese adage 'Devagarinho e parado' and the gentle persona who instilled these words in me, thank you for remembering me to take the walk before the run on this route.

To Dublin. How lucky am I to have called the city my home and resting spot along this adventure.

Last but not least, to my dearest friend, Qais Bader, whose exceptional resilience endured the prolonged pendency of refugee status. Your achievements, unfaltering perseverance,

and readiness to resist have paved the way on this voyage.

Ps: I love dogs too, brother.

Table of Abbreviations

3RP	Regional Refugee and Resilience Plan
ECtHR	European Court of Human Rights
EU	The European Union
IDPs	Internally displaced persons
IGCR	Intergovernmental Committee for Refugees
IRO	International Refugee Organization
NGOs	Non-governmental organisations
The League	The League of Nations
UN	The United Nations
UNHCR	United Nations High Commissioner for Refugees
USSR	Union of Soviet Socialist Republics
WWI	World War One
WWII	World War Two

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Introduction

A waging war in Ukraine compels, more than ever, to confront the impasses and discrepancies of current migratory policies. The organising of emergency measures to cope with the influx of refugees following Russia's aggression has not merely strained already depleted reception agencies but has drawn vocal accusations of seeming inequity in asylum policy. On closer inquiry, why should an Afghan or Syrian refugee suffer from lesser rights than those fleeing Kiev? What rationale remains for differentiating those fleeing war from those fleeing hardship or various instances of oppression?

If social sciences and lawyers are actively grappling these questions, including within the realm of public space, where does philosophy stand? In a not-so-distant past, Michel Foucault invited readers to review the concept of governmentality[1] as well as relations between power, subjectivity and the concept of agency, pointing at the extent power both entails and demands resistance that simultaneously opposes and builds it.[2] Honouring such an invitation, the discussion could however not fail to address further central concepts of his philosophy, notably biopower[3] and biopolitics,[4] the echoes of which appear to be growing louder in the current situation.

1 Michel Foucault, 'Governmentality' in Graham Burchell, Colin Gordon and Peter Miller (eds), *The Foucault Effect: Studies in Governmentality* (Harvester Wheatsheaf 1991) 102.

2 Michel Foucault, *The History of Sexuality, Vol. 1: An Introduction* (Robert Hurley tr, 5th edn, Vintage 1990) 94-96.

3 ibid 137.

4 Michel Foucault, *The Birth of Biopolitics: Lectures at the College de France 1978-1979* (Palgrave Macmillan 2008).

To further the discussion, and perhaps surprisingly for some, Hannah Arendt will be drawn into dialogue with Foucault. Indeed, an emphasis on how ties between the two are more deep-seated than their familiar intersections with key subjects – as political power, knowledge and power relations – and how their differing philosophical and political standpoints are arguably more reconcilable than initially appears.[5] Primarily, the comparison of the two authors' insights on modern political power and resistance thereto will be emphasised. Reflections on their own critical thinking will subsequently be offered. As such, engaging both authors has the potential to reveal subtle ties between their oeuvres, and offer clues to paradoxes inherent in their respective theories.[6]

The present analysis is divided into four parts. The first chapter examines the concept of biopower and its applicability to refugees, by investigating mechanisms and techniques of refugee body subjugation, separate from political justifications beneath them. The second reviews the notion of biopolitics and its substantive coverage of migration policies, revealing how sovereign power governs migrant communities by categorising and controlling lives. Part three will explore the contribution of Gilles Deleuze and Félix Guattari[7] to a renewed appreciation of biopolitics, supplying keywords and insights for framing complex power dynamics in migrant experience, enabling greater awareness of biopolitical migratory processes and nascent collective and subjective resistance to the latter. Lastly, the final part aims at constructing an effective political space of resistance for refugees, by exploring what a 'right to have rights' would imply for the ever-changing subjects of politics, and citing clarifications of Arendt's and Foucault's theories in such context.

The present research aims at providing reflective material on such stakes, by suggesting a philosophical insight on today's refugee status. Through exploring – and perhaps by redrawing – concepts, including legal ones, crucial to the issue: refugees, migrants, citizenship, asylum, freedom, ... it will seek to ponder, by way of theoretical approaches, the quandaries facing policy mak-

5 Jakub Franěk, 'Arendt and Foucault on Power, Resistance, and Critique' (2014) 6(3) Acta Politologica 294 <https://acpo.vedecke-casopisy.cz/publicFiles/00785.pdf> accessed 21 February 2023.

6 ibid.

7 Gilles Deleuze and Félix Guattari, *A Thousand Plateaus: Capitalism and Schizophrenia* (University of Minnesota Press 1987).

ers in this area. Lastly, in a forward-looking tone, it shall attempt to explore an alternative representation of refugees, possibly aimed at shifting migratory policies.

1. Biopower

First coined by Foucault in his Collège de France lectures, biopower refers to practices of modern nation-states and the regulation of their subjects through an 'explosion of numerous and diverse techniques for achieving the subjugation of bodies and the control of populations'.[8] While the latter's work termed mechanisms of regulation of biological life,[9] the present analysis considers those mechanisms as they apply to refugees, whose topicality warrants its relevance.

Misused interchangeably, biopower is to be distinguished from biopolitics, which is geared towards examining the strategies whereby biological processes are administered by executive powers – authority regimes – over processes of knowledge, power, and subjectivation.[10] In other words, while biopower will study mechanisms and techniques of body subjugation, biopolitics will embrace governmental strategies in their use of those mechanisms, pursuant to political ends.

Of ancient Greek, the prefix *bios* finds definition as 'life, that is, not animal life but the way of life' and further 'a life, a biography'.[11] To begin with, refugee identity and biography – embedded in historical, mediatised and political context – will be ascertained, thereby providing foundations to the analysis.

Secondly, the concept of power will be discussed through a proposed complementary reading of Arendt and Foucault, whose entwining could reveal how power impacts upon individual identi-

[8] Michel Foucault, 'Two Lectures' in Michael Kelly (ed), *Critique and Power: Recasting the Foucault/Habermas Debate* (3rd edn, MIT Press 1994) 140.
[9] Michel Foucault, *The History of Sexuality, Vol. 1: An Introduction* (Robert Hurley tr, 5th edn, Vintage 1990) 137.
[10] Foucault, 'Two Lectures' (n 8) 252-53.
[11] Henry George Liddel and Robert Scott, *A Greek-English Lexicon* (first published 1843, OUP 1968) 316.

ties, with specific relevance for refugees. Singularly, power within individual identity construction would allow positioning the refugee both as an object and subject of power.

Ultimately, power over *bios*, or biopower, will seek to appreciate the various mechanisms and techniques of refugee subjugation, primarily ignoring political rationalisations underpinning their use.

1.1 Bios: Refugees, as the object of international and national law

Refugees, as construed substantively, have found to be vulnerable to processes of categorising and determining refugee status, whereby the label of refugee, asylum-seeker or migrant entitle movers to varying rights.[12] A 'refugee' tag holds inherent power in defining displaced people's prospects and entering host countries.[13] Yet, if refugee determination is limited to making distinctions, can it not be inferred it remains another process of exclusion?

At the outset, consideration must be given to why and who is characterised as refugee, as opposed to migrant.[14] While the 1951 Convention Relating to the Status of Refugees (the Refugee Convention)[15] drew juridical differentiation between the two, with the former warranting international protection, lines eroded with evolving demands of migration management policy.[16] Security precincts prompted narrower understandings of the refugee definition, primarily by the Global North, and further inform migration policies development.[17] As such, 'secured' populations shifted with evolving foreign and influx policies over time.[18] Yet, quite

[12] Shaddin Almasri, 'Why is Syria a War but Not Afghanistan? Nationality-based Aid and Protection in Turkey's Syria Refugee Response' (2023) 42(1) Refugee Survey Quarterly 33.

[13] Roger Zetter, 'Labelling Refugees: Forming and Transforming a Bureaucratic Identity' (1991) 4(1) Journal of Refugee Studies 39ff.

[14] Almasri (n 12) 38.

[15] Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention).

[16] Almasri (n 12) 38.

[17] Gil Loescher, *The UNHCR and World Politics: A Perilous Path* (OUP 2001) 45.

[18] Simon Goodman, Ala Sirriyeh and Simon McMahon, 'The Evolving (Re) categorisations of Refugees Throughout the "refugee/migrant crisis"' (2017) 27(2) Journal of Community & Applied Social Psychology 105-14 <https://doi.org/10.1002/casp.2302> accessed 12 March 2023.

spontaneously, Ukrainians may receive refugee status on opening the definition, along with recognition as 'secured' group, bucking the tendency.

Subsequently, recognised and registered refugees would be granted international protection along with social, economic and political rights enshrined in the 1951 Refugee Convention. However, the blue and yellow tint of news reveals how numerous refugees seeking European Union (EU) entry encounter barriers not seen for Ukrainians, given differing legal and administrative frameworks.[19] Whilst 2015 saw references to a 'refugee crisis' surrounding the socio-economic and political implications of entering refugees – seeking rationalisation on why those arriving could not be adequately accommodated socioeconomically – the financial worry and fear lies today around the two-year COVID-19 legacy and wartime economic impact from Ukraine.[20] As such, the said rights under a 'refugee' tag are themselves susceptible to exclusionary tendencies.

1.1.1 The international refugee regime and the refugee: Historical background

Prior to the early 20th century, one's identity as a refugee was not an 'enticement' that presented itself.[21] Instead, refugees appeared as the category was coined.[22] In Europe, no appreciable bureaucratic hurdles to migration existed between nations.[23] The need for precise categories did not accrue in conditions of unlimited immigration, and no differentiation was articulated.[24] Thereby, how did the international refugee regime unfold and what does it imply about the inherited regime and refugee of today?

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[19] Katharina F Gallant, 'The "good" refugee is welcome: On the role of racism, sexism, and victimhood when fleeing from war' (2022) 8(3) DiscourseNet: Collaborative Working Paper Series 2 <https://discourseanalysis.net/sites/default/files/2022-10/Gallant_2022_DNCWPS_8-3.pdf> accessed 12 March 2023.

[20] Peter Carstens, ‚Im Schwarzwald geht die Angst um' (*FAZ*, 20 September 2022) <www.faz.net/aktuell/politik/inland/unternehmen-im-schwarzwald-der-mittelstand-in-der-krise-18328231/der-cdu-abgeordnete-thorsten-18328279.html> accessed 9 June 2023.

[21] Randy Lippert, 'Governing Refugees: The Relevance of Governmentality to Understanding the International Refugee Regime' (1999) 24(3) Alternatives: Global, Local, Political 299.

[22] ibid.

[23] Michael Marrus, *The Unwanted: European Refugees in the Twentieth Century* (OUP 1985) 92.

[24] Aristide Zolberg, Astri Suhrke and Sergio Aguayo, *Escape from Violence: Conflict and the Refugee Crisis in the Developing World* (OUP 1989) 25.

01 — International refugee regime

Around World War One (WWI), albeit quietly, an international refugee regime, and the refugee itself, came into being.[25] Previously non-mandatory for movement across European nations, passports were prescribed again in the early war.[26] With people fleeing (civil) wars, persecutions or fear arising therefrom, passports proved lacking for many, and often with no country to issue them. The newly formed Union of Soviet Socialist Republics (USSR) government's announcement in 1921 to revoke citizenship of overseas Russians, of whom some 800,000 refugees from the Russian Civil War,[27] prompted a meeting in February 1921 convened by the International Committee of the Red Cross and the League of Red Cross Societies.[28] The decision was reached to create a High Commissioner for Refugees under the League of Nations (the League).[29] The office facilitated resettlement of Russians lacking identity documents – and denied entry by other nations – through introducing an identity document for refugees, the 'Nansen'.[30] The use of such passport steadily widened and by 1928, 51 countries had agreed to issue and recognise the document.[31]

Interestingly, prior to the League office, all refugee assistance was dependent on private philanthropic action and funding.[32] Subsequently, in the 1920s, refugee aid remained a private enterprise, with the League's refugee office merely coordinating channelling of aid between organisations.[33]

In March 1938, the Intergovernmental Committee for Refugees (IGCR) was constituted, though failing in covering refugees as a universal category: like earlier League organisations, it addressed specific groups, ie German and Austrian Jews escaping Nazi-ruled lands.[34] The IGCR was, however, the first permanent international refugee agency, and its later reorganisation scored

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25 Lippert (n 21) 299.
26 Robin Cohen, *The New Helots: Migrants in the International Division of Labor* (Routledge 1987) 92.
27 Cara Giaimo, 'The Little-Known Passport That Protected 450,000 Refugees' (*Atlas Obscura*, 7 February 2017) <www.atlasobscura.com/articles/nansen-passport-refugees> accessed 3 March 2023.
28 John Pope Simpson, *The Refugee Problem: Report of a Survey* (OUP 1939) 199.
29 Lippert (n 21) 300.
30 ibid.
31 Marrus (n 23) 94-95.
32 Lippert (n 21) 301.
33 ibid.
34 ibid.

the first regular public funding explicitly devoted to providing refugee assistance.[35] In 1947, the International Refugee Organization (IRO) was formed 'as a non-permanent specialized agency of the United Nations'.[36] Its accompanying programme included both private and public agencies.[37] The United Nations (UN) subsequently endorsed the establishment of the United Nations High Commissioner for Refugees (UNHCR) in 1951 initially as a temporary organisation.[38] Its operating budget was meagre and intended to assist 'co-ordination of the efforts of private organizations concerned with the welfare of refugees'.[39] The public-private divide in international governmental discourse carries implications for understanding today's regime, which will be further analysed.

02 — Refugee status

Nowadays regarded as an 'evergreen', one might consider the genesis of such a figure, who was once new to the genre.

When refugee organisations were established under international programmes following WWI, the 'refugee' term began to substitute for 'exiled' and 'emigrated'.[40] Nonetheless, the refugee's reality as object and identity remained ambiguous.[41] After World War Two (WWII), European citizens outside their home-countries in need of aid and resettlement were referred to as 'displaced persons' until 1947, when the terminology came to be gradually replaced by 'refugee'.[42] The 1951 UN multilateral treaty, the Refugee Convention, was intended to provide protection to European persons fleeing 'events occurring before 1 January 1951'.[43] Therefore, its original figure was confined to a European refugee, and was subsequently modified in the 1967 Protocol, rendering refu-

35 Lippert (n 21) 301.
36 Louise W Holborn, *Refugees: A Problem of Our Time: The Work of the United Nations High Commissioner for Refugees, 1951-1972* (Scarecrow 1975) 30.
37 Lippert (n 21) 301.
38 ibid.
39 Holborn (n 36) 101.
40 Lippert (n 21) 302.
41 ibid.
42 ibid.
43 Refugee Convention (n 15).

gee protection universal.[44] Moreover, it is a narrow definition of refugees not as people fleeing war, but as those who fear persecution if returned to their country.

By this universal definition of refugee, little room is left for people forced to leave their country by violence and other extraordinary disturbances. However, and most encouragingly for Ukrainians, the EU expanded its 'refugee concept', notably with the 2001 Temporary Protection Directive, providing support for mass populations fleeing conflict.[45] Since 2004, the EU also disposes of 'subsidiary protection' for people fleeing internal or international situations of armed conflict, among other reasons.[46] However, beyond the EU – as well as Latin America and Africa – no opening for broader protection than the Refugee Convention definition remains.[47]

When appraising context in which the status developed, it is appreciable that member states – mainly Europeans – were initially addressing European refugees, predominantly of Soviet origin.[48] Receiving USSR refugees proved politically beneficial for signatories in Cold War tensions where the US and its allies employed a 'refugee angle' to gain goodwill and malign the Soviet Union.[49] They suggested people were fleeing the latter for oppressive conditions, while they remained sites of freedom and democracy.[50]

Refugee status later proved handy as nationalism rose across Africa and non-western territories in 1950-60s, where earlier colonial patterns prevailed.[51] Western authorities deemed these new nations morally deficient, needing support for development since

[44] Protocol relating to the Status of Refugees (adopted 16 December 1966,, entered into force 4 October 1967) 606 UNTS 267; Maryam Mushtaq, 'Refugee Assemblages: The Figure of the Refugee during the "Crisis" of Europe' (*The Georgetown Public Policy Review*, 2022) <www.gpprspringedition.com/refugee-assemblages-2022-5> accessed 10 February 2023.

[45] Bill Frelick, 'Ukrainians are refugees, but our laws don't consider them such' (*The Hill*, 30 March 2022) <https://thehill.com/opinion/immigration/599879-ukrainians-are-refugees-but-our-laws-dont-consider-them-such/> accessed 10 May 2023.

[46] ibid.

[47] ibid.

[48] Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof [2001] OJ L212/12; Phil Marfleet, 'Migration and the Refugee Experience' in Ray Kiely and Phil Marfleet (eds), *Globalisation and the Third World* (Routledge 1998) 70.

[49] ibid.

[50] Lippert (n 21) 305.

[51] ibid.

decolonisation.[52] Refugee status opened an 'apolitical' Western intervention through UNHCR and non-governmental organisations (NGOs) in regions where 'political' interference would have been impossible.[53] Again, specialised intervention could be assumed for both the new African nations that were fled and those to which they were directed – deemed inadequate to meet vital needs.[54] Such newly decolonised space and their inhabitants could, in fact, be recolonised, albeit in distinctly 'apolitical' manners.[55]

As such, both with so-called Second World and the nationalisation of the third one, the refugee emerged as a political object in Western discourse and part of wider objectives.[56] All further confirmed by noticing how the relevant programmes and organisations above are products of several Western countries: the Soviet Union and its Eastern European allies did not contribute or play a role in these organisations.[57]

An overturning of power relations occurred in the 1980s.[58] While the status remained – and is still – of international utility, it suddenly became accessible to previously barred groups, partly due to increased population mobility in non-Western countries.[59] Thus, law-based and knowledge-based identification agendas arose across the West to address the impending change.[60] As will be further analysed, the formation of the international regime and the refugee object/identity has gone hand in hand with the production of this knowledge.

1.1.2 The refugee crisis in Europe or a Europe in crisis? Addressing the multifaceted refugee figure

Over eight million have fled Ukraine following Russia's military invasion of the country in February 2022, sparking Europe's greatest refugee crisis since WWII.[61] Several governments in Europe, previously uncompromising towards refugees arriving from nations like Syria and Afghanistan, have now assumed distinctly

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52 Lippert (n 21) 305.
53 ibid.
54 ibid.
55 ibid.
56 Lippert (n 21) 306.
57 ibid 307.
58 ibid 308.
59 ibid.
60 ibid.
61 UNHCR, 'Ukraine Emergency' (*UNHCR*, 2023) <www.unrefugees.org/emergencies/ukraine/> accessed 9 June 2023.

supportive responses. Paradoxically, the appreciable solidarity testifies to Europe's abdication of universal standards of refugee protection, not its embrace.

On the one hand, the refugee crisis is a European crisis. As aforementioned, it is a crisis of European origin, in that the refugee is a European prototype created after WWII,[62] whose status may be rooted in historical institutionalism, concealing hierarchies of protection designed to exclude 'foreigners', ie non-Europeans.[63] While the refugee – understood substantially – is evolving in actualities, the formally defined refugee status fails to account evolutions and is granted to those deemed fitting the restrictive definition of international law, thus facilitating the denial of those – among others – fleeing dangers of natural phenomena and internally displaced persons (IDPs).[64] As such, the crisis per se and its related figures contain distortions, as they rely primarily on the formal refugee definition.

But it is also a European crisis, reflective of Europe's failure to conciliate universal human rights – grounded upon universal equality – and limited access to these by spatial, political, jurisdictional and financial frontiers.[65] Affirming specific refugee streams to constituting a 'crisis' speaks louder on Europe than on refugees.[66] Similarly, given how international refugee organisations are, as discussed, Western-influenced,[67] it might be inferred a 'protorefugee' of sorts, determining despite itself the figure of today's refugee.

The incommensurability between universality and latent European chauvinism was further epitomised in an EU-Turkey agreement. Whereas the EU had become a destination for migratory streams in 2015, the experience shifted its comprehensive reaction to large-scale refugee influxes as well as many EU states' political commitment to prioritising the humanitarian needs of ref-

62 Mushtaq (n 44).

63 Nimmi Kurian, 'The Good, The Bad and The Ugly: Ukraine's refugee Crisis and the (B)ordering of Europe' (*Center for Policy Research*, 31 March 2022) <https://cprindia.org/briefsreports/the-good-the-bad-and-the-ugly-ukraines-refugee-crisis-and-the-bordering-of-europe/> accessed 10 May 2023.

64 ibid.

65 ibid.

66 ibid.

67 Lippert (n 21) 307.

ugees and migrants above their own voters' needs.[68] The EU accordingly negotiated its 'problem' through the 2015-16 strategic agreement with Turkey, whereby it allocated €6 billion to the latter to divert Syrian refugees from crossing into Europe.[69] However, the 'sending back' of asylum-seekers from the EU demanded legal cutbacks, especially in European and international law: to be remitted in accordance, safe destination countries ought to be involved, whereas Turkey was listed as unsafe at the time.[70] Yet, within two months, Turkey was deemed safe enough for the agreement to enter into force.[71]

On the other hand, the communitarian crisis also presents an individualistic facet. By nature of international law, individual states are obligated to fulfil their obligations in measures they decide upon.[72] Member states retain control over whom may enter, alongside the entitlement to subscribe with reservations, thereby adding to the subjective character of the refugee determination process.[73] For example, Turkey maintained geographical exclusions under the Refugee Convention, limiting access to refugee status to persons of European origin.[74] Non-European refugees, in turn, are protected by different temporary regimes.[75] In effect, the resulting legal distinction between protections further layered refugees' access to various socio-economic entitlements.[76]

Moreover, the Refugee Convention itself is geared around an individualistic assessment of a persecuted individual's refugee status. In practice, however, and as responses to humanitarian crises,

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68 Jasmin Lilian Diab, 'What Ukraine, Afghanistan and Syria Have Taught Us About the Political Will Behind International Refugee Law' (*Refugee Law Initiative*, 3 May 2022) <https://rli.blogs.sas.ac.uk/2022/05/03/what-ukraine-afghanistan-and-syria-have-taught-us-about-the-political-will-behind-international-refugee-law/> accessed 10 May 2023.

69 Elizabeth Collett, 'The Paradox of the EU-Turkey Refugee Deal' (*Migration Policy Institute*, March 2016) <www.migrationpolicy.org/news/paradox-eu-turkey-refugee-deal> accessed 14 March 2023.

70 Elizabeth Collett, 'The Paradox of the EU-Turkey Refugee Deal' (*Migration Policy Institute*, March 2016) <www.migrationpolicy.org/news/paradox-eu-turkey-refugee-deal> accessed 14 March 2023.

71 ibid.

72 Mushtaq (n 44).

73 ibid.

74 Almasri (n 12) 39.

75 Feyzi Baban, Suzan Ilcan and Kim Rygiel, 'Syrian Refugees in Turkey: Pathways to Precarity, Differential Inclusion, and Negotiated Citizenship Rights' (2017) 43(1) Journal of Ethnic and Migration Studies 41-57.

76 Ayşen Üstübici, 'The impact of externalized migration governance on Turkey: technocratic migration governance and the production of differentiated legal status' (2019) 7(46) Comparative Migration Studies 46 <https://doi.org/10.1186/s40878-019-0159-x> accessed 12 April 2023.

the UNHCR may advise the conferral of refugee status on a *prima facie* basis, and states can bestow status on certain groups.[77] The UNHCR's International Protection Considerations, dated March 2021, consistently identify Syrians fleeing as qualifying for refugee status under the Refugee Convention.[78] The German example lists 'safe' countries – where most applicants are presumably economic migrants – and 'unsafe' countries such as Syria and Afghanistan – where seekers therefrom are regarded as genuine refugees. Even so, cases remain individually assessed.[79] Hungary, however, is a negative example of the practice. Since the 2015 'refugee crisis', the country refused reception of refugees from non-EU countries.[80] As such, refugee acceptance policies have routinely been influenced by external considerations beyond the individual refugee's situation, including conflict geography and political considerations.[81] Further, whilst *prima facie* status may be adopted to accommodate larger movements from high conflict situations, it may also result in precluding smaller groups of arrivals to countries with decades of refugees hosting.[82]

The following points will illustrate how the variable geometry institutionalised within the decision-making process, both at EU and state level, challenges the applicability of the refugee notion in fundamental ways, with consequences for the rights of vulnerable persons.

01 — The good Ukrainians

In stark contrast to previous conflict situations, Russia's invasion of Ukraine prompted widespread support from EU countries for those fleeing violence. Whilst the question, albeit not prominent in debates, whether fleeing Ukrainians qualify as Convention

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77 Maja Janmyr and Lama Mourad, 'Modes of Ordering: Labelling, Classification and Categorization in Lebanon's Refugee Response' (2018) 31(4) Journal of Refugee Studies 544, 544-65.

78 UNHCR, 'Turkey Inter-Sector Dashboard (Data Visualiazer)' (*Operational Data Portal*, 1 January 2021) <https://data2.unhcr.org/en/dataviz/38?geo=0&sv=0> accessed 24 March 2023.

79 Gwynne Dyer, 'Europe's Refugee Crisis: The Good, the Bad and the Ugly' (*Gwynne Dyer*, 2015) <https://gwynnedyer.com/2015/europes-refugee-crisis-the-good-the-bad-and-the-ugly/> accessed 10 May 2023.

80 Rachael Reilly and Michael Flynn, 'The Ukraine Crisis Double Standards: Has Europe's Response to Refugees Changed?' (*The Global Detention Project*, 2 March 2022) <www.globaldetentionproject.org/the-ukraine-crisis-double-standards-has-europes-response-to-refugees-changed> accessed 10 May 2023.

81 Almasri (n 12) 31.

82 ibid 34.

refugees remains pending, it would appear that the latter may well be *prima facie* refugees, for whom various responses sought to accommodate, both in terms of alternative protections being (re)introduced within the EU, and by national discourses and initiatives within member states.

The Temporary Protection Directive, established in 2001, officially suspended the Dublin Regulation due to mass immigration of Ukrainians, a legal tool forged following the Yugoslav wars, however not previously used.[83] Accordingly, Ukrainian are offered up to three years of temporary protection in EU countries, with no asylum applications requirements, along with rights to residence permits and access to education, housing and the labour market.[84] Furthermore, the EU facilitated border controls and entry conditions, including the possibility of visa-free travel for 90 days in EU countries, free public transport and free telephone calls.[85] Alternatively, in 2004, the EU further provided 'subsidiary protection' for people fleeing, inter alia, 'situations of international or internal armed conflict',[86] a definition which could include the ongoing war in Ukraine.

At state level, prominent examples of deferred measures of reception were found in countries such as Ireland, Greece, or even Poland and Hungary – the latter two having resisted outwardly those fleeing conflict and poverty in Middle East and Africa.[87] In effect, Poland opened its border to fleeing Ukrainians – including undocumented – and waived its requirement for a negative COVID-19 test or vaccination status.[88] Hungary, commonly described as Europe's leading anti-migrant government, stated it accepted all Ukrainian citizens and legal residents.[89] Despite having lived under Soviet rule for two generations, and themselves having experienced emigration experience in Europe, it remains that both share minimal exposure to immigration, as mirrored by their openly xenophobic remarks.[90]

[83] Gallant (n 19) 4.
[84] Reilly and Flynn (n 80).
[85] ibid.
[86] Frelick (n 45).
[87] Diab (n 68).
[88] ibid.
[89] ibid.
[90] Dyer (n 79).

While identified as refugees, they remain different from 'the ones we are used to ... these people are Europeans ... intelligent, educated people. This is not the wave of refugees we have been used to, people whose identities we were not sure of, people with unclear backgrounds, who might even have been terrorists'.[91] Indeed, and although Ukraine is not member of the EU, the latter was 'well prepared' for a 'united' reception of Ukrainian refugees.[92] Therefore, the question remains whether Ukrainians are deemed refugees as they fit within the obsolete refugee definition given that, as abovementioned, member states were initially concerned with Europeans, mainly from the Soviet bloc.[93] Another historical dimension of the refugee discourse may equally be cited: Ukrainian President Volodymyr Zelensky is recognised as a Jewish political leader.[94] For Germany's political and public posturing, siding with the Jewish victim – both the President and violated memorial sites – becomes instrumental in condemning its Nazi past.[95] Accordingly, given the post-WWII and Cold War context in which the refugee status emerged, might one find in this generous reception reminiscences of past approaches to refugees, or possibly historical institutionalism of refugee conception? The EU Asylum Project has been examining the possibility of the Ukrainians qualifying for refugee status following expiry of temporary measures, concluding that 'if a broad approach is taken on the basis of the material currently available, there would appear to be valid reasons for considering that many persons fleeing Ukraine meet the essential requirements of the refugee definition'.[96] Such a blanket approach, however, was not previously considered for other groups.

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91 Renata Brito, 'Europe welcomes Ukrainian refugees – others, less so' (*AP News*, 28 February 2022) <https://apnews.com/article/russia-ukraine-war-refugees-diversity-230b0cc790820b9bf8883f918fc8e313> accessed 12 June 2023.

92 Diab (n 68).

93 Marfleet (n 48) 70.

94 Gerhard Gnauck and Frederich Schmidt, ‚Was Russland hier macht, das ist Nazismus' (*Faz*, 3 May 2022) <www.faz.net/aktuell/politik/ausland/selenskyj-zu-lawrow-aussage-ueber-juedische-antisemiten-18002447.html> accessed 3 May 2023.

95 Zachary Gallant and Katharina F Gallant, *Brauner Boden: Ein jüdischer Blick auf die deutsche Aufarbeitung der NS-Zeit* (Westend academics 2022) 46.

96 Hugo Storey, 'Are those fleeing Ukraine refugees?' (*Asile Project*, 28 June 2022) <www.asileproject.eu/are-those-fleeing-ukraine-refugees/> accessed 10 May 2023.

02 — The bad Syrians

Syrians have emerged as the 'ideal' refugee, possibly conceived as more refugees than others or worthier of the status.[97] As such, both media and numerous policies arising from such premise, would bear witness to the latter.

In media coverage, the Syrian civil war received far more attention than conflicts in Afghanistan or Iraq.[98] The focus on viral images, particularly of Syrian children, consolidated the misapprehension whereby only Syrians are refugees, while others remain 'economic' or 'illegal' migrants.[99]

Amongst policies, and given the refugee increase in Europe and Syrian crisis, politicians focussed on the arrival and transit of Syrians rather than overall refugee movements.[100]

Mention may firstly be made of Germany's decision to suspend the Dublin Regulation, thereby opening asylum to Syrian refugees in Germany, irrespective of their point of entry into the Union.[101] Furthermore, the state considers Syrian citizenship as sufficient grounds for determining whether an applicant is a *bona fide* refugee, while respecting the individuality of each case.[102] Similarly, Turkey awarded 'temporary protection' to Syrians systematically, without any further determination process.[103] One may recall Erdogan's speech: 'We regard you as our brothers and sisters ... Turkey is also your homeland'[104] underlining how Syrians are considered guests deserving of asylum, largely on ethico-religious grounds, while Afghan applicants faced difficulties in accessing formal procedures and were illegalised.[105]

Secondly, the initial priority treatment to Syrians may be reflected in donor negotiations with receiving states from 2015 to 2017.[106] A Regional Refugee and Resilience Plan (3RP) adopted between UN agencies and parties in Jordan, Lebanon and Turkey referred explicitly to the needs of Syrian refugees and host commu-

97 Mushtaq (n 44).
98 ibid.
99 ibid.
100 Almasri (n 12) 30.
101 Dyer (n 79).
102 ibid.
103 Almasri (n 12) 30.
104 Umut Uras, 'Erdogan: Syrian refugees could become Turkish citizens' (*Aljazeera*, 3 July 2016) <www.aljazeera.com/news/2016/7/3/erdogan-syrian-refugees-could-become-turkish-citizens> accessed 9 June 2023.
105 Almasri (n 12) 37-40.
106 ibid 31.

nities in all three settings, reflecting the priority given to supporting them.[107] Concurrently, such priority served to validate Syrians' entitlement over other communities given broader acknowledgement of civil war conditions driving their displacement.[108] On a comparative basis, Syrian host states benefited from greater international support per capita than other refugee-hosting states: while the three largest refugee-producing countries in the world are Syria, Venezuela and Afghanistan, the first four years of the Syrian crisis resulted in US$1,500 per refugee, compared to, for instance, US$125 per capita for the mass displacement of Venezuelans.[109]

Finally, a particular analysis of the EU-Turkey agreement on the influx of Syrian refugees is required, considering its effects on non-Syrian – and 'less legitimate' – refugees not explicitly covered by the agreement.[110] As such, the latter prompts discussion on why Syrians are privileged by the two parties. For one, Turkey's migration policies may have historic roots in its relationship with the Syrian government and its aspiration to a supportive neighbouring state – anticipating the overthrow of El-Assad's regime and a potential role in its reconstruction.[111] The continuous service supply to Syrian refugees may be attributed, inter-alia, to earmarked funds received within the EU-Turkey crisis agreement. Migration is of relevance in EU foreign policy and opens opportunities for transit states as Turkey.[112] For another, the EU shared special interests in the displacement of Syrians, in that its attempts to impose refugee reception became sites of disputed policymaking.[113]

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[107] UNHCR, '(3RP) Regional Refugee and Resilience Plan 2015 - 2016 in response to the Syria Crisis | 2015 Annual Report' (*ReliefWeb*, 13 April 2016) <https://reliefweb.int/report/syrian-arab-republic/3rp-regional-refugee-and-resilience-plan-2015-2016-response-syria-crisis> accessed 2 June 2023.

[108] Krystell Jiménez , 'Documentation and Recordkeeping Issues Affecting Refugees in Turkey: A Review' (2019) 48(2) Preservation, Digital Technology & Culture 69-84 <https://doi.org/10.1515/pdtc-2019-0001> accessed 25 March 2023.

[109] Dany Bahar and Meagan Dooley, 'Venezuela Refugee Crisis to Become the Largest and Most Underfunded in Modern History' (*Brookings*, 9 December 2019) <www.brookings.edu/blog/up-front/2019/12/09/venezuela-refugee-crisis-to-become-the-largest-and-most-underfunded-in-modern-history/> accessed 15 March 2023.

[110] Almasri (n 12) 30.

[111] Umut Korkut, 'Pragmatism, Moral Responsibility or Policy Change: The Syrian Refugee Crisis and Selective Humanitarianism in the Turkish Refugee Regime' (2016) 4(2) Comparative Migration Studies 2 <https://doi.org/10.1186/s40878-015-0020-9> accessed 23 April 2023.

[112] Almasri (n 12) 36.

[113] Çiğdem Nas, 'The EU's Approach to the Syrian Crisis: Turkey as a Partner?' (2019) 16(62) Uluslararasi Iliskiler 45, 49-64 <https://dergipark.org.tr/tr/download/article-file/756713> accessed 21 June 2023.

However, if Syrians are given priority, how to justify their 'bad' label in the present analysis? The EU's approach to managing Syrian emigration ultimately rested upon externalisation methods through its partnership with the Turkish government.[114] The agreement between the EU and Turkey incorporates soft externalisation features, including the improvement of Syrians' living conditions in Turkey, rendering border crossing into Europe less likely than remaining within the country.[115] The agreement includes a €6 billion allocation for developing infrastructures and capacity-building for Turkish institutions.[116] Within this 'not in our backyard' attitude, came a type of migration diplomacy between Turkey and the EU, where policies on migration were weighted by potential diplomatic and political wins for both sides.[117] Alternatively, 'bad', as opposed to 'good' Ukrainians, in that differentiated handling between both nationalities implies a two-tiered system that further constrains access to resources for those most in need. Syrian family resettlement, for example, is now threatened by member states concentrating their reception capacity primarily on Ukrainians.[118] Such contrasting approaches to Syrian and Ukrainian refugees illustrate difficulties experienced by the former who, albeit legitimate, are nonetheless subjected to unfavourable views assigned to any non-European refugee community, consistent with historical origins of such etiquette.

03 — The ugly Afghans

The Afghan refugee movement stems from a four-decade protracted crisis of civil war, originating with the Soviet-backed coup d'état in 1978.[119] Compared to Syrian or Venezuelan displacement,[120] the widespread and jerky flow, additionally perceived as

[114] Çiğdem Nas, 'The EU's Approach to the Syrian Crisis: Turkey as a Partner?' (2019) 16(62) Uluslararasi Iliskiler 45, 46 <https://dergipark.org.tr/tr/download/article-file/756713> accessed 21 June 2023.
[115] ibid.
[116] ibid.
[117] Kelsey P Norman, *Reluctant Reception: Refugees, Migration and Governance in the Middle East and North Africa* (CUP 2020) 92ff.
[118] Julian Staib, ‚Deutschland steht vor einer enormen Kraftanstrengung' (*Faz*, 13 March 2022) <www.faz.net/aktuell/politik/inland/ukrainische-fluechtlinge-deutschland-steht-vor-einer-enormen-kraftanstrengung-17874125.html> accessed 21 June 2023.
[119] Susanne Schmeidl, 'Four Decades of Afghan Displacement' (*Bundeszentrale für politische Bildung*, 23 January 2019) <www.bpb.de/themen/migration-integration/laenderprofile/english-version-country-profiles/284416/four-decades-of-afghan-displacement/> accessed 23 May 2023.
[120] Almasri (n 12) 35.

non-white and non-Christian by European countries, prompted differing responses in recent years.[121] Violently in most cases, attempts were made to stop asylum-seekers from prolonged conflicts.[122] Under the EU-Turkey agreement, it resulted, inter-alia, in their non-eligibility for relocation, which was mainly reserved for Syrians,[123] as the war was 'continuing' in their country.[124]

While Syrian refugees' access to assistance and protection has been defined by 'mutual benefit',[125] restrictions on the definition of those eligible for protection, the imposition of obstacles in policy and practice, and the implementation of the said EU-Turkey agreement, may have rewarded and reinforced contrived distinctions between Syrian and Afghan refugees, along with other conflict zones.[126]

Firstly, and parallel to the near-automatic granting of privileged protection to Syrians, 'security concerns' prompted narrower interpretations of the refugee definition, particularly by Northern states,[127] notably at the expense of the present group. Indeed, within Turkish migration policy space, Afghan beneficiaries and applicants for international protection, though predominantly Muslim, were traditionally conflated to security concerns, whereas Syrians were treated as religious guests.[128] Media research in 2021 highlighted widespread use of violent terminology in news reports about Afghans in Turkey, including 'death', 'bombing' and 'conflict'.[129] Accordingly, Afghan displacement triggers may be delegitimised while Syrian refugees were seen as displaced from a war zone.[130] Moreover, the Syrian influx and subsequent political attention to their predicament further influenced the reduction of European donor support for Afghan refugees, as well as access and processing in Europe.[131]

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121 Diab (n 68).
122 ibid.
123 Almasri (n 12) 47.
124 Mushtaq (n 44).
125 Almasri (n 12) 53.
126 ibid.
127 Loescher (n 17) 45.
128 Almasri (n 12) 44.
129 Sibel Karadağ, *Ghosts of Istanbul: Afghans at the Margins of Precarity* (Confédération Suisse 2021) 16.
130 Almasri (n 12) 44.
131 ibid.

Secondly, while some Afghans do enjoy international protection, many remain as unregistered migrant workers in Turkey, owing to expired legal residence documents or rejected asylum claims.[132] In effect, such illegalisation translates into significant undocumented Afghans in Turkey; predominant arrests of irregular Afghan migrants, despite Syrians being the largest group of non-national migrants in the country; and border diversion, given widespread rejection or indefinite delay of applications.[133] Such *de facto* closure of registration has substantial ramifications for the Afghan community, as access to services such as education, healthcare and social assistance depends upon the latter.[134] However, Afghans in Turkey were marginalised prior to Syria's influx into the country. In 2011, Hazara International raised the longer handling of Afghan refugees' cases and lower recognition rates compared to other groups with the UNHCR.[135] Moreover, Afghan refugees have been subjected to public claims of raids and deportations by government entities in Turkish media, while accusations of deportations of Syrians, in contrast, were severely reprimanded by Turkey's Interior Ministry, further suggesting international liability for treating groups differs markedly.[136]

Finally, and importantly, the present analysis considers how the 'refugee' is continually becoming and changing. The EU's response on Kabul's demise to the Taliban in 2021 came lagging behind latest events in Ukraine, and consisted of limited diversionary responses and interference.[137] For EU member states, it brought back flashbacks to the 2015 refugee crisis, stalling coordinated action over Afghan refugees.[138] The EU Commissioner announced a plan to initiate a 'regional political platform of cooperation with Afghanistan's direct neighbours'[139] to manage the Afghan migration crisis, in line with its asylum policy of externalising refugee management and aiming to lessen its international

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132 Almasri (n 12) 38.
133 ibid 44-45.
134 ibid.
135 Hazara International, 'An open letter from Afghan refugees in Turkey to UNHCR' (*Hazara International*, 20 June 2011) <www.hazarainternational.com/2011/06/22/an-open-letter-from-afghan-refugees-in-turkey-to-unhcr/#:~:text=We%20urge%20you%20all%20to,refugees%20must%20be%20fast%2Dtracked> accessed 12 April 2023.
136 Almasri (n 12) 44.
137 Diab (n 68).
138 ibid.
139 ibid.

refugee law commitments and applicability of non-refoulement.[140] However, a UNHCR field office update found increased donor interest in Afghan refugees, leading to discussions with ambassadors and local authorities on the latter's situation and assistance needs.[141] In addition, a member of an alliance of local NGOs raised the possibility that aid channelling could shift towards Afghan refugees more explicitly, given the crisis of 2021.[142] As such, the Afghan refugee may find itself accepted as worthy of such status, bearing witness to the new interests in doing so.

04 - The forgotten ones: Economic, climate migrants and the IDPs

Whilst the refugee definition is based on the Refugee Convention and its subsequent 1967 amendment, the latter has failed to acknowledge evolving causes of forced migration,[143] thereby excluding vulnerable and largely non-European communities.

For one, the primary action of Convention refugees involves border crossing to flee persecution based on race, religion, nationality or political opinion.[144] The requirement to be 'outside one's country of nationality' is problematic, as it requires documents – such as passports – to be presented at borders, which may be lost or stolen in times of conflict, or which refugees may not possess.[145] In fact, while the number of IDPs represents the majority of the displaced,[146] the latter remain excluded from such restrictive refugee definition.

For another, the juridical aspect of 'persecution' is vague and highly problematic as it relies on ambient subjective and objective refugee claim determination criteria.[147] Persecution would exclude economic and climate migrants.

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[140] Diab (n 68).
[141] Almasri (n 12) 54.
[142] ibid.
[143] James C Hathaway, 'A Reconsideration of the Underlying Premise of Refugee Law' (1990) 31(1) Harvard International Law Journal 165.
[144] Mushtaq (n 44).
[145] ibid.
[146] IDMC, '2023 Global Report on Internal Displacement' (*Internal Displacement Monitoring Center*, May 2023) <www.internal-displacement.org/global-report/grid2023/> accessed 21 June 2023.
[147] Leila Nasr, 'International Refugee Law: Definitions and Limitations of the 1951 Refugee Convention' (*LSE Human Rights*, 8 February 2016) <http://blogs.lse.ac.uk/humanrights/2016/02/08/international-refugee-law-definitions-and-limitations-of-the-1951-refugee-convention/> accessed 12 April 2023.

The labelling as 'economic migrants' – coupled with missing knowledge of their movements' driving motives – has served to negate the pretence of seeking refugee status, reserved for those fleeing war or conflict.[148] In this case, refugee bodies are deemed menaces against a fragile nation-state's economic order.[149] The UNHCR's report on EU media coverage observes that 'the situation in Calais has always been characterised as an issue of "illegal" or "immigration" rather than one that related in part to refugee resettlement ... apart from Syrians, all other nationals have been classified as economic migrants'.[150] Conflating terminology – such as economic migrant with refugee – becomes important as it identifies the level of protection expected to be available to refugees and asylum-seekers under law.[151] 'Economic' migrants would constitute a throwaway category, whereby asylum applicants are refugees in disguise, taking the place of the most legitimate refugees, along with jobs for deserving Europeans.[152]

Refugee status is also not extended to individuals fleeing climate change and natural disasters, resulting in the poorest countries – ie developing and non-European countries – to be the furthest affected and shoulder the brunt of climate change burden.[153] In effect, an intergovernmental panel on climate change stated how countries contributing largest to climate change will have the least impact from the latter.[154]

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148 Mushtaq (n 44).

149 ibid.

150 Mike Berry, Inaki Garcia-Blanco and Kerry Moore, 'Press Coverage of the Refugee and Migrant Crisis in the EU: A Content Analysis of Five European Countries' (*UNHCR*, 2015) <www.unhcr.org/media/press-coverage-refugee-and-migrant-crisis-eu-content-analysis-five-european-countries> accessed 23 April 2023.

151 Mike Berry, Inaki Garcia-Blanco and Kerry Moore, 'Press Coverage of the Refugee and Migrant Crisis in the EU: A Content Analysis of Five European Countries' (*UNHCR*, 2015) <www.unhcr.org/media/press-coverage-refugee-and-migrant-crisis-eu-content-analysis-five-european-countries> accessed 23 April 2023.

152 ibid.

153 John Vidal, 'Climate change will hit poor countries hardest, study shows' (*The Guardian*, 27 September 2013) <www.theguardian.com/global-development/2013/sep/27/climate-change-poor-countries-ipcc#:~:text=Low%2Dincome%20countries%20will%20remain,assessment%20of%20the%20issue%20yet> accessed 12 May 2023.

154 ibid.

The legal confines on refugee status have translated into insufficient commitment to refugees, and the convenience of these limitations does not commit to opening the definition.[155] Meanwhile, UNHCR studies indicate the vast majority of migrants through Europe may in fact be eligible for asylum.[156]

Today, presumptions and assumptions on whom to consider a refugee are shaping policies towards the asylum eligible. Labelling refugees as economic or climate migrants would perhaps be a further attempt to preclude certain nationalities, mostly non-Europeans.

1.2 Power: Between Arendt and Foucault

Yet presented with two ominously influential, if controversial, political thinkers of the 20th century,[157] research merging Hannah Arendt and Michel Foucault has been rare.[158] Where Arendt traditionally appeared as a rightist, Aristotelian and highly resistant to liberating modernity, Foucault revealed as radical, leftist and Nietzschean post-modernist.[159] But to restrict attention on the latter is far too cursory, not least considering they, in fact, reach similar criticisms of liberal democracies and, to some extent, modernity per se.[160] Reference should also be made to their central preoccupation with the interrelationship between concepts of power, subjectivity and agency; discourse, knowledge and truth; and a resemblance between their respective concepts of violence and domination.[161]

Arendt and Foucault have articulated different ways of conceptualising power – not least since Foucauldian power is strategic, whereas Arendtian is communicative.[162] However, two preliminary remarks should be drawn. For one, each conception is

[155] Mushtaq (n 44).
[156] Hathaway (n 143) 133.
[157] Jakub Franěk, 'Arendt and Foucault on Power, Resistance, and Critique' (2014) 6(3) Acta Politologica 294 <https://acpo.vedecke-casopisy.cz/publicFiles/00785.pdf> accessed 21 February 2023.
[158] Jacob Maze, 'Towards an Analytic of Violence: Foucault, Arendt & Power' (2018) 25 Foucault Studies 121 <https://doi.org/10.22439/fs.v0i25.5577> accessed 10 February 2023.
[159] Amy Allen, 'Power, Subjectivity, and Agency: Between Arendt and Foucault' (2002) 10(2) International Journal of Philosophical Studies 131.
[160] Franěk (n 157).
[161] Allen (n 159) 132.
[162] ibid 142.

in essence rooted in the criticism of a common understanding of power, which Foucault refers to as the legal model and Arendt as the command-obedience model.[163] For another, albeit conceptually different, contrasting their views might prove antidotal to their respective limitations.

Underpinning their common critique lies the equalisation of power to rule of law and its assumption of paradigmatic power relationship as a sovereign imposing its rule on its subjects.[164] Such a comprehension of power infers for the state to be the primary realm in which power is operable.[165] Moreover, given the model's assumption of power, it inclines power as restricting, repressive and disempowering.[166] Consequently, both authors initiate a power analysis by contesting the equation of power as sovereignty.[167] In pursuing their intellectual ambitions, they built on consubstantial doctrines: their relational understanding of power, for example, is a near silent equivalent of the other.[168] One should therefore appreciate what a parallel – perhaps singularly complementary – reading of the thinkers would reveal about the refugee, conventionally limited to an object of power.

1.2.1 Power, subjectivity and agency

For the refugee, the theme of power in constructing subjectivity and agency provides understanding of the refugee as an object – but equally subject – of power. The subsequent chapters will situate refugees in migration policies, as 'refugee objects' of power (Chapter II), along with resistance possibilities derived from a 'refugee subject', as arising from the assemblage theory (Chapter III).

Foucault's juridical model of power entails two main criticisms: a confinement to social and political life, and a negative, repressive and prohibitive etiquette.[169] As for the former, Foucault urges to engage power at its extremities, where it becomes 'capillary', through regional forms and institutions.[170] Without negating power's existence in central ties, the peripheral relations of dom-

163 Allen (n 159) 132-40.
164 ibid.
165 ibid.
166 ibid.
167 ibid 132.
168 Maze (n 158) 123.
169 Allen (n 159) 132.
170 Michel Foucault, *Power/Knowledge: Selected Interviews & Other Writings, 1972–1977* (Colin Gordon ed, Vintage 1980) 96.

ination and subjugation, equally important, would be missed by such focus.[171] Regarding the latter, viewing power in exclusively negative or repressive terms is hardly warranted, since, according to Foucault: 'What makes power hold, what makes it acceptable, is simply the fact that it does not only weigh on us as a force that says no, but that it goes through and produces things, that it induces pleasure, forms knowledge, produces discourse'.[172] Therefore, whilst it may have such a side, it is merely too restricting.[173]

In the latter critique lies the Foucauldian foundation of the nexus of power, subjectivity and agency. The juridical model, subservient to this curtailment of power as solely repressive, misleads it into regarding individual subjects/agents to be wholly configured, settled and unified identities subsequently entangled in power relations external to their own formation.[174] Yet, on Foucault's view, individual subjects/agents are never fully constituted; they are constructed in and by social relations, which are, according to his primary critique, all permeated by power.[175] As such, power becomes the core element in individuals' own formation in that they are simultaneously situated within the complex, multiple and shifting relations of power in their social field and can assert a subject position in and through these relations.[176] Power, for Foucault, would be conditional upon individual possibility of subjectivity.[177]

Despite his own lack of attention to separating subjectivity from agency – his tendency to use the terms almost interchangeably – it nevertheless remains how subjectivity is prerequisite to agency; action can only be engaged in if one is capable of deliberation, ie being a subject thinker.[178] Hence, should power condition subjectivity for Foucault, it would be equally true for agency.[179]

Interpretation of Foucault thus suggests a power vision providing historical and sociocultural conditions of subjectivity's and agency's possibilities in modern societies, whose evolving figure of the refugee should be placed.

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171 Allen (n 159) 133.
172 Foucault, *Power/Knowledge* (n 170) 112.
173 Allen (n 159) 133.
174 Allen (n 159) 135.
175 ibid.
176 ibid.
177 ibid.
178 ibid 135.
179 ibid.

Along with Foucault, Arendt challenges the legal model or what she terms the 'command-obedience' model of power. The latter, she contends, arose from the splitting of two interdependent facets of action – to initiate or direct (archein) and to carry out or complete an action (prattein).[180] As it occurred, the 'initiator' or 'leader' became the ordering ruler, and 'action' was equated with a mere acting or carrying out orders by his subjects, however originally being characteristic of prattein.[181] According to Arendt, the partition of action's original unity into leading and obeying amounts to a drain on politics.[182] It suggests that politics is stable and orderly – with groups holding power over others in quiet and consistent manners – while politics should be marked by disorder and uncertainty as conflict, disagreement and change are fundamental to political dynamic developments.

In *The Human Condition*,[183] Arendt sought to recapture the primitive meaning of action as a beginning of something new, one linked to the 'human condition' of natality – the mere reality that human beings are born into the world.[184] Natality draws meaning from the newcomer's ability to act, yet equally, the ability to act, to renew, is a dimension of natality's condition.[185] The renewal – called 'action' by Arendt – is a constituent of the agent-individual. Action reveals – but is not – the actor: 'In acting and speaking, men show who they are, reveal actively their unique personal identity and thus make their appearance in the human world'.[186] However, the actor's identity is not uniquely performative – ie related simply to action – nor is action merely to express a pre-existing identity:

> [N]o one is the author or producer of his or her own life story ... the stories, the results of action and speech, reveal an agent, but that agent is not an author or producer. Somebody began it and is its subject in the twofold sense of the word, namely its actor and sufferer, but nobody is its author.[187]

[180] Hannah Arendt, *The Human Condition* (The University of Chicago Press 1958) 189.
[181] ibid.
[182] ibid 122.
[183] Arendt, *The Human Condition* (n 180).
[184] Allen (n 159) 136.
[185] Arendt, *The Human Condition* (n 180) 9.
[186] ibid 179.
[187] ibid 184.

In Arendt's view, acting and suffering are always simultaneous, meaning that suffering causes action just as action causes suffering. Inherently, action is unforeseeable, since it produces unexpected consequences while being inflected by others.[188] Thus, an agent has to suffer and act equally, constrained by others' actions – as action is inscribed in an ongoing network with others, while constructing and sustaining it – and empowered to act through the latter network in which they must do so.[189]

The latter reappropriation of action runs parallel to her reclaiming of power, leading to Arendt's second critique of the model of command-obedience power: while violence is instrumental in nature, power is an end in itself.[190] She dismisses the equating of power with violence. Rather, one should not regard violence as the ultimate exercise of power, but assert that wherever violence prevails, power cannot be adequately realised.[191] Power, according to Arendt, emerges from engaging collectively towards shared goals, and vanishes when individuals disperse.[192] However, if power emerges from action – say, from collective action – power is likewise a condition of enabling action.[193] Arendt holds that power, defined as 'the human capacity not only to act but to act in concert',[194] renders and conserves public and political realm wherein individuals act. As Arendt puts it, 'the political realm arises directly from common action, from the sharing of words and deeds'.[195]

Since identity is achieved by and within public/political space, being formed by power, the latter would appear, for Arendt, as a precondition for the possibility of agency.[196] Furthermore, Arendt maintains that power 'preserves the public domain and the space of appearance',[197] as power is perpetually produced by acting in public space, which, in turn, constructs and maintains the latter space. Consequently, despite springing from individuals interacting together, power likewise allows collective action through providing space where actions can unfold.[198] Added to which, by

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188 Allen (n 159) 137.
189 Allen (n 159) 137.
190 Hannah Arendt, *On Violence* (Harcourt Brace Jovanovich 1970) 37.
191 Arendt, *The Human Condition* (n 180) 200.
192 ibid.
193 Allen (n 159) 138.
194 Arendt, *On Violence* (n 190) 36.
195 Arendt, *The Human Condition* (n 180) 198.
196 Allen (n 159) 138.
197 Arendt, *The Human Condition* (n 180) 204.
198 Allen (n 159) 138.

constituting public domain, power constitutes another precondition for action, given an agent's identity may become reality solely via public action.[199] Arendt argues beyond power as a condition of possibility for action in the human condition, as she further contends power as a precondition for subjecthood proper.[200] The requisites for thinking subjects are solely met when public space is established and preserved by virtue of the power arising from the sharing of words and deeds.[201]

While diametrically opposites on the normative value of power, Arendt and Foucault agree that power – strategic for Foucault and communicative for Arendt – stands as a condition of possibility for agency and subjectivity. Each of them understands individuals in a twofold capacity, both as doers and sufferers, sufferers for doing and doers only insofar as they suffer.[202] Moreover, they firmly hold to power as central to individual subjectivity and agency formation.[203] Consequently, if the individual is constructed through unequal power relations, it appears evident that power is necessary for the individual to exist and to understand itself.[204] How could refugees form a solidarity movement if they were never constituted as refugees in the first place? Power, therefore, may be understood as enabling as it is constraining, for only through power relations do capacities for action emerge.[205]

Yet, in isolation, both authors' accounts of the relation between power and subjectivity/agency are dissatisfying. For one, as Foucault considers power in strategic and unsafe respects – posing threats to freedom from constraining and actuating forces[206] – explaining and analysing the binding power of social movements is rendered impossible.[207] Power may result from a concerted, mutual and consenting action, whereas Foucault stressed that power 'is not a function of consent' and, although it 'may be the result of prior or permanent consent … it is not by nature the result of a

199 Allen (n 159) 138.
200 Arendt, *The Human Condition* (n 180) 208.
201 ibid.
202 Allen (n 159) 142.
203 ibid.
204 Maze (n 158) 125.
205 ibid.
206 Allen (n 159) 143.
207 ibid.

consensual action'.[208] Certainly, such account of power as consensual is central to Arendt's narrative. However, the difficulties inherent within the latter are compounded by Arendt's assumption of power as communicative and end in itself, hence innately positive and normative.[209] As Arendt equates power with action in this sense, and thereby with the political realm itself, she has tended to neglect the tactical ways in which power is exercised.[210]

Enclosed within such power relations, it shall be attempted to explore a potential redress – along the present analysis of refugee identity – rendering Foucault's repression of power as supplementary rather than detrimental to Arendt's field of possibilities.

1.2.2 Power, knowledge and discourse

Power, as Foucault famously commented, 'goes through and produces things, it induces pleasure, forms knowledge, produces discourse'.[211] As such, knowledge is not to be regarded as an independent entity, for it is always an exercise of power and power is invariably a function of knowledge.[212] In continuous with the preceding section, the discussed Western production of migration knowledge may exemplify how the governance of refugees led to their knowledge, while refugee knowledge enabled their governance.[213] Foucault's insistency upon a tight and inextricable nexus between power and knowledge, along with his affirmation whereby the truthiness of any statement ever depends upon rules of a given knowledge system in which it is made,[214] suggests there are no normative guidelines by which to weigh the relative worth of varying configurations of power relations. In other lines, no universal criteria apply to assess how power relations differ from one another.

Along his career, Foucault took notice of discourse phenomena, chiefly how discourses shape reality in a social world and among people, ideas and things it comprises.[215] For Foucault, a

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[208] Michel Foucault, 'Afterword: The Subject and Power' in Hubert Dreyfus and Paul Rabinow (eds), *Michel Foucault: Beyond Structuralism and Hermeneutics* (2nd edn, Harvester 1982) 220.
[209] Allen (n 159) 143.
[210] ibid.
[211] Foucault, *Power/Knowledge* (n 170) 119.
[212] Michel Foucault, *The Archaeology of Knowledge* (Barnes and Noble 1993) 87.
[213] Lippert (n 21) 314.
[214] Franěk (n 157) 300.
[215] Routledge Sociology, 'Power/knowledge' (*Social Theory Rewired*) <www.routledgesoc.com/profile/michel-foucault#key-concepts> accessed 4 June 2023.

discourse is an institutionalised manner of speaking or writing over reality, determining what is intelligibly thinkable and sayable about the world.[216] Discourses would not unearth fundamental preexistent truths on human identity but generate them by means of power/knowledge practices.[217] Moreover, Foucault strives to elude imaginaries emphasising a visible locus of power such as the sovereign or the government, as distinct from the individual.[218] In his view, there are no discernible sites outside language at which discursive practices are diffused or regulated.[219] The latter point is central, as it indicates how control mechanisms cannot be traced back to any social agent, as they are non-subjective.

Some cursory observations on discursive practices, along with an appreciation of their power ties, are to be noted, while temporarily sidelining considerations regarding disciplinary techniques, biopower, governmentality, etc.[220] Any institutions, policy functions and fields of research, he suggests, entail utterances expressed in constitutions, regulations, mandates, memberships, contracts and suchlike.[221] An ensemble of statements would be termed a discursive formation, and in turn discursive formations produce knowledge.[222] In *Archaeology*, Foucault states that 'there is no knowledge without a particular discursive practice, and any discursive practice can be defined by the knowledge it forms'.[223] In other words, knowledge enabling a response to questions on domains, such as the refugee crisis, is informed by discursive practices constituting and delimiting that domain.

Consequently, the appropriate further step is to pinpoint the historical locus where a power mechanism has become available to be discoursed upon and exercised, focusing on 'the subjected knowledges which were thus released [and] would be brought into play'.[224] For example, it has been discussed the political context and place wherein seeking refuge in another country became

[216] Routledge Sociology, 'Power/knowledge' (*Social Theory Rewired*) <www.routledgesoc.com/profile/michel-foucault#key-concepts> accessed 4 June 2023.

[217] ibid.

[218] Neve Gordon, 'On Visibility and Power: An Arendtian Corrective of Foucault' (2002) 25(2) Human Studies 125, 129.

[219] ibid.

[220] Neve Gordon, 'On Visibility and Power: An Arendtian Corrective of Foucault' (2002) 25(2) Human Studies 125, 129. 27.

[221] ibid.

[222] ibid.

[223] Foucault, 'Afterword' (n 208) 87.

[224] Foucault, 'Two Lectures' (n 8) 24.

available, but it shall be further supplemented with ways in which both private and public parties carried refugee resettlement programmes and built methods of including (and excluding) refugees within their societies (Chapter II).

Discourse thus produces and constitutes identities and interests, thereby also influencing and shaping behaviour – refugee as subject of power.[225] Moreover, by defining bodies, spheres and fields of research, discourse fixes boundaries, forming a system of exclusion, ban and prohibition – refugee as object of power.[226] The preceding section on the differing consideration and discourses of refugee groups anticipates the function the latter may assume, according to the context, in relation to the refugee group's identity. Such function, dependent on its use (object/subject), will later be analysed.

As previously outlined, Arendt assumes the prerequisites for a thinking subject are found only where public space is formed and maintained by virtue of power derived from shared words and deeds,[227] ie discourse. Discourse is thereby central to the exercise of power. She stresses the relevance of public deliberation, discussion and dialogue as key elements in the functioning of politics and sees discourse as a fundamental ingredient of human freedom and political participation.[228] However, while her views on knowledge and truth are less developed than her ideas on power and politics, she emphasises the importance of veracity and propriety in politics and cautions on manipulation and fact-fabrication for political ends, to which reference shall be made in the later analysis of biopolitics.

Thus, discourse is of significance in subsequent biopower analysis given the intertwined unfolding of the modern state and modern science, giving rise to disciplinary power mechanisms whose use by politicians for normalisation purposes is key to both Foucauldian and Arendtian preoccupation on biopolitics.

[225] Gordon, 'On Visibility and Power' (n 218) 127.
[226] ibid.
[227] Arendt, *The Human Condition* (n 180) 200.
[228] Franěk (n 157) 301.

1.2.3 Power, violence and domination

Despite differences between Foucault and Arendt, particularly in terminology, their complementarity may be enhanced upon examining the self-attested ground of both philosophies: freedom.

Foucault asserted the exercise of power upon the subject empowers them to act freely: 'The individual is in fact a power-effect, and at the same time, and to the extent that he is a power-effect, the individual is a relay'.[229] On a parallel tone, Arendt argued that freedom and conditionality are inextricably bound – for neither can exist independently of the other.[230] Owing to the dichotomous equation, agents are deemed free to act otherwise, ie they enjoy potentiality.[231] Freedom's backbone therefore lies in the possibilities of acting differently, and power rests on the latter, or more accurately, is what makes potentiality possible, equally as potentiality is contingent on power,[232] as Foucault pointed out: 'In power relations there is necessarily the possibility of resistance because if there were no possibility of resistance ... there would be no power relations at all'.[233] Power is the pledge of potentiality, even for Arendt: 'Freedom, as we would say today, was experienced in spontaneity'.[234] Thus, 'Beginning [or spontaneity] ... is the supreme capacity of man; politically, it is identical with man's freedom'.[235] With analogous philosophical groundings in place, it remains to consider how violence, read through Arendt, can be folded within a Foucauldian framework.

Whereas power is pluralistic, acting through and among individuals, violence is conversely individualistic: although it can be used collectively, it is always a singular deployment of violence.[236] Arendt explains: 'The extreme form of power is All against One, the extreme form of violence is One against All. And this latter is never possible without instruments'.[237] 'Instruments of violence' are ways by which violence is exerted and, unlike power, may be

[229] Michel Foucault, *The Politics of Truth* (Sylvere Lotringer ed, Semiotext(e) 1997) 30.
[230] Maze (n 158) 128.
[231] ibid.
[232] ibid.
[233] Michel Foucault, 'The Ethics of the Concern for Self as a Practice of Freedom' in Paul Rabinow (ed), *Essential Works of Foucault 1954-1984, Volume 1: Ethics, Subjectivity and Truth* (Robert Hurley tr, The New Press 1984) 292.
[234] Hannah Arendt, 'What is freedom' in Peter Baehr (ed), *The Portable Hannah Arendt* (Penguin 1967) 456.
[235] Hannah Arendt, *Origins of Totalitarianism. Part 2. Imperialism* (Mariner Books Classics 1968) 479.
[236] Maze (n 158) 130.
[237] Arendt, *On Violence* (n 190) 42.

possessed.[238] Indeed, power is found in actions, yet not reducible to them.[239] Violence, by contrast, merely exists through acts, 'instruments', without requiring a cross-subjective component.[240]

In essence, if power is bound to potentiality, violence is present when the latter is destroyed – or lessened – a fact echoed by Foucault: 'Where the determining factors saturate the whole, there is no relationship of power; slavery is not a power relationship when man is in chains'.[241] The relevant division between power and violence lies in the potencies of acting otherwise: power enables it and violence impedes it.[242] The two forces are not concurrent, but rather correspondent and are, in Arendt's words, 'two sides of the same coin; they are by no means mutually exclusive'.[243] Arendt's contention that violence may destroy power but cannot generate it acquires significance once violence is seen as preventing potentiality.[244] Note, however, that Arendt is not opposed to violence itself.[245]

Furthermore, for violence to be exerted on a nexus of power relations, the latter must be in existence first.[246] For example, in order for refugees to be subjected to violence, a system of power relations is required to enable such treatment. The power relation could lie between state parties or refugees and host societies. Thus, violence is invariably experienced as an offspring of existing power dynamics, albeit they may strive to prevent certain developments from appearing, at least in a heterodox manner.[247]

Foucauldian genealogies document particular configurations of power – in contrast to Arendt's broad discussion of violence – and fail to address power in general.[248] The genealogical method was not intended for itself but aimed at supporting freedom.[249] Relationships of power are innately 'nonegalitarian'[250] as they include an unexpected possibility of acting, so that 'We can never be

[238] Maze (n 158) 130.
[239] ibid.
[240] ibid.
[241] Foucault, 'Afterword' (n 208) 221.
[242] Maze (n 158) 132.
[243] ibid.
[244] ibid.
[245] Hannah Arendt, 'Truth and Politics' in Peter Baehr (ed), *The Portable Hannah Arendt* (Penguin 1967) 557.
[246] Maze (n 158) 134.
[247] ibid.
[248] ibid.
[249] ibid 137.
[250] ibid.

ensnared by power: we can always modify its grip in determinate conditions and according to a precise strategy'.[251] Yet, factors do generally preclude such 'creativity'. For example, whilst having the right to declare oneself a world citizen, a passport is nonetheless compulsory for travelling abroad.[252] Hence, where factors develop into such stringent hegemonism, it constitutes a state of domination, which Foucault explicitly links to power:

> One sometimes encounters what may be called situations or states of domination in which the relations of power, instead of being mobile, allowing the various participants to adopt strategies that modify them, remain blocked, fixed ... one is faced with what may be called a state of domination.[253]

Failing to delineate power from domination, Foucault's arising deadlock affords transposing Arendt's analysis of violence to provide insight on domination. The latter would thus be reframed to circumstances where violence has attained levels at which the possibilities of acting otherwise have been reduced, insofar as the exercise of freedom is rendered highly difficult, yet not completely excluded.[254] As such, domination would refer to the high degree of violence which impedes spontaneity and ensures a failure of competing strategies.[255]

By its nature, violence should be considered relational and strategic, as Arendt intended, but its effects – the non-sovereignty of action – enable systems of violence to be stabilised, which corresponds to Foucauldian configuration of power.[256]

As such, Arendt and Foucault dismiss mainstream power frames by seeing violence as an instrument to prevent groups or individuals accessing perceived spaces of action and recognition. With refugees, for example, policies and practices conducive to containment and securitisation of certain movements, as mentioned above, are not inevitably implemented by force, but through various sociopolitical and economic arrangements resulting on internalised segregation and controls over their lives. Prob-

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[251] Michel Foucault, *Discipline and Punish: The Birth of the Prison* (Vintage 1977) 123.
[252] Maze (n 158) 137.
[253] Foucault, 'The Ethics of the Concern for Self' (n 233) 283.
[254] Maze (n 158) 138.
[255] ibid.
[256] ibid.

ing into the political rationalisation behind violence in the subsequent chapter and investigating the historical formation of violence will be of importance: '[T]o see how these mechanisms of power [or violence] have been – and continue to be – invested, colonized, utilized, involuted, transformed, displaced, extended, etc., by ever more general mechanisms and by forms of global domination'.[257]

1.3 Biopower: A power over the bios

In studying modernity, both philosophers remark how the advent of the latter is coupled with invasive economic activities, ie life-sustaining activities, into the public domain.[258]

De facto, the modern nation-state development demands the shaping of a fundamentally new power form or domination[259] designed to control, develop and manage 'the most precious source of the state, its population'.[260] Both philosophers highlight the disciplinary nature of such power, aiming to carve 'docile bodies',[261] or in Arendt's conception, compliant individuals behaving predictably, yet simultaneously incapable of spontaneous action.[262] Arendt and Foucault agree on how the new power or domination – called biopower by Foucault and echoed in Arendt's incredibly similar concept of social domination – addresses individuals at their biological existence whose primary control is life itself.[263]

1.3.1 From disciplinary ...

Unlike the earlier sovereign power, the new system of biopower – alternately, disciplinary power – may not be reduced to a single-way relationship between the ordering sovereign and obeying subjects.[264] Rather, it 'emerges from interactions between agents and ... exists only in its exercise'[265] and its nature appears

[257] Foucault, 'Two Lectures' (n 8) 37.
[258] Franěk (n 157) 295.
[259] ibid.
[260] Dana R Villa, 'Postmodernism and the Public Sphere' (1992) 86(3) American Political Science Review 712, 718.
[261] Foucault, *The History of Sexuality* (n 9) 141.
[262] Arendt, *The Human Condition* (n 180) 40.
[263] Franěk (n 157) 295.
[264] ibid.
[265] Allen (n 159) 142.

relational or intersubjective.[266] Additionally, unlike sovereign power whose power operates primarily negatively, through issuing commands and prohibitions, disciplinary power will rather operate positively or productively.[267]

Disciplinary power formulates itself using 'natural rules, or norms'.[268] Owing to the interlaced development of both modern state and science, the norms are issued within diverse scientific disciplines, referred by Foucault as 'human sciences', and implemented by disciplinary institutions.[269] Refugees are amenable to disciplinary power in various institutional contexts. Refugee camps – often administered by international organisations such as the UNHCR and national governments – offer an example. In the latter, refugees may suffer from disciplinary measures such as lockdowns, limitations on movement and access to resources. In addition, they may be 'disciplined' in detention centres or during the asylum process, where forms of control may be applied.[270] Such institutions are likely to be geared towards compelling adherence to a particular set of standards and inducing compliant bodies – ones that can be easily managed and controlled.[271]

Arendt's account of the 'Rise of the social',[272] ie modern society's development, may be viewed as describing the emergence and operation of the modern form of power – in Arendt's terms, social domination.[273] The system is designed to regulate individual human beings, populations and, in short, the whole life process.[274] It minimises human beings to biological existence, harnessing vital energy and incorporating them tighter into mainstream work and consumption systems.[275] Along with Foucault, she therefore stresses the indispensability of socio-behavioural sciences (in Foucault's terms, 'human sciences') to such domination.[276]

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[266] Franěk (n 157) 295.
[267] ibid 296.
[268] Foucault, *Power/Knowledge* (n 170) 106.
[269] Franěk (n 157) 296.
[270] ibid.
[271] ibid 295; Villa (n 260) 718.
[272] Arendt, *The Human Condition* (n 180) 38-50.
[273] Franěk (n 157) 297.
[274] Arendt, *The Human Condition* (n 180) 257.
[275] Franěk (n 157) 297.
[276] ibid.

Before furthering the present analysis, a terminological dipping is of relevance. In attempting to cross-reference the two philosophers' concepts, it was noted of Arendt's violence being closely analogised to Foucault's domination.[277] However, (social) domination for Arendt appears to bear striking resemblance to Foucault's concept of biopower.[278] And while both contend social domination (Arendt)/biopower (Foucault) as all decentralised institutions for disciplining populations, such demographic discipline is a form of power over a population, ie *power* over the *bios*, whose power is, as previously mentioned, intrinsically linked to agency and subjectivity.[279] Despite the existence of paradoxes in Foucault's conceptualisation of power within the agent/sufferer relationship, the latter remain constructive as they are, somewhat, opposing those encountered in Arendt's work. For Arendt, disciplinary techniques would be means by which the refugee is objectified, in that the social domination system of late modern society operates in a social – as opposed to political – sphere and cannot thereby be defined as oppression or political domination.[280] How could the 'suffering' refugee 'act' if such is tied to the potential of being undertaken or resisted through political action, when these are non-political issues in Arendt's view? How could social domination be resisted without social, economic and private issues becoming public and political issues?[281] Conversely, Foucault argues how the unfolding of bio-power opens numerous opportunities for resistance, thereby maintaining the potentiality of being a power-subject.[282] Nevertheless, his theory's shortcoming hinges on the unresolved query as to the purpose of such resistance, ie what would its goal be?

Subsequently, disciplinary power ought to be contrasted with normalisation, as understood by both philosophers, which underlies political decisions regarding what is deemed normal or abnormal, and for which disciplinary techniques would be the means to justify such ends.[283] Like Foucault, Arendt underlines social domination's normalising potential: 'It is decisive that society … expects from each of its members a certain type of behavior, impos-

[277] Maze (n 158) 138.
[278] Franěk (n 157) 295.
[279] Allen (n 159) 142.
[280] Franěk (n 157) 299.
[281] ibid.
[282] ibid.
[283] ibid 297; Mathieu Bietlot, 'Du disciplinaire au sécuritaire : De la prison au centre fermé' (2003) 11(1) Multitudes 57, 58ff.

ing innumerable and varied rules, all of which tend to "normalize" its members, to make them behave, to exclude spontaneous action'.[284]

Finally, biopower, ie power over the *bios*, is equally tied to knowledge and discourse. Foucault's 'human sciences' – accepted by Arendt – and otherwise understood as knowledge informed by discursive practices – are to be applied by disciplinary institutions.[285] Yet again, as both philosophers warned, knowledge may be politically manipulated and exploited for normalising populations. One recalls Foucault, for whom the truthfulness of any statement is ever a function of a given system of knowledge in which it is embedded,[286] as well as Arendt, who cautions the dangers of manipulation and fact-fabrication – especially by experts – for political purposes.[287] Like Foucault, Arendt highlights the central role of social or behavioural sciences – 'human sciences' for Foucault – whose aim of defining what is deemed normal.[288]

1.3.2 ... to securitarian power

As a way of introducing biopolitics, it is opportune to acknowledge the slide from biopower to biopolitics. To begin with, the development of disciplinary power has not resulted in the demise of earlier sovereign power model.[289] The now discernible constitutional and legal constructs of modern democratic states conceal the negative disciplinary coercion processes operating beyond the discernible.[290] Simultaneously, the latter processes allow for visible legal and political (democratic) structures to exist.[291] Their aim is to 'assure the cohesion of [its] social body',[292] and discipline individuals who may grow into accountable citizens[293]: 'The individual ... is not the opposite of power, it is ... one of its primary effects ... [and at the same time] the vehicle'.[294] Furthermore, Arendt, together with Foucault, equally highlights the de-

[284] Arendt, *The Human Condition* (n 180) 40.
[285] Franěk (n 157) 299; Gordon, 'On Visibility and Power' (n 218) 129.
[286] Franěk (n 157) 300.
[287] Roger Berkowitz, 'The Danger of Intellectuals' (*The Hannah Arendt Center for Politics and Humanities*, 22 July 2013) <https://hac.bard.edu/amor-mundi/the-danger-of-intellectuals-2013-07-22> accessed 22 February 2023.
[288] Franěk (n 157) 297.
[289] ibid. 296.
[290] ibid.
[291] ibid.
[292] Foucault, *Power/Knowledge* (n 170) 106.
[293] Franěk (n 157) 296.
[294] Foucault, *Power/Knowledge* (n 170) 98.

centralised and non-subjective quality of domination.[295] A modern society is ruled by 'nobody' yet remains oppressive.[296] Finally, like Foucault, she underlines the positive and productive quality of contemporary social domination regime, whereby it organises, channels, multiplies and invests the collective society's life force/process.[297]

Against this background, Foucault established a new theoretical model for power studies, understanding power as pervasive, diffuse and capillary, and both producing and repressing.[298] Foucault contended how legal and disciplinary power were both inherent to modern western societies, and warned how the former came to conceal the latter.[299]

While such disciplinary society is a defining feature of the modern era, it however appears that its mechanisms have not vanished, as once predicted by Foucault.[300] On the contrary, the 'security' paradigm, novel to the genre, introduced a new world order: new monitoring and internalisation mechanisms for norms on the one hand, subjection and brutal exclusion of supernumeraries on the other.[301] The security paradigm works wonders in the vicious normalisation circles uncovered by Foucault, creating the very problems they are intended to address to ensure their continuance.[302] In fact, to supply rationale for control and violence, the securitarian machinery prevents disorder but also defines and, if necessary, creates it.[303] As noted by examination of refugee groups, the historical understanding of security reveals how each time frame provides a legitimate definition of what is to be feared.

As a result, the so-called 'security model' mobilises disciplinary power mechanisms perfected by new technologies, with a strengthened sovereign power in subjecting the supernumerary.[304] The latter mobilisation, and owing to its nature, is necessarily embedded in a biopolitical framework, whose importance shall be assessed.

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[295] Franěk (n 157) 297.
[296] Arendt, *The Human Condition* (n 180) 35.
[297] ibid 45-46; Franěk (n 157) 297.
[298] Allen (n 159) 133.
[299] ibid.
[300] Bietlot (n 283) 58.
[301] ibid.
[302] ibid.
[303] ibid.
[304] ibid.

2. Biopolitics: From power to politics

In considering how migration policies, framed within a security construct, are designed to direct lives and livelihoods of migrating populations, the concept of 'biopolitics' inherent therein warrants relevance.[305] First coined by Foucault in his 1970s Collège de France lectures,[306] the notion has been subject to extensive reworkings since.[307] Within migration research, the study provides practical insights into how governing powers categorises populations, distinguishes people's lives by value and how it manifests in governing practices and techniques.[308]

Biopolitics was powered by the introduction of modern knowledge, primarily statistics, bringing new perspectives on the politics of demography, public health and the environment.[309] The *'bio'* prefix marks commitments to biological, bodily and substantive properties of a population, rather than individuals' bodies, while its pairing with 'politics' grounds Foucault's broader engage-

[305] Anna-Kaisa Kuusisto-Arponen and Mary Gilmartin, 'The politics of migration' (2015) 48 Political Geography 143, 143-45 <https://doi.org/10.1016/j.polgeo.2015.06.008> accessed 21 June 2023.

[306] Michel Foucault, *Society Must Be Defended: Lectures at the College de France, 1975–76* (Picador 2003) 244ff.

[307] Thilo Wiertz, 'Biopolitics of migration: An assemblage approach' (2021) 39(7) Environment and Planning C: Politics and Space 1375, 1376 <https://doi.org/10.1177/2399654420941854> accessed 10 February 2023. See also Mathew Coleman and Kevin Grove, 'Biopolitics, biopower, and the return of sovereignty' (2009) 27(3) Environment and Planning D: Society and Space 489, 489ff; Paul Rutherford and Stephanie Rutherford, 'The confusions and exuberances of biopolitics' (2013) 7(6) Geography Compass 412, 412ff <https://doi.org/10.1111/gec3.12046> accessed 21 May 2023.

[308] Wiertz (n 307) 1376.

[309] Foucault, *Society Must Be Defended* (n 306) 243-45.

ment to dialogue with power, knowledge and government.[310] As Foucault argues, the '19th century biopolitics' features a commitment to security, read as 'random' government processes beyond certainty and framed in terms of probabilities, contingencies, incertitude, etc.; an inward turn of power – a shift of attention to risks in population biological processes rather than territory and warfare; and the optimisation of life, driven by economic growth and rising labour demands.[311] Western states have subsumed citizens' and populations' lives among their calculations, lending to why biopolitical theory is of interest to research on migration, borders and camps.

For her part, Arendt never used the term biopolitics. In her views, biopolitics was a contradiction: whatever was biological was outside politics since it was associated with necessities of life, with labour, and therefore, confined to private realm.[312] This stance, however, whereby the biological basis of human association is opposed and excluded from the political domain, will be presently ignored. In fact, while according to her, the domain of human affairs would consist exclusively of action and speech, which are deemed to be political, and would exclude 'everything that is merely necessary or useful',[313] it would somewhat be illogical to assume such preclusion from the political domain. Indeed, while action, as freedom, is only possible when natural needs are satisfied, there is no reason why what is necessary for political life should be excluded from it, and besides, what is useful is unlikely to be.[314]

Building on Foucault's famous formulation whereby 'biopolitics' amounts to 'making-live and letting-die',[315] the chapter focuses on understanding the refugee as an object – or sufferer – of migration policies. While the first section will look at admission practices, namely the state's power to categorise between 'mak-

[310] Stuart Elden, 'Rethinking governmentality' (2007) 26(1) Political Geography 29 <https://progressivegeographies.files.wordpress.com/2012/03/rethinking-governmentality.pdf> accessed 9 June 2023; Thomas Lemke, 'The birth of bio-politics: Michel Foucault's lecture at the College de France on neo-liberal governmentality' (2001) 30(2) Economy and Society 190, 190ff.

[311] Wiertz (n 307) 1377; Foucault, *Society Must Be Defended* (n 306) 314-15.

[312] Paul Voice, 'Labour, work and action' in Patrick Hayden (ed), *Hannah Arendt: Key Concepts* (Routledge 2014) 37.

[313] Hannah Arendt, *The Human Condition* (The University of Chicago Press 1958) 71.

[314] James Gordon Finlayson, 'Bare life and Politics in Agamben's Reading of Aristotle' (2010) 72(1) The Review of Politics 97, 118-19.

[315] Foucault, *Society Must Be Defended* (n 306) 241.

ing-live', 'letting-die' and the means of its workings, the second will attempt to further analyse those 'left for dead', both politically and often biologically – or as Arendt would phrase it, 'the scum of the earth'.[316]

2.1 The borderlands of Foucauldian biopolitics and governmentality: An Arendtian interpretation

In terminological parlance, biopolitics and governmentality are interrelated concepts in Foucault's theory, but not interchangeable. Biopolitics relates to how power is utilised to regulate life itself, including reproduction, health and death.[317] Governmentality describes how the latter power operates through technologies and rationalities of governance.[318] It refers to studying how individuals and populations are governed, including the techniques and strategies of power used to manage and regulate them.[319]

2.1.1 Biopolitics, bureaucratics and migration studies

Biopolitics of migration categorises any given population through patterns of evaluation and governing of people's physical state.[320] While biopolitics, for Foucault, implies maximising lives, its counterpart is devaluing those outside the norm, as reflected in his to 'make live' and 'let die'.[321] Biological government racism of the 20th century is the epitome of how biopolitics privileges the lifelines of some groups but permits mortality of others.[322] The 21st century practices of securitisation in migration policy-making by categorising certain populations, changing the measurement and governance of their biological condition, would be its contemporary form.

316 Hannah Arendt, *Origins of Totalitarianism. Part 2. Imperialism* (Mariner Books Classics 1968) 267.
317 Foucault, *Society Must Be Defended* (n 306) 243-45.
318 Randy Lippert, 'Governing Refugees: The Relevance of Governmentality to Understanding the International Refugee Regime' (1999) 24(3) Alternatives: Global, Local, Political 296.
319 ibid.
320 Wiertz (n 307) 1378.
321 Foucault, *Society Must Be Defended* (n 306) 241.
322 ibid 254.

Research on migration biopolitics addresses how, in which settings, within which knowledge and spatial arrangements, migrants' lives are evaluated unevenly, subjecting them to physical harm, health deterioration or death.[323] Thus, the above-mentioned categorisation of refugee groups is explained by, and reflects, a politics of the bios – in other words, a 'control of the biological by the state'.[324]

In the present point, the contrast between 'making-live' – as opposed to 'letting-die' – refugees will be addressed. For clarity, Arendt's distinction, refashioned, of de facto refugees and de jure refugees, is of relevance. De jure refugees are those responding to a legal definition of a refugee,[325] both by the Refugee Convention and alternative EU mechanisms discussed. They may therefore be subject to a 'making-live' policy, bearing appreciation of the differentiated manner in which it is pursued, as earlier discussion explored how the protection mechanism – ie international or EU or national – influences living arrangements of these rights holders. De facto stateless persons, on the other hand, or those effectively deprived of effective citizenship or political belonging irrespective of their legal status, comprise all forcefully displaced persons, independently of the legal classification,[326] ie as refugees, asylum-seekers, forcibly displaced, undocumented, IDPs, war refugees, etc.[327] The latter would thus correspond to those politically left for dead.

Modelled on the foregoing analysis, just as the 'forgotten' are not captured by any political definition – or labelling – the hindrance or factual foreclosure to registration of Afghans in Turkey may equally be suggestive of whom to consider politically dead. As for those with a refugee label, such as the Ukrainian or legitimate Syrian, they are given 'making-live' policy through the coverage of various protection mechanisms. However, one cannot deny

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[323] Wiertz (n 307) 1378. See also Alison Mountz, 'The enforcement archipelago: Detention, haunting, and asylum on islands' (2011) 30(3) Political Geography 118, 118ff <https://doi.org/10.1016/j.polgeo.2011.01.005> accessed 14 March 2023; Thom Davies, Arshad Isakjee and Surindar Dhesi, 'Violent inaction: The necropolitical experience of refugees in Europe' (2017) 49(5) Antipode 1263, 1263ff <https://doi.org/10.1177/0263276406023002l8> accessed 14 May 2023.

[324] Foucault, *Society Must Be Defended* (n 306) 239.

[325] Arendt, *Origins of Totalitarianism* (n 316) 295.

[326] ibid 279.

[327] Serena Parekh, 'Beyond the ethics of admission: Stateless people, refugee camps and moral obligations' (2014) 40(7) Philosophy and Social Criticism 645, 650 <https://doi.org/10.1177/0191453713498254> accessed 12 April 2023.

that Syrians seeking to enter the EU experience significant obstacles compared to Ukrainians given the different legal and administrative provisions.[328]

While biopolitics is the political exercise of power to regulate populations, which power has been described as capillary and diffuse,[329] the role of bureaucracy, in its articulation with biopolitics, is to be appreciated to define the modern liberal state.[330] Commenting on the Eichmann trial in Jerusalem, Arendt elaborated on bureaucracy:

> [I]t is important for political and social science that the essence of totalitarian government, and perhaps the nature of all bureaucracy, is to make men into functionaries and mere cogs in the administrative machine, and thus to dehumanise them. And one can argue long and profitably about Nobody's rule, which is what the political form known as bureaucracy really is.[331]

Ambivalently, bureaucracies' assistance in developing democratising European continental nation-states likewise disclosed its instrumental significance in the cancellation of liberal rights.[332] Indeed, their immunisation from human contingencies also means that 'in a fully developed bureaucracy, there is no longer anyone with whom one can argue, to whom one can present grievances, on whom one can exert the pressures of power'.[333]

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328 Katharina F Gallant, 'The "good" refugee is welcome: On the role of racism, sexism, and victimhood when fleeing from war' (2022) 8(3) DiscourseNet: Collaborative Working Paper Series 2 <https://discourseanalysis.net/sites/default/files/2022-10/Gallant_2022_DNCWPS_8-3.pdf> accessed 12 March 2023.

329 Michel Foucault, *Power/Knowledge: Selected Interviews & Other Writings, 1972–1977* (Colin Gordon ed, Vintage 1980) 96.

330 Nina Sahraoui, 'Midwives and Humanitarian Bureaucracy: Managing Migration at a Postcolonial Border' (2021) 15(2) International Political Sociology 272, 276 <https://doi.org/10.1093/ips/olab001> accessed 10 February 2023.

331 Hannah Arendt, *Eichmann in Jerusalem. A Report on the Banality of Evil* (first published 1963, Penguin 2006) 289.

332 Sahraoui, 'Midwives and Humanitarian Bureaucracy' (n 330) 277.

333 Hannah Arendt, *On Violence* (Harcourt Brace Jovanovich 1970) 81.

First-line bureaucrats, however, interpret, tailor and modify policies and regulations of all kinds, thereby acquiring a political role,[334] even though they are merely a 'cog in the wheel'.[335] As such, politicisation of ordinary phenomena closely ties into Foucault's dispelment of the institutional neutrality assumption.[336] He demonstrates how institutions often appear impartial, while disguising an agenda used to advance specific programmes.[337] Institutions, moreover, neither own, gain nor trade power, as a liberal account would suggest, but reveal an interplay of forces already existing in society.[338] In effect, ethnographic studies of migration policy agents reveal that, in addition to the leeway they possess in practice, collective dynamics tend to prevail along political lines, casting them as gatekeepers of states facing non-citizens and imposing particularly restrictive interpretations of existing policies.[339] In addition, public authorities increasingly draw on conditioning access to social services for migration control and deterrence purposes, thereby reinforcing the exclusionary dynamics of counter-practices towards migrant persons.[340] In the present analysis, mention may be made of the de facto closure of registration for the Afghan community, laying the foundations for access to other services such as access to education, health care and social assistance.[341]

Bureaucracy thus proves beneficial to migratory biopolitics in its power to fracture state action and dissipate the accountability of various professions, roles and functions[342]: businesses, state institutions, NGOs and health professionals perform, albeit often in diverging ways, exclusionary, utilitarian or solidarity-based

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334 Evelyn Z Brodkin, 'Street-Level Organizations and the Welfare State' in Evelyn Z Brodkin and Gregory Marston (eds), *Work and the Welfare State. Street-Level Organizations and Workfare Politics* (Georgetown UP 2013) 17-34.

335 Max Weber, *Economy and Society: An Outline of Interpretive Sociology* (University of California Press 1978) 988.

336 Neve Gordon, 'On Visibility and Power: An Arendtian Corrective of Foucault' (2002) 25(2) Human Studies 128.

337 Michel Foucault, *Madness and Civilization* (Vintage 1988) 269.

338 Gordon, 'On Visibility and Power' (n 336) 128.

339 Nina Sahraoui, 'Des dispositions bureaucratiques humanitaires au service d'un gouvernement nécropolitique des non-citoyens : un paradoxe libéral ?' (2022) 2(86) Raisons Politiques 93, 98 <www.cairn.info/revue-raisons-politiques-2022-2-page-93.htm> accessed 10 February 2023.

340 ibid.

341 Shaddin Almasri, 'Why is Syria a War but Not Afghanistan? Nationality-based Aid and Protection in Turkey's Syria Refugee Response' (2023) 42(1) Refugee Survey Quarterly 42.

342 Sahraoui, 'Des dispositions bureaucratiques humanitaires' (n 339) 98.

logics.[343] For example, midwives become relevant in administering deportations of pregnant women detected by border guards by weighing health conditions against legal detention, effectively becoming a determinant decision-maker between making-live and letting-die.[344] Regarding 'making-live', one could mention donors' responsibility for the privileges of Syrians over Afghans, or solidarity with Ukrainian refugees. The latter have, in effect, benefited from rights to residence permits and access to education, housing, labour market, simplified border controls and entry conditions, free public transport, telephone communications, food, clothing and medicine[345]: all advantages involving a diversity of actors, therefore engaged in the letting-live policies. The difference in treatment between these two groups, Syrians and Ukrainians, may also be exacerbated by bureaucratic decisions if those in greater need of access to family reunification, such as Syrians, are jeopardised by German reception capacities shifting exclusively to Ukrainians.[346]

2.1.2 Governmentality or political calculus: Between rationalities and technologies of life governance

Whereas biopolitics considers the regulation of life itself, governmentality discusses governance techniques and strategies used for the said regulation. Foucault describes 'governmentality' as 'the set of institutions, procedures, analyses and reflections, calculations and tactics that *allow* the exercise of this very specific, though complex, form of power'.[347] In his later writings, Foucault pursued an analysis of the functioning of governing powers rather

[343] Heide Castañeda, 'Medical aid as protest: Acts of citizenship for unauthorized im/migrants and refugees' (2013) 17(2) Citizenship Studies 227, 227ff; Gudbjorg Ottosdottir and Ruth Evans, 'Ethics of care in supporting disabled forced migrants: Interactions with professionals and ethical dilemmas in health and social care in the south-east of England' (2014) 44 (suppl.1) British Journal of Social Work i53, i53-69 <https://doi.org/10.1093/bjsw/bcu048> accessed 15 February 2023.

[344] Sahraoui, 'Midwives and Humanitarian Bureaucracy' (n 330) 286-87.

[345] Rachael Reilly and Michael Flynn, 'The Ukraine Crisis Double Standards: Has Europe's Response to Refugees Changed?' (*The Global Detention Project*, 2 March 2022) <www.globaldetentionproject.org/the-ukraine-crisis-double-standards-has-europes-response-to-refugees-changed> accessed 10 May 2023.

[346] Julian Staib, ‚Deutschland steht vor einer enormen Kraftanstrengung' (*Faz*, 13 March 2022) <www.faz.net/aktuell/politik/inland/ukrainische-fluechtlinge-deutschland-steht-vor-einer-enormen-kraftanstrengung-17874125.html> accessed 21 June 2023.

[347] Graham Burchell, Colin Gordon and Peter Miller (eds), *The Foucault Effect: Studies in Governmentality* (Harvester Wheatsheaf 1991) 102 (emphasis added).

than a general theory of the state.[348] The latter was considered as an historical product, outcome, or derivative of specific governing practices, rather than an actor.[349]

Governmentality literature has traditionally employed the concept of governmental 'programmes'.[350] It consists of projects imagined to administrating social life which provide knowledge of a given domain.[351] Within programmes, technologies are fitted by rationalities, yet no correspondence is necessary between the two.[352] Rather, given technologies come to perform diverse functions compared to rationalities to which they are linked.[353]

As from the beginning of the 20th century, epoch-specific technologies, rationalities and knowledge forms could be discerned, enabling and forming the international refugee regime as evolved and inherited today.[354] Refugee status may be read as a moral-political gambit[355] and are increasingly popular today. Although liberal rationalities and technologies have been lauded,[356] it hardly negates the possibility of illiberalism to also be informing and enabling the international regime. The analysis of a range of elements, such as discursive and material, would reveal how they coalesced to shape a historically specific estate to our present. In turn, it could lead to ingenuity, and the construction of alternative governmental rationales, techniques and knowledge.

01 — Rationalities

Rationalities, such as liberalism, cannot be regarded merely as theories or doctrines.[357] A rationality is 'a way or system of thinking about the nature of government – who can govern; what governing is; who or what is governed – capable of making some

348 Mitchell Dean, *Critical and Effective Histories: Foucault's Methods and Historical Sociology* (Routledge 1994) 179.
349 Lippert (n 318) 295.
350 ibid 296.
351 Colin Gordon, *Power/Knowledge: Selected Interviews and Other Writings, 1972-1977 by Michel Foucault* (Pantheon 1980) 248.
352 Lippert (n 318) 296.
353 Mariana Valverde, '"Despotism" and Ethical Liberal Governance' (1996) 25(3) Economy and Society 357, 358.
354 Lippert (n 318) 319-20.
355 ibid.
356 ibid.
357 ibid.296.

form of that activity thinkable and practicable'[358] and may therefore be deemed a requisite but insufficient basis for governmental practices.[359]

As a preliminary remark, refugee governance, framed in the security model, was previously covered in its diverse strata, involving a variety of actors and institutions at national, communitarian and international levels. In addition to state actors and intergovernmental organisations, and by way of Foucault's analysis of diffuse and capillary power, non-state actors such as NGOs and private companies play a substantial role in refugee governance. Central to the latter is the determination of whose decision the refugees' fate is and how their inclusion or exclusion is determined. Theoretically, the liberal model, emphasising individual rights and freedoms, has been the predominant paradigm for both understanding and responding to refugee issues.[360] However, practical application of this rationality is marred by inconsistencies and even hidden power dynamics.

Refugee governance therefore demands analysis and rationalisation, including considerations of relevant policy boundaries, suitable ambitions and policy effectiveness.

02 — The theoretical liberal rationality

Prima facie, refugee governance may be equated with the values and principles of liberal democracy, such as human rights, the rule of law and equality before the law.[361] A liberal governance constrains political interference and assumes freedom and agency beyond the acceptable scope of politics.[362] It encounters civil society subjects presumed to possess rights not to be infringed by formal political authorities.[363]

Indeed, liberal democracies are intended to afford refugees protection and guarantee their humane and dignified treatment. The Refugee Convention, providing the legal framework for pro-

[358] Burchell, Gordon and Miller (n 347) 3.
[359] Lippert (n 318) 296.
[360] Karsten Schubert, 'The Challenge of Migration. Is Liberalism the Problem?' in Stephan Kirste and Norbert Paulo (eds), *Populism. Perspectives From Legal Philosophy* (Franz Steiner Verlag 2021) 173-92.
[361] Jeremy Waldron, 'The Rule of Law' (*Stanford Encyclopedia of Philosophy*, 22 June 2016). <https://plato.stanford.edu/entries/rule-of-law/> accessed 2 June 2023.
[362] Terrence Ball and others, 'Liberalism' (*Britannica*, 14 September) <www.britannica.com/topic/liberalism> accessed 2 June 2023.
[363] ibid.

tection,[364] builds on such principles[365] and was ratified by most liberal democracies.[366] As such, refugee governance may be viewed as expressing liberal values and principles.

A liberal political rationality of admission would, however, be at odds with liberalism itself: any liberal posture that upholds denying refugees admission to a given community – be it national, communitarian or international – must do so in ways that upholds the foundations of liberalism[367] – inter alia, fundamental equality between refugees and stateless persons as well as a public/private distinction.

First, securitisation – or categorisation – practices must be assessed in terms of liberalism. One may arguably deem securitisation of refugees as liberal given Michael Walzer's argument on the importance of preserving distinctive 'communities of character' for human existence.[368] According to his perspective, distinctive political communities lend significance to lives and consequently demand some degree of closure to sustain oneness.[369] It implies a morally justifiable exclusion of people, including refugees, to maintaining these communities of significance.[370] However, it should not be assumed that either obligations to refugees or foreigners can be dismissed. According to Walzer, there remain some, but at the discretion of particular communities to determine who and how many refugees to accept.[371] Therefore, refugee securitisation could be regarded as liberal insofar as it attempts to preserve equality while recognising the need to maintain distinctive communities.

Secondly, liberal government assumes the opposition between the public and private domains. The above analysis of the international regime consistently revealed a perceptible opposition between 'public' and 'private', 'governmental' and 'non-governmental', or 'political' and 'non-political' authorities, organ-

364 Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention).
365 See for eg ibid arts 2, 3, 33.
366 UNHCR, 'States Parties to the 1951 Convention and its 1967 Protocol' (*UNHCR*, 17 April 2015) <www.unhcr.org/ie/media/39149> accessed 2 June 2023.
367 Parekh, 'Beyond the ethics of admission' (n 327) 648.
368 Michael Walzer, 'The Distribution of Membership' in Thomas Pogge and Darrel Moellendorf (eds), *Global Justice: Seminal Essays* (Paragon House 2008) 163.
369 Parekh, 'Beyond the ethics of admission' (n 327) 648.
370 ibid.
371 ibid.

isations and technologies.[372] In successive international refugee programmes, private international organisations, later referred as NGOs, were devised as fulfilling tasks separated from those assumed for governmental or primarily public bodies.[373]

Nonetheless, the practical application of this rationality, using both arguments, may involve inconsistencies and tensions. For one, non-governmental – or private – organisations are a misnomer, as they also 'govern',[374] once again acknowledging Foucault's capillarity and diffusion of power – despite his failure to address international regimes. In effect, as previously considered under bureaucracy, NGOs do govern, for example by supplying essential services such as medical assistance, food, water and shelter to refugees; ensuring education and training for refugees; coordinating refugee camps; mediating and assisting conflict settlement between refugee groups or the host community; etc. For another, because of hidden issues of power and domination, as the above discussion on the historical refugee regime has emphasised refugees' role as tools for states – notably against enemy nations – which will be developed subsequently.

Thus, while refugee governance is theoretically based on liberal democratic values, its implementation in practice may not always conform to such.

03 — The practical neoliberal rationality

The rise of the refugee as a new category to modern statehood and liberal ideas within its regime has lengthy standing. However, as globalisation spread, securitisation practices arose to address the alleged threats posed by refugees.[375] Paradoxically, such practices proved at odds with a regime which failed to accommodate the changing nature of the refugee phenomenon:[376] the regime remained rooted in the modern state and liberal ideas,[377] thereby neglecting the demands of globalisation as well as its practices

372 Lippert (n 318) 311.
373 ibid.
374 ibid; Grahame Thompson and Paul Hirst, 'Globalization and the Future of the Nation State' (1995) 24(3) Economy and Society 408, 432.
375 Mathieu Bietlot, 'Du disciplinaire au sécuritaire : De la prison au centre fermé' (2003) 11(1) Multitudes 62.
376 Maryam Mushtaq, 'Refugee Assemblages: The Figure of the Refugee during the "Crisis" of Europe' (*The Georgetown Public Policy Review*, 2022) <www.gpprspringedition.com/refugee-assemblages-2022-5> accessed 10 February 2023.
377 ibid.

and challenges. Accordingly, refugee securitisation has been criticised as ill-adapted to the intricacies of refugee problems and as violating liberal principles underpinning the regime.[378]

Whereas with the creation of the IGCR in 1938, and later the IRO, UNHCR and similar organisations, whereby international refugee practice was largely based on public funding and officials from Western nations,[379] the 1980s marked a transition, reaching across healthcare, higher education and policing.[380] While each field has a unique course and conditions of possibility, the transformation is consonant with a shift from 'liberal'[381] to a rationality variously termed 'neo-liberal'.[382]

The so-called securitisation of refugees would therefore exhibit a neoliberal rationality.[383] As such, the resulting refugee governance and policies are configured and guided by a politico-economic ideology, which emphasises free markets, privatisation, deregulation and individualism.[384] It further suggests that policies and practices regulating refugees, such as resettlement, asylum and humanitarian assistance, are shaped by neo-liberal ideas and objectives, such as reduced state intervention and recourse to private sector.[385] Such rationality also implies 'localisation', or the displacement of responsibility to lower levels, a new focus on 'community', the concept of 'self-reliance' and NGOs now referred to as 'partners'.[386]

Thus, security measures are to globalisation what disciplines were to Foucault's modern state.[387] The new closeness between populations and unequal communities brought by globalisation, however, created perceptions of 'insecurity', and called for new power arrangements to governing new global space, notably through permanent flow controls and modulation of identi-

[378] Sahraoui, 'Des dispositions bureaucratiques humanitaires' (n 339) 94.
[379] Lippert (n 318) 301.
[380] ibid 112.
[381] Samantha Ashenden, 'Reflexive Governance and Child Sexual Abuse: Liberal Welfare Rationality and the Cleveland Inquiry' (1996) 25(1) Economy and Society 64, 85.
[382] Peter Miller and Nikolas Rose, 'Political Power beyond the State: Problematics of Government' (1992) 43(2) The British Journal of Sociology 173, 198-201.
[383] Bietlot (n 375) 58ff.
[384] Liz Manning, 'Neoliberalism: What It Is, With Examples and Pros and Cons' (*Investopedia*, 29 July 2022) <www.investopedia.com/terms/n/neoliberalism.asp> accessed 2 June 2023.
[385] Bietlot (n 375) 58.
[386] Lippert (n 318) 313.
[387] Bietlot (n 375) 58.

ties.[388] Globalisation and neoliberal ideology also trigger the redesign of state roles and functions.[389] In fact, the growing power of international bodies and increasing regionalism challenged state sovereignty, while neoliberalism required less intervention by the state.[390] Consequently, state power is said to have turned inward to policing territory and populations.[391] Within such new world order, a security agenda emerged: new mechanisms for control and norm internalisation, combined with outsiders' brutal subjugation and exclusion.[392]

However, neoliberalism contributed to producing uncertainty and insecurity, and given the dominant practices and discourses, individuals were led to interpret the latter as such.[393] The social disorder generated by such atmosphere and the stringent government security measures merely confirmed and reinforced the translation or feeling.[394] Prioritising economic and security considerations over humanitarian needs thus led to further alienation and exclusion of refugees.[395] It may also suggest a neoliberal governance reinforcing and perpetuating global inequalities and the domination of the North over the South,[396] which therefore warrants examination within a power dynamics rationality.

04 — The power-dynamic rationality

By discarding liberalism's fundamental assumptions, Foucault suggests modifying and broadening conceptions of politicians' power and control.[397] Contrasting liberal thinking, he considers subjects not to be a pre-existing entity undertaking free actions in accordance with calculus informed by its own interests.[398] Certainly, the subject's actions could be following a 'rational' decision-making process, but its consent to acting in a certain way

[388] Bietlot (n 375) 59.
[389] ibid.
[390] ibid.
[391] ibid.
[392] ibid.
[393] ibid 60.
[394] ibid.
[395] ibid 61ff.
[396] See for eg Siri Gamage, 'Globalization, Neoliberal Reforms, and Inequality: A Review of Conceptual Tools, Competing Discourses, Responses, and Alternatives' (2015) 31(1) Journal of Developing Societies 8, 8ff <https://doi.org/10.1177/0169796X14562126> accessed 14 June 2023.
[397] Gordon, 'On Visibility and Power' (n 336) 125.
[398] ibid.

is not merely a manifestation of freedom of choice.[399] According to Foucault, consent may be constructed through intricately designed control devices producing norms, forming interests and modelling behaviour.[400] A dissection of 'consent' and of preestablished self-interest implies an understanding of rationality saturated with power.[401]

Every state – rightly or wrongly – seeks to rationalise who they exclude from whom they elect to admit.[402] The majority of states assume no obligation to receive people who have no place to live; and when they do welcome refugees, they regard it as an ex-gratia policy, arising from generosity rather than moral or legal imperatives.[403] Exclusion, on the other hand, is allegedly motivated by a perceived need to protect a given community of character,[404] notably through security mechanisms.[405]

Following the Cold War, the internal security field required reconfiguration, and immigration emerged as the primary threat to be addressed by security mechanisms.[406] Such reconfiguring suggests a Deleuzian diagram:

> It never functions to represent a pre-existing world, it produces a new type of reality, a new model of truth. It is not the subject of history, nor does it overhang history. It makes history by undoing previous realities and significations, constituting so many points of emergence or creativity, unexpected conjunctions, improbable continuums.[407]

As such, connections or amalgams are established to inform or influence more than they represent reality, ie continuums modifying perceptions.[408]

Neoliberal ideology, providing initial justification for security measures, also builds on crisis discourse to justify austerity policies based on appointing scapegoats.[409] The UK provides a con-

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399 Gordon, 'On Visibility and Power' (n 336) 125.
400 ibid.
401 ibid.
402 Parekh, 'Beyond the ethics of admission' (n 327) 646.
403 ibid.
404 Walzer (n 368) 163.
405 Bietlot (n 375) 59.
406 ibid 62.
407 Gilles Deleuze, *Foucault* (University of Minnesota Press 1988) 46.
408 Bietlot (n 375) 62.
409 ibid 61.

crete example of such a dynamic. Indeed, to legitimise stringent measures, neoliberal ideology was employed to nurture resentment towards economic migrants for lack of market opportunities due to their influx's increased labour supply,[410] despite some 25,000 out of 300,000 immigrants being refugees[411] – irrespective of category. Beneath neoliberalism, the stigmatisation of foreigners, as threats to market dynamics and competition, addresses weakened national cohesion and the social tensions they supposedly caused,[412] thus concealing rationales governed by power dynamics. Refugees, faced with increased competition and violence, are prime victims of categorising approaches – legitimate/illegitimate – developed by security authorities, dividing and selecting whom they deem useful.[413] Thus, a notion of 'selective solidarity' towards non-nationals is intimately associated with host states' political will and ideologies in both receiving and sending countries.[414]

Earlier, the historical refugee regime addressed refugee politics and their role as tools for (blocs of) nations, to embitter, destabilise or weaken enemy nations.[415] In other words, 'Refugees came into being as the category refugee was being invented'[416] and thereby exploited. From the very beginning of the regime, political power's primacy in the regime is apparent – refraining from relying on humanitarian sentiments – as evidenced in cases such as the USSR or Africa's rising nationalism.[417]

The evolving global and political migratory landscape suggests how these negotiations, as well as migrants' effectiveness as tools, continually shift with political interests of receiving states[418] and other aforementioned actors. Migration securitisation and surrounding North-South dynamics, provide an opportunity for the South to lobby on Northern security interests, which was apparent with the Syrian refugee influx.[419] Such leverage plays an

[410] Mushtaq (n 376).
[411] Gwynne Dyer, 'Europe's Refugee Crisis: The Good, the Bad and the Ugly' (*Gwynne Dyer*, 2015) <https://gwynnedyer.com/2015/europes-refugee-crisis-the-good-the-bad-and-the-ugly/> accessed 10 May 2023.
[412] Bietlot (n 375) 61.
[413] ibid.
[414] Almasri (n 341) 33.
[415] Lippert (n 318) 297.
[416] ibid 299.
[417] ibid 306.
[418] Almasri (n 341) 36.
[419] ibid.

important role for smaller or poorer states as foreign policy vehicles.[420] By proving unable to monitor or unwilling to regulate outflows, source states could secure 'political, commercial, economic or strategic concessions' during inter-state agreements.[421]

In a Foucauldian and Arendtian discussion on refugees, the power-dynamic rationality outlines how power relations are construed and implemented between the refugee and state/other actors engaged in refugee regime. The rationality addresses how power operates via discourses and practices of controlling and governing refugees – in other words, a governance of refugees as (political) objects of power. Refugee reception thereby serves as grounds for litigious policy-making,[422] where policies are specific to refugee category or nationality, rather than building comprehensive humanitarian policy responses,[423] as might be expected by the refugee subject/agent. Mention could be made of the privileged treatment of Ukrainians, reminiscent of Soviet past and of European unity, or of Europe's vested interests in Syrian displacement, conversely to the Afghan community or the 'forgotten'. Despite European approaches to promoting regional reception of refugees, the latter was not passively embraced, and emerged as contentious policymaking forums, heavily dependent upon the group in question. It cannot, however, be forgotten that this power could be negotiated and contested by refugees themselves (Chapter III).

05 — Knowledge and technologies

Compared to state-centred research,[424] governmentality studies build on assumptions that certain knowledge and technologies underpin the rise and workability of given governmental domains, and how related practices depend on knowing their ob-

[420] Almasri (n 341) 36.
[421] Reinhard Lohrmann, 'Migrants, Refugees and Insecurity. Current Threats to Peace?' (2000) 38(4) International Migration 3.
[422] Almasri (n 341) 36.
[423] Umut Korkut, 'Pragmatism, Moral Responsibility or Policy Change: The Syrian Refugee Crisis and Selective Humanitarianism in the Turkish Refugee Regime' (2016) 4(2) Comparative Migration Studies 7 <https://doi.org/10.1186/s40878-015-0020-9> accessed 23 April 2023.
[424] Dean (n 348) 188.

jects.[425] Amongst others, these include: grading, calculation and evaluation techniques; standardisation of training systems; inculcation of habits; etc.[426]

Whereas rationalities sought to answer the questions of what governs, what should govern and what is governed, technologies and knowledge aim to answer 'how' to address these.

06 — Normative knowledge

While biopolitics entails, for Foucault, an optimising of life, its reverse facet lies in devaluating lives outside the norm, captured in his oft-quoted formula 'to make' live and 'let' die.[427] Like any (bio)power, securitisation biopolitics would operate through continuous producing of anomalies to be corrected or normalised by them, thereby including cultivating suspicion of the 'other', negatively categorising the foreigner and employing discourses and practices of immigrant – even naturalised – non-assimilation.[428] All given the (power of) knowledge, used to legitimate and reinforce normalisation and social control practices exercised on targeted populations, such as refugees.

07 — Normalisation

Securitarianism revolves within the updated Foucaultian normalisation framework, producing the very issues it needs to address to ensure its perpetuation.[429] Refugee control and security policies would be responses to domestic populations' concerns, needing assurance.[430] To supply rationale for control and violence, securitisation biopolitics would prevent, define and, possibly, provoke disorder.[431] By historically examining security, it is illustrated how each epoch presents corresponding definitions of what is to be feared, with a twofold strategy of reassuring populations and creating fear as rationale for protection.[432] Thus, normality would be shaped and maintained by delineating the abnormal.[433] In ef-

[425] Peter Miller and Nikolas Rose, 'The Tavistock Programme: The Government of Subjectivity and Social Life' (1988) 22(2) Sociology 171, 174.
[426] Peter Miller and Nikolas Rose, 'Governing Economic Life' (1990) 19(1) Economy and Society 1, 8 <https://doi.org/10.1080/03085149000000001> accessed 10 May 2023.
[427] Foucault, *Society Must Be Defended* (n 306) 241.
[428] Bietlot (n 375) 62.
[429] ibid.
[430] ibid 60.
[431] ibid.
[432] ibid.
[433] ibid 62.

fect, while differing categorisations and related political discourses determine disorder and what is to be feared, for which political measures are introduced to prevent it, the same policies and practices may simultaneously foster a climate of hostility and social disorder. For example, forced displacement policies, extensive use of violence at borders and beyond, and unsustainable living conditions in refugee camps can generate conflict, violence, and disorder. In addition, discriminatory and stigmatising policies may fuel hostility and disorder in both refugee and host communities. These measures are likely to strengthen existing stereotypes and prejudices, and borders to become participants in the creation of legitimate and illegitimate refugees.[434]

Consequently, asylum-seekers are objectified as security concerns, allowing their ordering, screening and categorisation.[435] However, while securitisation historically played a role in migration policy making, the analysis highlighted how specific 'secured' groups change as foreign policy and influxes continue to evolve over time. It includes questions of who is recognised as a refugee, rather than a migrant, and why, depending on migration policy needs and outcomes.[436] Security concerns have thus fuelled narrower interpretations of refugee definition, particularly by Northern states.[437]

From an Arendtian standpoint, and as abovementioned, normalisation is a social form of domination focusing on biological life matters, to be excluded from the political domain.[438] She could then maintain that refugees are unable to politically resist normalisation, confining the latter to a mere social domination.[439] For reference, Arendt's social domination, akin to Foucault's biopower, is a form of decentralised power aimed at disciplining populations that, she argues, operates in a social – rather than political – sphere, thereby objectifying refugees. In this respect, social domination cannot be defined as political domination or oppression.[440] Although opposed to biopolitics, deconstructing her narrow po-

[434] Mushtaq (n 376).
[435] Bietlot (n 375) 61.
[436] Almasri (n 341) 38.
[437] Gil Loescher, *The UNHCR and World Politics: A Perilous Path* (OUP 2001) 45.
[438] Jakub Franěk, 'Arendt and Foucault on Power, Resistance, and Critique' (2014) 6(3) Acta Politologica 299 <https://acpo.vedecke-casopisy.cz/publicFiles/00785.pdf> accessed 21 February 2023.
[439] ibid.
[440] ibid.

litical understanding is achievable. For one, by the Foucauldian argument highlighting how the biological may be part of politics and therefore the numerous resistance possibilities existing.[441] For another, if action, like freedom, is only attainable by satisfying natural needs, it follows that everything necessary for political life should not be excluded, nor should anything useful be.[442] Thus, in interpreting Arendt's account of political action to include the normalisation/securitisation of refugees, one must abandon the conceptual distinction between political and social, even if generally taken as core to political action.[443] Such interpretation will subsequently enable her argumentation on political manipulation of facts and knowledge for normalisation purposes – an argument that would remain impossible if normalisation had remained social.

The question arises as to whether such securitisation equates to a violence (Arendt)/domination (Foucault) exerted on refugees, the effect of which is, as previously written, the prevention of the exercise of power by its subjects.[444] It seems clear, however, how securitisation processes of refugees occur in spite of them, which may denote violence. Nevertheless, Foucault is relatively optimistic about the possibilities of resistance,[445] including for refugees.

08 — Knowledge

As Foucault notes, 'Power and knowledge directly imply one another … there is no power relation without the correlative constitution of a field of knowledge, nor any knowledge that does not presuppose and constitute at the same time power relations'.[446] Considerable research on refugees emerged after WWI,[447] yet most knowledge prior to the 1960s remained bound to operations of international refugee cooperation in one way or another.[448] Howev-

[441] Jakub Franěk, 'Arendt and Foucault on Power, Resistance, and Critique' (2014) 6(3) Acta Politologica 299 <https://acpo.vedecke-casopisy.cz/publicFiles/00785.pdf> accessed 21 February 2023.
[442] Finlayson (n 314) 118-19.
[443] Franěk (n 438) 299
[444] Jacob Maze, 'Towards an Analytic of Violence: Foucault, Arendt & Power' (2018) 25 Foucault Studies 138 <https://doi.org/10.22439/fs.v0i25.5577> accessed 10 February 2023.
[445] Michel Foucault, *The History of Sexuality, Vol. 1: An Introduction* (Robert Hurley tr, 5th edn, Vintage 1990) 95.
[446] Michel Foucault, *Discipline and Punish: The Birth of the Prison* (Vintage 1977) 27.
[447] Lippert (n 318) 314.
[448] Liisa H Malkki, 'Refugees and Exile: From "Refugee Studies" to the National Order of Things' (1995) 24 Annual Review of Anthropology 495, 506.

er, in recognising how non-Western countries could regularly produce migratory crises, refugee movements were deemed non-atypical and needing to be secured.[449] Since then, from 1960 onwards, formal knowledge production on refugees expanded from international aid and development supply by UNHCR and NGOs outwith control of particular nations, to include settlement and determination of refugees within host nations.[450] Both international refugee policies and practices, and refugees themselves, continued to be objects of knowledge,[451] or, as a Foucauldian interpretation suggests, objects of power.

Paralleling the transition from liberal to neo-liberal rationality previously described, and security practices associated therewith, the shift also closely coincided with the emergence of a new priority in refugee studies: early warning.[452] Whereas initial attempts to construct international early warning systems for refugee movements dated back to early 1980s, it was upon the demise of Cold War agreements and the onset of neoliberal rationality, when prospects were raised for furthering the system by the UN, NGOs and Western states.[453] Such developments also informed national and international refugee regimes.[454] As such, early warning refers to coordinating information on potential refugee situations, aiming to identify high-risk settings through databases and use of Internet.[455]

Refugee research agendas contemplate the question 'Who is a refugee?' – as opposed to who is not or ought not to be – by facilitating documentation centres for monitoring non-Western areas and providing comprehensive data about them.[456] The above-mentioned responsive, practical and 'apolitical' NGOs, seemingly suitable for refugee aid provision and, latterly, community development, would shoulder effective monitoring and warning of prospective refugee crises – leading to risk identification, management and, if necessary, strategic military intervention to resolve refugee crises[457] – still warranted under neoliberalism. In

[449] Lippert (n 318) 314.
[450] ibid 315.
[451] ibid.
[452] ibid 316-19.
[453] ibid 317.
[454] ibid 316-17.
[455] William Demars, 'Waiting for Early Warning: Humanitarian Action after the Cold War' (1995) 8(4) Journal of Refugees Studies 390, 393.
[456] Lippert (n 318) 316.
[457] Demars (n 455) 390.

essence, identifying and managing risks within international refugee regimes ought to be conducted primarily by private, rather than public, organisations and agents.[458] As Professor Randy Lippert argues, refugee studies' shift towards early warning systems has, in convoluted ways, closely accompanied the gradual rise of a so-called 'neoliberal rationality'.[459] 'So-called' as it is neither another incremental (neo) advance in addressing world's burgeoning refugee crises, nor a mere component of broad 'neoliberal' ideology.[460] On the contrary, refugee studies and their new emphasis on early warning ought to be aligned with the shift towards identifying and managing regions/populations likely to remaining illiberal – considered unsecured – and comprehended, therefore, as intellectual power devices for governments rendering the world intelligible.[461] For instance, critics emphasise shortcomings in early warning systems for humanitarian crises, whereby relief agencies and governments prioritise their 'soft interests'[462] – such as security concerns and risk management – over addressing driving causes of forced displacement.[463] Such government power and refugee studies invoke Foucault's 'power-knowledge' node, recalling a power-dynamic rationality, where no cause and effect could be disentangled.[464] In each case, one limits the other and makes the other possible.[465] In effect, refugee bodies are thereby used to identify refugees, and determine who qualifies as legitimate ones.

It will be necessary to analyse the production and negation of knowledge and discourse distinctively, despite both being performative.

For one, knowledge and discourse produced legitimate restrictive migration policies regarding given groups and disseminate fear, thus increasing public feelings of insecurity and strengthening or stirring anxieties among populations seeking greater security measures.[466] The discourses of crisis and exceptionalism surrounding refugees can illustrate contrasting practical cases.

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458 Lippert (n 318) 318.
459 ibid.
460 ibid 319.
461 Miller and Rose, 'Political Power beyond the State' (n 382) 182.
462 Alex De Waal, 'Responses to Demars' (1995) 8(4) Journal of Refugee Studies 411, 412.
463 ibid.
464 Lippert (n 318) 319.
465 ibid.
466 Bietlot (n 375) 60.

For example, in Turkish media discourse, Afghans were often equated with security and terrorism concerns, while Syrians were regarded as religious guests.[467] Research – previously mentioned – revealed prevalent violent terminologies in Turkish reporting on Afghans, heightening stigmatisations.[468] Additionally, Turkish media merely cited raids and expulsions targeting Afghan refugees, while deportation accusations of Syrians were met with harsh reprobation by the country's Interior Ministry, underlining differing treatment between groups.[469] Conversely, Ukrainians now viewed as legitimate refugees, do not elicit similar discourses on terrorist suspicions, given they are deemed 'intelligent and educated' Europeans.[470] This differentiated treatment of Ukrainians emphasises how crisis discourses shifts depending on the refugees' perceptions of origin, influencing their legitimacy and status. Differently, resorting to 'economic migrant' labelling, paired with insufficient knowledge regarding root causes of their displacement, served to deny refugee status, reserved for those fleeing war or conflict.[471] Conflating terms – as economic migrant and refugee – is significant as it dictates legal protection granted to refugees and asylum-seekers.[472]

As such, crisis and exceptionality discourses around refugees[473] may serve to both illegitimise refugees – eg Afghans, IDPs and economic or climate migrants – and demonstrate legitimacy of their status – eg Ukrainians or Syrians in Turkey. Broader, political and media discourses often borrow colonialist tones to de-

[467] Almasri (n 341) 44.
[468] Sibel Karadağ, *Ghosts of Istanbul: Afghans at the Margins of Precarity* (Confédération Suisse 2021) 16.
[469] Almasri (n 341) 39.
[470] Renata Brito, 'Europe welcomes Ukrainian refugees – others, less so' (*AP News*, 28 February 2022) <https://apnews.com/article/russia-ukraine-war-refugees-diversity-230b0cc790820b9bf8883f918fc8e313> accessed 12 June 2023.
[471] Mushtaq (n 376).
[472] Mike Berry, Inaki Garcia-Blanco and Kerry Moore, 'Press Coverage of the Refugee and Migrant Crisis in the EU: A Content Analysis of Five European Countries' (*UNHCR*, 2015) <www.unhcr.org/media/press-coverage-refugee-and-migrant-crisis-eu-content-analysis-five-european-countries> accessed 23 April 2023.
[473] Sahraoui, 'Des dispositions bureaucratiques humanitaires' (n 339) 94.

scribe refugees and compare them to disasters such as 'storms', 'floods' or 'human waves', thereby emphasising their overall perception as a burden.[474]

If bureaucracy was previously analysed as the materiality – or capillarity – of securitarian biopolitics, discourses of crisis and exceptionality equally constitute discursive vehicles justifying bureaucratic decisions – or governance.[475] Since early 1990s, EU border regions feature as continuously in crisis,[476] spreading 'socio-political' borders across these spaces, extending to all social life aspects.[477] For example, the health sector or police migration control – strategic to biopolitical government of populations – are exposed to such exclusionary political incursions towards non-citizens.[478] The 'migratory invasion' narrative is pervasive, rationalising various field-specific restrictions on mobility.[479] By purporting as exceptional and in crisis, humanitarian bureaucratic arrangements illustrate a liberal government paradox[480] of deliberately allowing non-citizens to 'die', while claiming humanitarian action. Thus, they expose how the liberal state endorses many illiberal exceptions.

For another, the negation of knowledge and discourse is also performative. By absence of knowledge, reference may be made to aforementioned lack of information about economic migrants' driving forces as grounds for their illegitimacy.[481] Likewise, the EU-Turkey agreement fails to reference other refugee groups than Syrians, except a misleading note within the introducing clause stressing the imposition of visas on 'Syrians and other nationalities'.[482] The conscious omission could also be identified within

[474] Thomas Nail, 'A Tale of Two Crises: Migration and Terrorism After the Paris Attacks' (2016) 16(1) Studies in Ethnicity and Nationalism 158, 158ff <https://doi.org/10.1111/sena.12168> accessed 12 June 2023; Tiffany A Dykstra, 'Assemblages of Syrian Suffering: Rhetorical Formations of Refugees in Western Media' (2016) 4(1) Language Discourse & Society 31, 31ff <https://zenodo.org/record/4033472> accessed 12 June 2023.

[475] ibid.

[476] Ruben Andersson, 'Europe's failed "fight" against irregular migration: ethnographic notes on a counterproductive industry' (2015) 42(7) Journal of Ethnic and Migration Studies 1055 <https://doi.org/10.1080/1369183X.2016.1139446> accessed 8 March 2023.

[477] Sahraoui, 'Des dispositions bureaucratiques humanitaires' (n 339) 94.

[478] ibid.

[479] ibid 101.

[480] ibid.

[481] Mushtaq (n 376).

[482] European Council, 'EU-Turkey Statement, 18 March 2016' (*European Council*, 2016) <www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/> accessed 5 May 2023.

civil society organisations and international NGOs, where it is suggested that Afghan communities are likely to be insufficiently considered in NGO programmes, given poor knowledge of their specific needs.[483] It further mirrors donors' attitudes towards non-Syrian refugees. For example, although the EU's Facility for Refugees in Turkey has been extended to other groups, evaluations of the latter fund largely focus on Syrians' needs.[484] More broadly, the UNHCR's intersectoral panel reported only 51 out of 105 implementing partners as being involved with or having identified non-Syrian refugee needs.[485] As regards the lack of discourse, reference shall be made to media coverage, spotlighting selected conflicts above others.[486] For example, Syria's civil war was widely covered compared to the Afghan conflict.[487] Emphasis on Syrian children and its viral nature, along a failure to cover other conflicts, served the common misconception of refugees as – although not limited to – Syrians and others as 'economic migrants' or 'illegals'.[488] Similarly, migrant deaths in the Indian Ocean remain largely uncovered by non-local media, and absent from European political discourse, despite knowledge of the dangerous nature and frequent shipwrecks of these seas.[489] Besides, the lack of systematic reporting and public information hinders estimates of drowning deaths.[490]

Arendt's argumentation regarding the standing and power vested in intellectuals in government matters, viewed in a normalising interpretation, and both in terms of knowledge production and manipulation, should therefore be appreciated. On the first, she emphasised how outside government consultants develop logically convincing hypotheses of future events.[491] It may be consistent, among other things, with early warning developments as its

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483 Almasri (n 341) 49.

484 Aurora Ianni, Meral Açıkgöz and Valeria Giannotta, 'The Refugee Issue in Turkey's Relations with the EU, Project Report' (*Centro Studi de Politica Internazionale*, 21 May 2021) <www.esteri.it/mae/resource/doc/2021/07/cespi-_the_refugee_issue_in_turkeys_relations.pdf> accessed 3 June 2023.

485 UNCHR, 'International Protection Considerations with Regard to People Fleeing the Syrian Arab Republic – Update VI' (*UN High Commissioner for Refugees*, March 2021) <www.refworld.org/docid/606427d97.html> accessed 8 May 2023.

486 Mushtaq (n 376).

487 ibid.

488 ibid.

489 Sahraoui, 'Des dispositions bureaucratiques humanitaires' (n 339) 102.

490 ibid.

491 Roger Berkowitz, 'The Danger of Intellectuals' (*The Hannah Arendt Center for Politics and Humanities*, 22 July 2013) <https://hac.bard.edu/amor-mundi/the-danger-of-intellectuals-2013-07-22> accessed 22 February 2023.

related claims – just like Arendt states – invariably commence with a hypothesis.[492] They state possible outcomes from given events, and subsequently debate or reject other possibilities.[493] Precisely, speculative possibility of a risky situation is conveniently translated into finding these results to be facts.[494] The danger of intellectuals in politics lies in their becoming so engrossed with the power of their arguments they lose sight of the concreteness of situations.[495] Considering the second point, reference may be drawn to 'problem-solvers', which she mentions in her essay 'Lying in politics'.[496] She affirms they are 'not just intelligent, but prided themselves on being "rational", and they were ... above "sentimentality" and in love with "theory"'.[497] Acquainted with theorising and handling of facts into logical argumentation, they proved likely to massage any facts into suiting their theories.[498] 'Problem-solvers' strive to convert factual contingency into logical coherence, crafting a quasi-scientific legal narrative, whereas politics differs from science's natural world.[499] As a result, temptation to adapt facts to reality may lead to self-deception.[500] The same ability to massage facts could be traced to the discussed power-dynamic political rationality, where refugee categories, knowledge and security practices conform to states' political interests at a given time.

Formation of the international regime and the refugee object-identity is intricately linked to knowledge production. Over time, refugee governance assumed responsibility for knowledge construction about refugees, while this knowledge, in turn, facilitated their governance.[501] As such, the international refugee regime, developed and coordinated by bodies such as the UNHCR and assisted by NGOs, played significant role in refugee aid and development, thereby contributing to producing detailed knowledge of refugee realities. In addition, research centres on resettlement and refugee status determination within nations, including

[492] Roger Berkowitz, 'The Danger of Intellectuals' (*The Hannah Arendt Center for Politics and Humanities*, 22 July 2013) <https://hac.bard.edu/amor-mundi/the-danger-of-intellectuals-2013-07-22> accessed 22 February 2023.
[493] ibid.
[494] Arendt, *On Violence* (n 333) 11; Berkowitz (n 491).
[495] ibid.
[496] Hannah Arendt, *Crisis of the Republic* (Harcourt Brace & Company 1972).
[497] ibid 11.
[498] Berkowitz (n 491).
[499] ibid; Arendt, *Crisis of the Republic* (n 496) 11.
[500] ibid.
[501] Lippert (n 318) 314.

the early warning system outlined, further exemplifies how refugee governance adapted to include monitoring and crisis prognosis systems.

Intimately connected to political rationalities, knowledge production is therefore not immune to a 'power-dynamic' rationality. Discourses, theories and paradigms influence how refugees are understood and treated. Differing perspectives in literature, government policies and media may form representations of refugees and influence the decisions and categorisations taken towards them.

09 — Technologies

International refugee government practices and refugee object/identity emerged in the 20th century by invention of technologies.[502] Adapted from other fields and refined through initiatives of the League, IRO, UNHCR and private volunteering international organisations like The Red Cross, technologies were employed to serve diverse communities and locations.[503] Two of these technologies are the refugee camp and the refugee passport, both said to complement the liberal rationality referred above.

10 — Passports

Upon its emergence, a passport offered unique storage features of the citizen's specific information, intended to yield security over individuals, as to who were nationals and thereby titled to rights and benefits.[504] Such security grew in importance in the period following WWII.[505] Under a passport regime, the 'object' of citizenship is rendered substantially controllable and manageable, both by governments and citizens themselves, as the latter could henceforth conceive of and govern their lives as 'nationals', ie individuals responsible for a particular nationality.[506]

In the immediate aftermath of WWI, 'refugees were non-persons. They usually did not have a valid legal identity document'.[507] Holding a passport was not merely a matter of official recognition, but also deemed the primary document confirming an in-

[502] Lippert (n 318) 308.
[503] ibid.
[504] ibid 309.
[505] ibid 310.
[506] ibid.
[507] Leon Gordenker, *Refugees in International Politics* (Croom Helm 1987) 20.

dividual's existence as a person with juridical status.[508] National passport requirements proved to be technically challenging and, coupled therewith an adjustment by Fridtjof Nansen, prompted a novel passport type, promising a solution.[509] Originally created for Russian refugees, the Nansen passport 'adjusted' the national passport and permitted its owner to travel from nation to nation for work, or to join dispersed relatives.[510] Nevertheless, the latter was no substitute for national passports, as no right to return to the issuing nation was granted without a special provision to that effect.[511]

However trivial the technology may seem; one cannot conceive the 20th century's refugee management in its absence.[512] As with statistics and knowledge, national passports appeared as tools to build the contemporary national citizen, objects of politics. It is noteworthy to embed the passport in the power argument, which discussed how refugees came to be both agents and sufferers. According to Foucault, such hypothesis would prevent power control, in that its dominance could be adjusted under specific conditions and strategies.[513] Any refugee, striving to 'act', may be tempted to declare themselves as citizens of the global world. Yet factors could prevent such action, of which national passport requirements for travel abroad would constitute one.[514] The passport, inscribed in refugee governance, could thus be seen as a tool, or technology, limiting the potentiality of the refugee to act. In fact, while they may have initially appeared as identification and documenting instruments – conforming with liberal concepts as individual rights, citizenship or the rule of law – their usage in refugee affairs appears at odds with the latter.

[508] Lippert (n 318) 310.
[509] ibid.
[510] ibid.
[511] ibid.
[512] ibid.
[513] Foucault, *Discipline and Punish* (n 446) 123.
[514] Maze (n 444) 137.

11 — Refugee camps

While refugee camps received scholarly consideration, they seldom arose as disciplinary mechanisms.[515] As it happens, refugee camps did not exist in Europe before the modern era, and their mainstreaming began during WWII.[516]

Inhabitants of refugee camps are presumed lacking liberal civility and ability of choice.[517] Properly conducted camps would conform them to such citizenry standards.[518] They provided temporary pens for initially sorting inhabitants and, thereafter, enabling camp authorities to evaluate behaviour for conformity and deviance[519] – depending on the categorisation of those who fell into either category, considering the temporally specific power dynamics. At the outset, refugee camps required discipline for maintaining order and security, including military exercises, training, and vocational rehabilitation programmes.[520] These arrangements allowed – and still do – the assessment of suitable 'objects' for resettlement and those in need of further training.[521]

However, refugee camps also underwent the shift from disciplinary to securitisation rationality: if those who find refuge in camps hope to be resettled, such hope is contingent on their objectification as 'secure' groups, thereby enabling formal asylum applications. Meanwhile, attempts to leave the camps may result in their detention as illegal immigrants in closed detention centres,[522] intended to remain for the time necessary to organise their forced return. Thus, camps became less a place of discipline for rehabilitation, but rather a limbo made permanent, unless securitisation measures and policies decided otherwise. For example, resurgent interest in the Afghan group in 2021, where 12% of those who left for Turkey were relocated compared to less than 2% in 2018, suggests how the latter practices were adapted to novel political interests.[523] As such, whereas disciplinary 'pens' aimed to

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[515] Carol A Mortland, 'Transforming Refugees in Refugee Camps' (1987) 16(3/4) Urban Anthropology and Studies of Cultural Systems and World Economic Development 375, 375-404.
[516] Malkki (n 448) 497.
[517] Lippert (n 318) 309.
[518] ibid.
[519] ibid.
[520] ibid.
[521] ibid.
[522] Tim Finch, 'In limbo in world's oldest refugee camps: Where 10 million people can spend years, or even decades' (2015) 44(1) Index on Censorship 53.
[523] Almasri (n 341) 54.

integrate and train masses, current detention centres and camps target foreigners who are to be maintained in permanent places of residence or sent back, but in no way integrated.[524] They materialise the security regime, providing a revealing manifestation of power issues related to 'object'/'suffering' refugees.

In the 1980s, protracted experience of free food, water and medical aid in a refugee camp emerged as a dependency and risk factor, as such exposure was assumed to reinforce less acceptable behaviours.[525] It was reasoned the longer people lived in refugee camps, the harder it 'proved' for them to adapt to their environment and settle in host countries[526] – compounding likelihoods of transitions toward criminal activity.[527] It could, in other words, trigger and consolidate prejudices used to justify measures of control and violence above-mentioned. However, this dependency is compounded through existing rules and regulations placed on refugees and asylum-seekers.[528] For example, asylum-seekers are not entitled to employment in most countries without receiving refugee status, which could require years.[529] It may also be recalled the impediments to Afghan legalisation in Turkey,[530] or how Calais' situation was categorised as an 'illegality' or 'immigration' question, as opposed to a 'resettlement' affair of nationals classified as economic migrants, with the evident exception of Syrian refugees.[531] As such, refugees are further circumscribed within camps, risking detention as illegal immigrants should they attempt to leave.

Lastly, camps equally provide sources of knowledge[532] – always to be appreciated within broader power-dynamics and their exercise of power. In fact, states demand statistics from humanitarian organisations, such as the UNHCR, since compiling information to produce official statistics on refugee numbers is a requisite for fundraising.[533] However, as discussed, statistics are often unreliable due to manipulability, doubly so when considering

[524] Bietlot (n 375) 63.
[525] Lippert (n 318) 309.
[526] ibid.
[527] ibid.
[528] Mushtaq (n 376).
[529] ibid.
[530] Almasri (n 341) 44.
[531] Berry, Garcia-Blanco and Moore (n 472) 52-54.
[532] Barbara Harrell-Bond, Eftihia Voutira and Mark Leopold, 'Counting the Refugees: Gifts, Givers, Patrons and Clients' (1992) 5(3-4) Journal of Refugee Studies 205, 209-11.
[533] ibid 212.

how most refugees do not live in camps or other facilities.[534] Refugee counting is also highly politicised. For example, countries with stable diplomatic alliances are likely to lower their refugee numbers.[535] As such, refugee camps exemplify Arendt's argumentation on knowledge production and manipulation.

Refugee camps appear equally as a technology objectifying them to power-dynamics and greatly reducing any potential to act otherwise. Such technology, however, departs substantially from the liberal imaginary, focused on humanitarian aid and protection, wherein subjects should be self-existent agents whose decisions are determined freely by their own interests.[536]

2.2 Humanitarian bureaucracy: A political invention contrary to politics itself

As the preceding section addressed admission practices, it only covered a subset of the refugee population – ie those deemed as such and eligible for resettlement. However, admission to Western states may not be available for the majority under the existing international framework.[537] Only one-fifth of stateless individuals are eligible for resettlement when meeting UN refugee criteria; amongst whom less than 1% are resettled.[538] Rather, they remain disconnected and reliant on international assistance.[539]

Much scholarly work has emerged in recent years addressing concerns regarding the 'refugee regime', specifically how international humanitarian organisations and national state policies manage stateless populations, said to be 'at best morally problematic, and at worst manifests a unique form of control and domination'.[540] Therefore, consideration must be taken to any harm suffered by stateless people beyond political communities and under humanitarian control.

[534] Mushtaq (n 376).
[535] Harrell-Bond, Voutira and Leopold (n 532) 213.
[536] Gordon, 'On Visibility and Power' (n 336) 125.
[537] Parekh, 'Beyond the ethics of admission' (n 327) 649.
[538] ibid.
[539] Gil Loescher, *Beyond Charity: International Cooperation and the Global Refugee Crisis* (OUP 1993) 9.
[540] Parekh, 'Beyond the ethics of admission' (n 327) 649.

Attention will be given to those 'left for dead' in Foucault's account, echoed in Arendt's notion of de facto stateless, ie all those forcibly displaced and devoid of any form of effective citizenship or political belonging, regardless of their legal classification as refugees, asylum-seekers, forcibly displaced, undocumented, internally displaced, war refugees, etc.[541] According to her, those in such situations are fundamentally rightless; they do not 'belong to any internationally recognizable community'[542] and thus come to depend on humanitarian aid – or bureaucracy – for their survival.

2.2.1 A political invention: Foucauldian biopolitics of 'letting-die' or Thanatopolitics

While Foucault asserted that 'once the state functions in the mode of biopower [hence, biopolitics], racism alone can justify the murderous function of the state',[543] it would appear that, rather than an effect of biopolitical governance, racism, herein understood as political exclusion, pertains to the rise and deployment of biopolitics as a governance model.[544] Indeed, Foucault failed to appreciate the constituent function of prior racism/political exclusions in the making of modernity and biopower itself, along with that of excluded and marginalised people to defining the 'human', which definition is ontologically necessary to biopower's functioning.[545] In marginalising and devaluing specific 'others', biopower consolidated its authoritative domination. Put differently, the establishment and perpetuation of biopolitical control systems entailed the prior constructing of social hierarchies and dehumanising of certain groups, together with their unequal treatment. The 'other' takes centre stage in determining humankind's boundaries and thereby those included or excluded from the biopolitical apparatus's benefits and protections. The process of exclusion is not a 'post-effect', but rather (pre-)constitutive of biopolitical governance. Thus, the role of the 'other' in ontologically anchoring the 'human' concept within biopower is central to understand under-

541 Parekh, 'Beyond the ethics of admission' (n 327) 650.
542 Hannah Arendt, *Responsibility and Judgment* (Jerome Kohn ed, Schocken Books 2003) 150.
543 Foucault, *Society Must Be Defended* (n 306) 256.
544 Sahraoui, 'Midwives and Humanitarian Bureaucracy' (n 330) 277.
545 ibid.

lying power, control and exclusion in refugee contexts, as well as appreciating how biopolitical systems operate to perpetuate inequalities.

The term 'humanitarian bureaucracy'[546] – entailing relation to this 'other' excluded – will therefore be applied rather than 'biopolitical bureaucracy', given its failure to address hierarchical power relations governing who benefits from livelihood policies of those excluded, with ranging consequences from political to physical marginalisation.[547] In fact, while biopolitical logic is undeniably identifiable within humanitarian bureaucratic governance, such logic is ontologically marked by political exclusion, not sufficiently emphasised in dominant biopolitical conceptions.[548] The 'other' presently would refer to the stateless refugee, a figure who cannot be 'contained within the nation-state because of anxieties over 'national security', and is therefore relegated to a new space',[549] inside state borders, yet outside of liberal ones.[550]

Humanitarian bureaucracy exposes the power of bureaucratic acts, endorsed by professionals, to neuter accountability, and represents the ambivalence of a power originating from biopolitics[551] but producing *thanatopolitics* – the 'letting-die' of Foucauldian formulas[552] – through exclusionary processes. Communities of 'others' risk exclusion from life-sustaining politics and, consequently, being left to die.[553] It further echoes Arendt's characterisation of bureaucracy as the rule of 'No One', meaning 'there is no one left to answer for what is done'.[554] In other words, since there is no longer anyone 'to whom one can present grievances, on whom one can exert the pressures of power',[555] all power is withdrawn from power – taken as the refugees' potentiality to act, rather than being mere humanitarian aid objects – whose withdrawal

[546] Sahraoui, 'Midwives and Humanitarian Bureaucracy' (n 330) 277.
[547] ibid.
[548] ibid.
[549] Suvendrini Perera, 'What is a Camp…?' (2002) 1(1) Borderlands E-Journal 3 <www.mcrg.ac.in/RLS_Migration_2020/Reading_List_2020/Module_E/Perera_what%20is%20a%20camp.pdf> accessed 12 March 2023.
[550] Sahraoui, 'Midwives and Humanitarian Bureaucracy' (n 330) 277.
[551] ibid 275.
[552] Antonella Patteri, 'Between Life and Death: On Biopolitics, Necropolitics and other Contemporary Crises' (*The BISR Blog*, 21 February 2018) <https://bisrblog.wordpress.com/2018/02/21/between-life-and-death-on-biopolitics-necropolitics-and-other-contemporary-crises/> accessed 21 May 2023.
[553] Sahraoui, 'Midwives and Humanitarian Bureaucracy' (n 330) 278.
[554] Arendt, *On Violence* (n 333) 38-39.
[555] ibid 81.

is detrimental, if not lethal, to their freedom. As such, a Foucauldian domination – or high degrees of Arendtian violence – could be argued, given the hindered spontaneity and potentiality.

However, 'humanitarian bureaucracy' suggests how modern bureaucracies cannot dispense from biopolitics humanitarianism but provide their own rationales for modelling biopolitical governance modus operandi,[556] thereby opening discussion to consider humanitarian aid's and intervention's role in enforcing and reinforcing distinctions between refugees. Mention may be made of various studies of health professionals and administrative agents, engaged in repressive border management, with consequences for healthcare access and irregularisation policies,[557] constituting a biopolitical surface for a fundamentally *thanatopolitical* migration policy. In addition, humanitarian aid allocation by donors themselves inhibits impartiality and non-discrimination by nationality, thus further reflecting biopolitics, as discussed for humanitarian actors in Turkey.[558] Bureaucratic fragmentation, or the 'Rule of Nobody' to quote Arendt, nullifies decision-making and, thereby, accountability.[559] As such, ethical codes of qualified humanitarian personnel seem weakened or even nullified by this bureaucratic fragmentation of roles. Thus, while humanitarian entities appear apolitical and impartial, they are so much created by/derived from biopolitics and maintain a cloaked loyalty to the authorities they are expected to be fighting.[560] These dynamics underscore the need for a thorough review of humanitarian bureaucracies, and a reconsideration of biopolitical logics underpinning them.

2.2.2 Apolitical confinement: Ontological and political deprivation of statelessness

The present part refers to Arendt's analysis whereby the ontological deprivation – of influence on a political level – of statelessness is composed of three components: identity loss; expulsion from common humanity and inability to speak and act meaningfully; and their loss of agency.[561]

[556] Sahraoui, 'Midwives and Humanitarian Bureaucracy' (n 330) 276.
[557] Sahraoui, 'Des dispositions bureaucratiques humanitaires' (n 339) 95.
[558] Almasri (n 341) 52.
[559] Sahraoui, 'Midwives and Humanitarian Bureaucracy' (n 330) 283.
[560] Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life* (Daniel Heller-Roazen tr, Stanford UP 1998) 133.
[561] Parekh, 'Beyond the ethics of admission' (n 327) 651.

To begin with, Arendt recorded how statelessness alters a person's identity. The latter process entails two dimensions: it divests one's old identity and substitutes a new one.[562] In fact, rather than being political subjects, they become mere beings and humanitarian objects, or agencies to be treated and protected, as opposed to individuals with unique identities or political subjects whose existence counts.[563] Such ontological deprivation is solidified in political architecture, ensuring humanitarian aid is only available upon such transformation.[564]

The second component pertains to exclusion from the common world, which likewise carries political dimensions.[565] Refugee camps, for example, rarely register on maps, while they might have existed for decades or more.[566] The stateless are economically outsiders to the common world, given their ineligibility to participate in global economics, save as passive recipients of global charity, upon which their minimal biological existence depends altogether.[567] Additionally, they remain socially and politically excluded from the common world, since they lack social integration and political rights or action in the states where they reside.[568] For Arendt, such exclusion falls under ontological deprivation as it causes an individual to lose their place in a common public space from which action, speech, and thus identity become meaningful – in other words, the very foundations upon which one could meaningfully engage in politics.[569]

Finally, statelessness diminishes a person's capacity to speak and act in a meaningful way.[570] In this sense, stateless persons' political agency is diminished, understood as their capacity to 'act' in an Arendtian sense – the freedom to act with others and have their actions and speech recognised as meaningful.[571] Such capacity should not be understood as a subjective state or inner disposition, but a human experience, achieved primarily through politi-

[562] Parekh, 'Beyond the ethics of admission' (n 327) 651.
[563] ibid 652.
[564] ibid.
[565] ibid 653.
[566] ibid.
[567] ibid.
[568] Michel Agier, *On the Margins of the World: The Refugee Experience Today* (Polity 2008) 49.
[569] Parekh, 'Beyond the ethics of admission' (n 327) 653.
[570] ibid 654.
[571] ibid 654-55.

cal action, where a person reveals their uniqueness with others.[572] Indeed, while freedom would be 'the reason why men live together in a political organization',[573] freedom is intersubjective, entailing the presence and recognition of others within a shared public domain.[574] While without 'a politically guaranteed public domain, freedom does not have the global space to make its appearance',[575] it seems easy to appreciate the harm suffered by refugees, especially those dependent on humanitarian aid. Indeed, decommunitarised, they would be deprived of the reliability and sustainability of a politically guaranteed space where their actions and words could be seen and understood.[576] Though far from condemning refugee political action to impossibility, such action would nevertheless be limited as it would lack the very conditions that make it consistently meaningful.[577]

2.2.3 Apostasy of political rights: Arendtian 'right to have rights' amidst realities of humanitarian recognition

The present point examines how humanitarian aid contributes to political rights apostasy, and how Arendt's famous distinction between biological and political is no longer sustainable, given the complementarity – if not uniqueness – of the two in accessing political rights.

As demonstrated, political rights of stateless refugees are rendered elusive, as ontological and political deprivation affecting their (in)access is solidified by humanitarian aid. In effect, the latter depends on and reinforces their loss of identity; their expulsion from common humanity and inability to speak and act meaningfully; and their loss of agency.[578] Political rights as such are not unattainable, but nonetheless limited as such deprivation hinders the very conditions that make them exercisable.

Yet, in *The Human Condition*,[579] Arendt appears inadvertently to illustrate how the biological is inevitably a matter for the political. According to her, labour, with its link to the biological – the latter referring to the 'ever-recurring cyclical movement of na-

[572] Serena Parekh, *Refugees and the Ethics of Forced Displacement* (Routledge 2016) 93.
[573] Hannah Arendt, *Between Past and Future* (Penguin 1993) 146.
[574] Parekh, *Refugees* (n 571) 93.
[575] Arendt, *Between Past and Future* (n 573) 149.
[576] Parekh, *Refugees* (n 571) 94.
[577] ibid.
[578] Parekh, 'Beyond the ethics of admission' (n 327) 651.
[579] Arendt, *The Human Condition* (n 313).

ture' – includes 'all those human activities which arise from the necessity of coping with it'.[580] Arendt implies that labour is an activity necessary to maintaining life, involving any activity aimed at sustaining or reproducing life.[581] Thus, industrial activities, large-scale agriculture, resource extraction, etc are all activities that aim to sustain life and reproduce it, and thereby constitute labour.[582] Arendt directly contrasts necessity with freedom, contending that so long are individuals bound by biological needs, they cannot be free.[583] Thus, it could be inferred that political access is subordinated to prior satisfaction of natural needs. In this regard, one may criticise refugees' plight – dependent on humanitarian aid – who are formally excluded from social and economic activities and depend solely on international assistance to provide all material goods necessary for their minimal biological existence.[584] They find themselves outside the common space to support themselves.[585] Most countries prevent asylum-seekers from working until official refugee status has been granted, which may take years. In the UK, for example, asylum-seekers will be granted an allowance of around £35 for expenditure in a week should they have no savings.[586] While this deprivation does not seem to be a problem when their needs are met by international charity, the latter is not guaranteed at all times, and such exclusion would pose a serious issue when charity runs out.

Her position whereby the biological basis of human association is opposed to and excluded from the political domain is disproved. It would be somewhat illogical to assume that 'everything that is merely necessary or useful is strictly excluded'[587] from the political domain. While Giorgio Agamben argues that the modern state politicises natural life,[588] the present account demonstrates the opposite: humanitarian aid would not be a political project, but rather an invention fundamentally contrary to politics itself.

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580 Arendt, *The Human Condition* (n 313) 176-79.
581 Paul Voice, 'Labour, work and action' in Patrick Hayden (ed), *Hannah Arendt: Key Concepts* (Routledge 2014) 37.
582 ibid.
583 ibid 47.
584 Parekh, 'Beyond the ethics of admission' (n 327) 653.
585 Agier, *On the Margins of the World* (n 568) 2.
586 Kate Lyons, 'How do you live on £36.95 a week? Asylum seekers on surviving on their allowance' (*The Guardian*, 21 August 2017) <www.theguardian.com/world/2017/aug/21/asylum-seekers-allowance-surviving-charities-counting-pennies> accessed 12 March 2023.
587 Arendt, *The Human Condition* (n 313) 71.
588 Agamben (n 560) 133.

It could be recognised that insofar as the very foundations of any human association are not fulfilled, access to the political community would be impossible. Refugees dependent on humanitarian aid, inscribed in a context where these foundations are weak or even absent, have no access to political life.

However, a second complementarity should be considered between political and biological life. In 1949, Arendt raised a statement which remains as relevant today as ever, whose famous motto 'The right to have rights'.[589] The latter merely translates her scepticism about the concept of human rights. While such rights should, in principle, accrue to every person by reason of their humanity, they were only guaranteed and conditioned on membership of a state.[590] If you do not have a passport, you would not only be deprived of travel, but also of your most fundamental rights. Arendt quickly identified the concept's disillusionment, in that human rights, instead of being guaranteed by humanity itself, were ultimately dependent on nation-states' willingness to recognise and enforce the rights of those who had become unprotected by the loss of their national affiliations.[591] Since then, such a critique cannot be considered outdated: as the migration crisis reaches its peak and its own record, the Ukrainian war seems to have reinforced the assumption of a dependence on the will of nation-states to ensure human rights effectiveness. Indeed, while not discounting the merits of international support for Ukrainian refugees, the variable geometry of nations' migration policies seems to underline that states, or their union – when considering the EU and its temporary protection – ultimately decide when and which refugees deserve protection, rather than their belonging to humanity per se. Based on such considerations, Arendt suggested that the only necessary and failing right would be that of being a citizen of a nation state, or at least of an organised political community, as previously discussed.[592] It is through such a right that the enjoyment of all other civil, social, economic and political rights can be guaranteed. Thus, a 'right to have rights'.[593]

[589] Masha Gessen, '"The Right to Have Rights" and the Plight of the Stateless' (*The New Yorker*, 3 May 2018) <www.newyorker.com/news/our-columnists/the-right-to-have-rights-and-the-plight-of-the-stateless> accessed 23 March 2023.
[590] ibid.
[591] Arendt, *Origins of Totalitarianism* (n 316) 290-301.
[592] Lida Maxwell and others, *The Right to Have Rights* (Verso 2018) 8.
[593] Arendt, *The Human Condition* (n 313) 298.

The second complementarity between biological and political seems to be conceivable as oneness: since access to political community, which depends on the satisfaction of biological needs according to Arendt, seems hardly achievable under humanitarian aid, how could stateless people claim even the most vital rights ie civil and political rights enabling the satisfaction of natural needs, but also not to be excluded from any activity permitting such subsistence. It appears in effect that political would be inaccessible without the biological, and conversely.

Thus, how can one who does not belong to a community claim the rights arising from it, when the condition for claiming such rights would be membership of a community?[594] Humanitarian bureaucracy presents an instrument of politics fundamentally at odds with the latter, in that it greatly reduces, if not totally, the potential for refugees to act.

[594] Maxwell and others (n 592) 11.

3. A contemporary interpretation of biopolitics

Biopolitics offers insights on how sovereign power – or states – characterises and regulates migrant populations' living conditions. That said, the theory has limitations, especially as an instrument of analyses and empirical research. Recent developments highlighting the complex and nuanced differentiations of inclusion and citizenry, ambiguous power dynamics, and elevating agency and subjective experience over traditional representations of political oppression, has shifted emphasis beyond historical developments and binary contrasts – life and death, inclusion and exclusion, political rights or lack of them.[595] The assemblage approach and Gilles Deleuze's and Félix Guattari's writings supply terminology and understandings relevant to rethinking biopolitics and challenging inherited assumptions of structure versus agency, oppression versus resistance, and thereby enhancing appreciation of complex power dynamics in migrant life.[596] More specifically, it will be discussed what revisited notions of power, life, categorisation and population contribute to framing a Foucauldian theory of resistance, unformulated by the author, while overturning a spatial or temporal confinement of biopolitics, in favour of a multiple and evolving understanding of the latter.[597] As

[595] Lynn A Staeheli and others, 'Dreaming the ordinary: Daily life and the complex geographies of citizenship' (2012) 36(5) Progress in Human Geography 628, 628ff <https://doi.org/10.1177/0309132511435001> accessed 23 March 2023; Joe Turner, '(En)gendering the political: Citizenship from marginal spaces' (2016) 20(2) Citizenship Studies 141, 141ff <https://doi.org/10.1080/13621025.2015.1132569> accessed 3 April 2023.

[596] Thilo Wiertz, 'Biopolitics of migration: An assemblage approach' (2021) 39(7) Environment and Planning C: Politics and Space 1376 <https://doi.org/10.1177/2399654420941854> accessed 10 February 2023.

[597] ibid.

such, analysis may gain sensitivity to biopolitical migrant experience as well as emerging alternating agencies and subjectivities, calling current migratory regimes' violent biopolitics to account.

3.1 Constrained by borders: Understanding the rigidity of Foucauldian biopolitics

While popular in migratory studies, biopolitics has come under substantial criticism. Two grounds for tension, amongst others, between Foucauldian biopolitical theory and migration research will be presently analysed.

For one, biopolitics fails to account for the complexity and individuality of migrants' experiences. Many theorists within biopolitical studies sink social differentiation in terms of the aforesaid binary contrasts, thereby rendering difficult to appreciate the multifaceted distinctions typifying inclusive politics and citizenship.[598] Moreover, it tends to assume a coherent governing logic, inherent to given historical or geographic settings, and ascribed to an overarching body – whether a state or a ruler. It stands at odds with broader migration regimes[599] which, as previously noted, feature multiple players pursuing differing, perhaps contradictory, agendas.

For another, whilst Foucault maintained how biopower's deployment allows considerable resistance potential, his analysis failed to delineate and articulate how such resistance would unfold, not least within biopolitics. Foucault's argument of omnipresent and unavoidable power relations suggests that resistance's object should not be described as liberation, or as rupture of power's encircling bonds.[600] Rather, it can be hoped merely to reconfigure existing power relations.[601] There are, however, two points to be made. Firstly, Foucault maintains that power and

[598] Turner (n 595) 141ff; Staeheli and others (n 595) 628ff.

[599] Engin F Isin and Kim Rygiel, 'Abject spaces: Frontiers, zones, camps' in Elizabeth Dauphinee and Cristina Masters (eds), *Logics of Biopower and the War on Terror* (Palgrave 2007) 181-203; Vicki Squire, 'Governing migration through death in Europe and the US: Identification, burial and the crisis of modern humanism' (2017) 23(3) European Journal of International Relations 513, 513ff <https://doi.org/10.1177/1354066116668662> accessed 9 April 2023.

[600] Jakub Franěk, 'Arendt and Foucault on Power, Resistance, and Critique' (2014) 6(3) Acta Politologica 299 <https://acpo.vedecke-casopisy.cz/publicFiles/00785.pdf> accessed 21 February 2023.

[601] ibid.

knowledge are closely tied, and that truth validation hinges on the knowledge system's norms in which it is delivered, suggesting that no objective yardstick serves to gauge different power configurations.[602] The relativisation of truth and freedom may challenge possible political resistance: if the validity of truth is contingent upon the knowledge system's rules, it may prove elusive to determine unbiased criteria for assessing power and domination. Secondly, whereas Arendt's political analysis struggled with an uncompromising definition of the political realm, Foucault failed to provide one. Indeed, Foucault's concept of power and politics appears to rule out public or political realms which could serve as staging for common political action, or to use Arendt's terms, for 'acting in concert'.[603] In other words, given Foucault's depiction of political power as merely strategical, characterising politics as 'the continuation of war by other means',[604] it implies little possibility of solidarity[605] or political communities in his work.[606] Both contradictions intrinsic to Foucault's oeuvre pose two questions on possible forms of resistance. First, what is the objective of such resistance? Second, what form or modalities might it take?

Conceptualising biopolitics as an assemblage, derived from Deleuze and Guattari's development, proposes valuable ways of recasting biopolitics and affiliated concepts with greater awareness of the two issues raised by recent research on migration. Indeed, biopolitics by assemblage, thereby accounting for multiplicities in forces with no inherent coherency, may provide elements of a 'circular' perspective to both critiques: resistance could find its content and vehicle in the complexity of biopolitics, and said biopolitical complexity would find its fundamentals in the agency and autonomy of refugees, namely their resistance, which has often been forgotten in favour of an emphasis on political repression. In other words, the biopolitical complexity is both explained by the often forgotten resistance, and makes resistance itself possible.

While the following section will conceptualise biopolitics as an assemblage and present elements of response (Section 2), a Foucauldian and Arendtian-inspired theoretical framework of re-

602 Franěk (n 600) 299.
603 ibid.
604 Michel Foucault, *Power/Knowledge: Selected Interviews & Other Writings, 1972–1977* (Colin Gordon ed, Vintage 1980) 90.
605 Amy Allen, 'Power, Subjectivity, and Agency: Between Arendt and Foucault' (2002) 10(2) International Journal of Philosophical Studies 143.
606 Franěk (n 600) 299.

sistance will be assembled, considering the limitations addressed to their theories and openings offered by assemblage theory (Section 3).

3.2 Beyond borders: Unravelling the potentiality under assemblage biopolitics

As Deleuze and Guattari argued, any given concept ought to be regarded as an 'assemblage' of other concepts alongside the issues underlying its articulation.[607] Such theory is relevant to biopolitics, as it provides a power ontology without focusing on encapsulating particular contingencies, but rather supports comprehension of biopolitics as the result of multiple interplaying forces, rather than ascribed to governing powers.[608] As such, the 'assemblage' proposed by Deleuze and Guattari[609] relies on ontology whereby force and power relations are central, whilst avoiding prior structuring or hierarchical assertions – useful for biopolitical research in particular.[610] Rather, reality is regarded by Deleuze as an environment where forces generate processes of 'becoming'.[611] The latter have no intrinsic roots or structures, like a governing power, but are implicit within the evolving interrelationships of existing beings or assemblages.[612] Resulting then from cooperating forces, and given their continuing action, assemblages and their storylines are subject to changing and interlocking with neighbouring assemblages,[613] representing a latticework of assemblies, each with emergent qualities and potentialities.[614]

Assemblages of biopolitics, namely at life's frontier with politics and demography, ought to be perceived as multicomponent fields of non-convergent forces.[615] Foucault's analysis of biopolitics occasionally positions the state as a quasi-power centre, for example by contrasting 'the series body-organism-discipline-institutions, and the series population-biological processes-mecha-

[607] Paul Patton, *Deleuze and the Political* (Routledge 2002) 23-28.
[608] Wiertz (n 596) 1371.
[609] Gilles Deleuze and Félix Guattari, *A Thousand Plateaus: Capitalism and Schizophrenia* (University of Minnesota Press 1987).
[610] Wiertz (n 596) 1371.
[611] Patton (n 607) 55.
[612] Wiertz (n 596) 1372.
[613] Patton (n 607) 70.
[614] Wiertz (n 596) 1380.
[615] ibid.

nisms-state',[616] while linking biopolitics to this latter series. Nonetheless, he provides an alternate account for state powers as 'an emergent and changeable effect of incessant transactions, multiple governmentalities, and perpetual statizations'.[617] Such understanding approaches the assemblage concept in asserting unified state institution tendencies as feasible – but not inherent – outcomes amidst manifold power relations.[618] Consequently, analysis is geared towards diverging points and dissonant situations.[619]

Understanding centrally-planned or instituted power as resulting from numerous forces, adopting the assemblage viewpoint, enables to sidestep traditional dualisms such as individual-state, structure-agency, oppression-autonomy.[620] Migrants' living conditions, say in settlements, feature intricately interplaying agents, organisations, realities and knowledge-fields which may expand, as well as undermine biopolitical control.[621] Refugee healthcare systems exemplify the diverse players and agencies – private, public and public-private. Companies, state institutions, NGOs and medical professionals all perform along differing logics of excluding, profit-making, humanitarism or charity.[622] In this context, an assemblage approach to biopolitics' stakes could be articulated as cartographing and unravelling an array of forces shaping life's and populations' governing, attending to both resonances and divergences.

While the present account of biopolitics and associated concepts via assemblage theory remains limited in ideas and concepts, it will be examined how assemblage theory provides greater

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616 Michel Foucault, *Society Must Be Defended: Lectures at the College de France, 1975–76* (Picador 2003) 250.

617 Bob Jessop, 'From micro-powers to governmentality: Foucault's work on statehood, state formation, statecraft and state power' (2007) 26(1) Political Geography 34, 37 <https://eprints.lancs.ac.uk/id/eprint/506/1/-_E-2007a_Foucault-PG.pdf> accessed 12 April 2023.

618 Wiertz (n 596) 1380.

619 ibid.

620 ibid.

621 Gaja Maestri, 'The contentious sovereignties of the camp: Political contention among state and non-state actors in Italian Roma camps' (2017) 60 Political Geography 213, 213ff <https://doi.org/10.1016/j.polgeo.2017.08.002> accessed 2 June 2023; Lucas Oesch, 'The refugee camp as a space of multiple ambiguities and subjectivities' (2017) 60 (Supplement C) Political Geography 110, 110ff <https://doi.org/10.1016/j.polgeo.2017.05.004> accessed 3 May 2023.

622 Heide Castañeda, 'Medical aid as protest: Acts of citizenship for unauthorized im/migrants and refugees' (2013) 17(2) Citizenship Studies 227, 227ff; Gudbjorg Ottosdottir and Ruth Evans, 'Ethics of care in supporting disabled forced migrants: Interactions with professionals and ethical dilemmas in health and social care in the south-east of England' (2014) 44 (suppl.1) British Journal of Social Work i53, i53-69.

insight when applied to revisiting three fundamental concepts of biopolitical theory: life, the diffusion of power and categorisation, which will be discussed successively.

3.2.1 Embodiment of life: The reclaiming of knowledge and discourse for the refugee – political object

The first chapter examined the relationship between power, agency and subjectivity, noting the indissociability of power and knowledge in Foucault's theories. When it comes to refugees, however, Foucauldian biopolitics tends to reduce them to mere abstract notions – or political objects – divorced from concrete experience,[623] insofar as Foucault's work focuses primarily on the discursive side of power.[624] As such, it consigns their lives to passivity, governed by science, bureaucracy and technology.

In the context of biopolitical assemblages, material and discursive interaction, in particular the relative structuring between 'visible' and 'sayable', are of relevance.[625] Deleuze maintains power is not merely movable from one domain to another – material to discursive or conversely – but involves their respective organisation.[626] The 'sayable' connotes organised statements, categorised subjects as materiality, and the like, whereas the 'visible' calls for matter which may appear in a discourse in the first place, especially political ones.[627] Within the context of biopolitics governing migration and borders, such consideration suggests analysing both discourses categorising migrants (eg secured, legitimate, illegal or irregular) and the assemblage of physical structures arranging their presence and appearance in discursive or legal terms.[628]

By examining biopolitical assemblages, the complementarity between Deleuze's ideas and Foucault's theory becomes apparent, whereby 'there is no knowledge without a particular discursive practice, and any discursive practice can be defined by the knowledge it forms'.[629] Assemblages theory provides insight into how material and discursive dimensions interact and shape each

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623 Thomas Lemke, 'From state biology to the government of life: Historical dimensions and contemporary perspectives of "biopolitics"' (2010) 10(4) Journal of Classical Sociology 421, 431 <https://doi.org/10.1177/1468795X10385183> accessed 12 June 2023.

624 Gilles Deleuze, *Foucault* (University of Minnesota Press 1988).

625 Wiertz (n 596) 1381.

626 Deleuze (n 624) 77.

627 ibid 80.

628 Wiertz (n 596) 1381.

629 Michel Foucault, *The Archaeology of Knowledge* (Barnes and Noble 1993) 87.

other in the context of migratory biopolitics. Thus, by integrating Deleuze's perspectives, Foucauldian theory's limits may be addressed by grasping power dynamics' complexity through studying interactions between material and discursive dimensions.

When material reality, or facets of the latter, among refugee groups is rendered invisible within public and political discourse, accountability of actors towards refugees' lives and obligations becomes elusive.[630] Invisibility enables avoidance or minimisation of political debates and responsibilities arising from migrant life's physicality.[631] Both governments and the general public are less likely to address dangers and distress experienced by migrants, given lack of awareness around material realities. However, it remains to be stressed how the materiality of migrants' lives, despite its invisibility, remains and impacts effectively on the individuals concerned. Against such background, resistance becomes more affordable too: by accounting for the materiality of refugees' lives, often overlooked by Foucauldian biopolitics, assemblage theory would explore how refugees may mobilise living and non-living physical elements of their existence to resist actively oppressive biopolitics against them.

A prime example would be Ukrainian refugees and the use of blue and yellow flags, arguably exemplifying the materiality of life becoming visible. Flags are material symbols embodying identity, affiliation and political statements. When refugees display them publicly, these are material artifacts used to make their presence known, drawing attention to their situation, and asserting a public place for themselves.[632] Along the same lines, and more recently, an exhibit exposing Russian crimes in Ukraine prevented a Russian ambassador from visiting a memorial for Soviet soldiers on Russia's Victory Day in Poland.[633] The exhibition, organised by Ukraine-supporting citizens, featured numerous Ukrainian flags, false blood and crosses representing Ukrainians killed in the recent war.[634] Alan Kurdi's photograph may also be seen as an ex-

630 Wiertz (n 596) 1381.
631 ibid.
632 Nicolas Camus and Ellen Boonen, '"We are all Ukrainian" How the yellow-and-blue flag won over Europe' (*Politico*, 23 February 2023) <www.politico.eu/article/ukraine-russia-war-vladimir-putin-volodymyr-zelenskyy-emmanuel-macron-yellow-and-blue-flag-won-over-europe/> accessed 9 May 2023.
633 Vanessa Gera, 'Ukraine flags block Russian ambassador's path on Victory Day' (*AP News*, 9 May 2023) <https://apnews.com/article/poland-ukraine-russia-victory-day-protest-warsaw-850032b48d8faa9468fe721a41322f26> accessed 21 May 2023.
634 Gera (n 633).

ample of life's materiality becoming visible. The image of a Syrian child discovered lifeless on a Turkish beach sparked worldwide attention to refugees' plight and precarious existence.[635] In highlighting the sufferance and individual vulnerability of those embroiled in conflicts and crises, it provoked thoughtful action on asylum politics and international accountability, and provided a compelling reminder about the reality of human lives, behind figures and statistics.

While these examples highlight how appropriating visibility can account for materiality, the reverse is also possible, when materiality of life becomes instrumental in bringing visibility. The example of a Haitian woman seeking asylum in France after being gang-raped in Haiti[636] serves to illustrate the way materiality of life can render a situation visible. She was initially refused asylum as rape was not deemed politically motivated.[637] However, after being diagnosed as HIV-positive with AIDS, resulting from her rape, she obtained asylum on medical grounds.[638] The materiality of her body, testifying the suffering and trauma suffered, enabled her to be recognised.

An analytical approach based on biopolitics enabled the understanding of how refugees labelled as 'illegitimate' find their discourse and materiality negated. However, it is equally pertinent to explore with sensitivity and scrutiny why resistance is difficult to organise for these different groups, beyond the political obstacles they face. According to Arendt and Foucault's theory, who maintained of the individual being constructed through unequal power relations, power appears necessary for the individual to self-perceive and self-understand.[639] From this perspective, how could refugees form a solidarity or resistance movement when they were never officially recognised as such at the outset? Thus, the question arises whether the agency of these various groups is sufficiently developed. For example, it may be questioned whether the Afghan refugee group encounters difficulties in gaining rec-

[635] Maryam Mushtaq, 'Refugee Assemblages: The Figure of the Refugee during the "Crisis" of Europe' (*The Georgetown Public Policy Review*, 2022) <www.gpprspringedition.com/refugee-assemblages-2022-5> accessed 10 February 2023.
[636] Didier Fassin, *Humanitarian Reason: A Moral History of the Present* (University of California Press 2012) 142.
[637] ibid.
[638] ibid.
[639] Jacob Maze, 'Towards an Analytic of Violence: Foucault, Arendt & Power' (2018) 25 Foucault Studies 125 <https://doi.org/10.22439/fs.v0i25.5577> accessed 10 February 2023.

ognition for themselves as refugees owing the long conflict duration,[640] complexity in identifying victims[641] among the warring parties in an inter- and intra-ethnic civil context – which differs from a conflict between states – along with psychological implications and diminished willingness arising from policies affecting them. Similarly, the challenges faced by economic, climate and internally displaced refugees are frequently multifaceted and intertwined, owing to economic, environmental, social and political considerations,[642] thereby hampering clear and concise communication of their realities to the international community.

By collapsing the hierarchical order between power over life which characterises Foucauldian biopolitics, assemblage theory demands reconsideration of how biopolitics constructs life as a target of governing power, as well as how, in such cases, 'life becomes a resistance to power when power takes life as its object'.[643] Examples such as hunger strikes, fingerprint mutilation, occupation of refugee camps, demonstrations and protests are among others illustrating how refugees' physicality acquire active role within movements for visibility, recognition and rights.[644]

3.2.2 Diffused and capillary power: An ambivalent force for migratory biopolitics

The previous chapter highlighted bureaucrats' political involvement, perceived as strands of capillary power revealing the interplay of forces present in society, and in the present case, embodying biopolitical dynamics of migration. However, assemblage theory demonstrates how that same capillarity would likewise constitute opportunities to exploit incoherencies, whose exposure could be prejudicial to them. The segmentarity concept introduced by Deleuze and Guattari proves valuable and directly related to their ideas on power.[645] They suggest there is differentiation or categorisation within all societies, segmented by social,

[640] Shaddin Almasri, 'Why is Syria a War but Not Afghanistan? Nationality-based Aid and Protection in Turkey's Syria Refugee Response' (2023) 42(1) Refugee Survey Quarterly 35.

[641] Katharina F Gallant, 'The "good" refugee is welcome: On the role of racism, sexism, and victimhood when fleeing from war' (2022) 8(3) DiscourseNet: Collaborative Working Paper Series 3 <https://discourseanalysis.net/sites/default/files/2022-10/Gallant_2022_DNCWPS_8-3.pdf> accessed 12 March 2023.

[642] Mushtaq (n 635).

[643] Deleuze (n 624) 92.

[644] Wiertz (n 596) 1382.

[645] Deleuze and Guattari (n 609).

time and space parameters.[646] Segmentarity may be rigid or supple, but a rigid segmentarity remains nevertheless the result of multidimensionality.[647] Biopolitical differentiations thus require careful analysis and explanation.

Segmentarity 'becomes rigid, insofar as all centers resonate in ... a single point of accumulation that is like a point of intersection'.[648] The governing power succeeds at appearing as a power centre insofar as they mark resonance points.[649] They retain such appearance so long as consistent differentiation occurs at every point of the assemblage,[650] ie the various capillaries of power, in this case frontline bureaucrats in the migratory regime. However, the individual points, or bureaucracies, are also shaped by micropolitics bearing potential ambivalence and discrepancy.[651] Thus, segmentarity may become flexible, if various points, organisations, actors, etc 'do not all resonate together, they do not fall on the same point'.[652] More importantly, both rigid and flexible segmentarity do not mutually exclude each other, but belong to a single assemblage.[653] The 'succeeding' of a statist mechanism, and of the binaries it induces, hinges upon its ability to recapture dissonances, thereby curtailing their resisting potential.[654] Yet, the possibility remains that the state may fail at doing so.

The organisation of migrants' health care illustrates the coexistence of rigid and flexible segmentarity. For example, border regulations demanding teenagers to furnish proof of age via medical certificates contravene European and national legislation on enlightened consent, which a minor is incapable of providing, thereby uncovering paradoxes arising from the interplay.[655] Not to mention, child development experts are often not included in proceedings, like paediatricians or child psychologists,[656] rendering evaluations imprecise as age increases, and leading to most of

[646] Wiertz (n 596) 1382.
[647] ibid.
[648] Deleuze and Guattari (n 609) 211.
[649] Wiertz (n 596) 1382.
[650] ibid.
[651] ibid.
[652] Deleuze and Guattari (n 609) 211.
[653] Wiertz (n 596) 1382.
[654] ibid.
[655] Mushtaq (n 635).
[656] Pieter JJ Sauer, Alf Nicholson and David Neubauer, 'Age determination in asylum seekers: physicians should not be implicated' (2016) 175 European Journal of Pediatrics 299 <https://doi.org/10.1007/s00431-015-2628-z> accessed 2 April 2023.

them being mistakenly recognised as adults.[657] A second example, discussed earlier, concerns healthcare legislation granting undocumented expectant mothers' entitlement to perinatal and maternal care across most European countries, irrespective of legal status.[658] Pregnant women with precarious legal status are found at the intersection of dynamics of health inclusion[659] and (bio)political exclusion. The latter reveal tensions within liberal states, between the biopolitical principle of governing individuals and the exclusions effected by migratory regimes.[660]

While governing power may seek to stabilise incoherence, its failure could provide valuable understanding of how biopolitics is exercised and experienced in concrete situations. Such incoherencies could be mutually profitable for refugees, as they provide opportunities for resistance when made public – detrimental to bureaucracies responsible for migration policies playing a political role as capillaries of power.

3.2.3 From infirmed to affirmed: The substitution of agency and subjectivity, towards a political self-categorisation of refugees

Population, according to Foucault, emerges as product of knowledge discourses and practices whose reach is, in turn, enhanced by state government technologies.[661] Populations acquire 'relevance as objectives, and individuals, series of individuals, are no longer relevant as objectives, but simply as instruments, relays or conditions for obtaining something at the level of the population'.[662] In migration research, such portrayals of individuals are problematic, as they reinforce refugee and migrant representation as passive and voiceless victims.[663]

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[657] Pieter JJ Sauer, Alf Nicholson and David Neubauer, 'Age determination in asylum seekers: physicians should not be implicated' (2016) 175 European Journal of Pediatrics 299 <https://doi.org/10.1007/s00431-015-2628-z> accessed 2 April 2023.

[658] Vanessa Grotti and others, 'Shifting Vulnerabilities: Gender and Reproductive Care on the Migrant Trail to Europe' (2018) 6(23) Comparative Migration Studies 6, 6ff <https://comparativemigrationstudies.springeropen.com/articles/10.1186/s40878-018-0089-z> accessed 12 March 2023.

[659] Nina Sahraoui, 'Midwives and Humanitarian Bureaucracy: Managing Migration at a Postcolonial Border' (2021) 15(2) International Political Sociology 285 <https://doi.org/10.1093/ips/olab001> accessed 10 February 2023.

[660] ibid 284.

[661] Wiertz (n 596) 1383.

[662] Michel Foucault, *Security, territory, population: Lectures at the College de France, 1977–78* (Michel Senellart ed, Graham Burchell tr, Palgrave Macmillan 2007) 65.

[663] Wiertz (n 596) 1383.

The reappraisal of population as assemblage may help revisit relations of person-population, and agency-structure.[664] Convening subjects, communities and settings within a given geographical frame yields both emergent phenomena and aleatory outcomes, beyond any individual component.[665] While Foucault was ambivalent regarding the status of the individual subject and body versus the population, the theory of assemblages clarifies that, although an assemblage's existence depends on the relations between its components, a component's existence and identity are never entirely defined or exhausted by a single assemblage.[666] Consequently, individual subjectivities and capacities are both irreducible to, and never fully captured by, a particular biopolitical assemblage.[667]

While biopolitics itself relies on focusing upon an identity component – often reduced to a singular one or simplistic stereotypes – such as Ukrainian as European, Syrian as religious guest, Afghan as terrorist and the 'forgotten' as profiteer – the reconsideration of populations as assemblage equally proposes how individuals conserve the ability to articulate alternative subjectivities and dissonance in biopolitics' performance.[668] For Dimitris Papadopoulos and Vassilis Tsianos,[669] migration itself represents a decoding process – becoming impervious to state categorisations and consequently biopolitics. Individuals may constitute other assemblages, collectives or populations. To put it differently, while 'objects' capabilities are largely governed by their positions in differing social assemblages, they 'retain their own properties' enabling them to 'detach themselves from one assemblage and be plugged into another'.[670]

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[664] Wiertz (n 596) 1383.
[665] ibid 1383-84.
[666] ibid 1384.
[667] ibid.
[668] ibid.
[669] Dimitris Papadopoulos and Vassilis Tsianos, 'The autonomy of migration: The animals of undocumented mobility' in Anna Hickey-Moody and Peta Malins (eds), *Deleuzian Encounters: Studies in Contemporary Social Issues* (Palgrave Macmillan 2008) 223-35.
[670] Manuel DeLanda, *Assemblage Theory* (Edinburgh UP 2016) 74.

Therefore, rather than being regarded as devoid of agency, as Arendt suggested in her conception of statelessness, they may be comprehended as exercising a 'charged agency'[671] where, despite operating within considerable duress, alternative forms of agency are practiced.

Examples can be mentioned. On the one hand, the death and image of Alan Kurdi's body featured empathy, arguably not owing the death of a refugee nor their plight, but rather to the fact the corpse was of a child, as attested by right-wing newspaper headlines: 'Little victim of a human catastrophe', 'Unbearable: a three-year-old boy…'.[672] Because Alan Kurdi was a child refugee, he was treated with sympathy. Regarding Ukrainians, the president and the population themselves have long supported they are 'Europeans' beyond refugees, as illustrated in a speech by the former 'this is our Europe, these are our rules, this is our way of life … and for Ukraine, it's a way home'.[673] It may further be noted the Jewish identity of the Ukrainian war, when Zelensky stressed that Russian attacks had targeted Shoah memorial sites in Ukraine.[674] In political stance, supporting the Jewish victim – the president and memorial sites violated – implies condemning Nazi past and embracing internationally-agreed Western moral code.[675] Moreover, Ukrainian refugees are not merely individuals, but also a 'president'. Indeed, as Hildy Kuryk, former Vogue communications director, explains, given how his informal attire has been noted in

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671 Diane Tietjens Meyers, 'Two Victim Paradigms and the Problem of "Impure" Victims' (2011) 2(2) Humanity 255 <https://philpapers.org/archive/MEYTVP-2.pdf> accessed 12 June 2023.

672 Mushtaq (n 635); Roy Greenslade, 'Will the image of a lifeless boy on a beach change the refugee debate?' (*The Guardian*, 3 September 2015) <www.theguardian.com/media/greenslade/2015/sep/03/will-the-image-of-a-lifeless-boy-on-a-beach-change-the-refugee-debate> accessed 4 May 2023.

673 Sophie Tanno and others, 'Europe is Ukraine's "home" Zelensky tells EU lawmakers in emotional address' (*CNN News*, 9 February 2023) <https://edition.cnn.com/2023/02/09/europe/zelensky-eu-parliament-address-intl/index.html> accessed 12 March 2023.

674 Gerhard Gnauck and Frederich Schmidt, ‚Was Russland hier macht, das ist Nazismus' (*Faz*, 3 May 2022) <www.faz.net/aktuell/politik/ausland/selenskyj-zu-lawrow-aussage-ueber-juedische-antisemiten-18002447.html> accessed 3 May 2023.

675 Zachary Gallant and Katharina F Gallant, *Brauner Boden: Ein jüdischer Blick auf die deutsche Aufarbeitung der NS-Zeit* (Westend academics 2022) 46.

the media, 'President Zelensky shows solidarity with those ordinary people who woke up one day and were forced by circumstance to become defenders of their homeland or *refugees* abroad'.[676]

Additionally, while the previous chapter highlighted securitisation practices and viewed refugees as passive objects of power, it remains to explore how refugees can exercise leverage and resist such practices. An interesting example occurred in 2014, where Ukrainians in Russian refugee camps were unwilling to apply for asylum in the latter country as they feared reprisals if they were to return to Ukraine.[677] Despite being deemed a 'secure group' at the time, they successfully wielded power and resistance to prevailing power-dynamics by refusing themselves to be refugees.

Perhaps it would provide resistance avenues to groups lacking agency-subjectivity accorded to legitimate refugees. By considering a community as an assemblage, other identity components could be highlighted. Consider, for example, economic migrants in Europe. Both their presence and participation on the common market are considered unlawful.[678] Yet, they could invoke the Treaty of Rome as grounds for reconsidering their illegal status.[679] The latter defines the internal and external markets within a common global one, implying economic migrants' involvement and labour in the internal market may not be strictly illegal, but fall into a grey 'legal zone' where law remains ambiguous.[680] Highlighting inconsistencies and opportunities for resistance within the legal and political system challenges the European policy distinction between internal and external markets.[681] As such, economic migrants may employ alternative power relations to promote their legitimacy.

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[676] Andrew Buncombe, 'How Ukrainian president Zelensky's simple green T-shirt became an iconic message of defiance' (*The Independent*, 21 March 2022) <www.independent.co.uk/news/world/europe/zelensky-green-tshirt-ukraine-president-b2040590.html> accessed 8 May 2023 (emphasis added).

[677] Nic MacBean, 'Refugees crisis grows as Ukraine conflict shows no sign of ending' (*ABC News*, 21 July 2014) <www.abc.net.au/news/2014-07-21/ukraine-conflict-refugee-camps-russia/5611670> accessed 9 June 2023.

[678] Hans Lindahl, 'Border Crossings by Immigrants: Legality, Illegality, and Alegality' (2008) 14 Res Publica 117, 126 <https://doi.org/10.1007/s11158-008-9051-5> accessed 23 April 2023.

[679] Treaty Establishing the European Community (Consolidated Version) (signed 25 March 1957) [1957] 298 UNTS 11.

[680] ibid.

[681] ibid.

Besides, such example equally underlines how resistance must not be reduced to discursive forms. In fact, further examples of hunger strikes, fingerprint mutilation, refugee camp occupations, demonstrations, protests and civil disobedience illustrate, among others, non-discursive expressions of resistance in which the refugee body itself plays an active role.

That said, it must not be denied the ability of governing power to meet such resistance. For illustration, the Russian government, unwilling to be challenged anew by Ukrainian refugees' refusal to seek refuge in Russia, introduced filtration camps. According to Kiev, such centres are designed to 'triage' refugees for potential transfer to Russia,[682] with an estimated 900,000 to 1.6 million Ukrainians forcibly deported by September 2022.[683]

The presented examples highlight potential for a biopolitical assemblage approach emphasising the formation of alternative subjectivities and agency, and how these inform and construe migrant life politics. Assemblage theory assists understanding processes contributive to refugee's ever-changing identity, by providing insights into various facets shaping refugee conceptualisations and avenues of resistance, and thereby preventing both macro- and micro-reductions.[684] Ontological emergence is therefore continuous, meaning that all things are in a state of becoming.[685] As such, this 'becoming' is a defining concept in Deleuze and Guattari's work[686] and underlines how each 'state' is 'sensitive to time and temporality',[687] undermining stability and steady identities, and thereby shifting attention from static identities to continuous processes.[688] Such considerations may thus challenge the statical refugee definition in the Refugee Convention.

[682] Kattalin Caubet, 'Guerre en Ukraine : ce que l'on sait sur les «camps de filtration» russes' (*TFI Info*, 4 May 2022) <www.tf1info.fr/international/guerre-en-ukraine-refugies-marioupol-ce-que-l-on-sait-sur-les-camps-de-filtration-russe-2218696.html> accessed 12 March 2023.

[683] Emma Farge, 'More than 1 million Ukrainians may have been deported, U.S. envoy says' (*Reuters*, 23 September 2022) <www.reuters.com/world/europe/more-than-1-million-ukrainians-may-have-been-deported-us-envoy-says-2022-09-23/> accessed 12 March 2023.

[684] Mushtaq (n 635).

[685] ibid.

[686] Deleuze and Guattari (n 609).

[687] Venn Couze, 'A Note on Assemblage' (2006) 23(2-3) Theory, Culture and Society 107.

[688] Mushtaq (n 635).

3.3 Bridging borders: Unveiling the political space under Arendtian and Foucauldian theories

To provide normative substance and shape to potential resistance in an Arendtian and Foucauldian sense, and while both reject traditional liberal understandings of freedom as absence of coercion – contending that freedom is only realised when exercising political power – it remains appropriate to first address the differences in their conceptual understanding of power.

Arendt describes political power as individuals' ability to 'act in concert' pursuing a common purpose, thereby identifying power as 'freedom'.[689] She stresses collective action and dismisses coercion.[690] Moreover, Arendt opposes power against domination and distinguishes, as above-mentioned, the political from the social.[691] Foucault, by contrast, while equally acknowledging power's relational nature, reveals the inevitability of domination in power. Power would be inevitably exercised over or against someone. His understanding of power revolves around the will and its conflicts with opposing ones, a view Arendt rejects.[692] Moreover, while individuals are, for Foucault, both effects and means of articulating power, he considers power can be non-subjective, and attends discursive practices, material devices and disciplinary techniques as manifolds of power.[693] Power relations, he maintains, are 'both intentional and non-subjective'.[694] Although they result from goals, targets and computations, these cannot be ascribed to free will, particularly if the latter is equated with free conscience.[695] In effect, 'individuals are the vehicles of power, not its point of application'.[696]

Another major difference lies in their understanding of the political domain. Arendt maintains there is only genuine political action in a public domain, distinguished from private/social

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689 Franěk (n 600) 297.
690 ibid.
691 ibid.
692 ibid.
693 Neve Gordon, 'On Visibility and Power: An Arendtian Corrective of Foucault' (2002) 25(2) Human Studies 133.
694 Michel Foucault, *The History of Sexuality, Vol. 1: An Introduction* (Robert Hurley tr, 5th edn, Vintage 1990) 94.
695 Gordon, 'On Visibility and Power' (n 693) 133.
696 Foucault, *Power/Knowledge* (n 604) 101.

spheres.[697] Foucault, by contrast, contends that every social relationship, private and personal included, carries power, and is political in nature.[698] According to him, the politicising of social relations provides possibilities for political initiative, questions and resistance to the existing system.[699]

Interestingly, beneath their differences, Foucault's and Arendt's conceptions of power may complement each other. Both perspectives contribute to shaping the normative objectives of resistance, as well as concrete modalities for enactment. Using the assemblage theory, the latter offers opportunities to experiment the configuration and functioning of resistance.

3.3.1 Objectives of resistance: Sailing through power relations

As discussed earlier, Foucault opposes Arendt, by asserting how biopower's existence offers openings for resistance.[700] Yet the objective of such resistance remained vague, as Foucault regarded power relations as pervasive and inevitable, thus never permitting complete liberation.[701] Moreover, his relativising of truth and freedom challenges fundamental elements of his critique of modern power and knowledge.[702]

An answer to his theory's shortcomings may be drawn from his reasoning: as subjects under disciplinary power must invariably be, somehow, dynamically engaging in power relations, as opposed to being passive objects of domination, they may employ their inherent freedom of power relations to employ resistance against manipulative power mechanisms.[703] Such resistance will ultimately not liberate against power relations but could lead to improving status quo – and possibly to fairer or more symmetrical

697 Franěk (n 600) 298.
698 ibid.
699 Frederick M Dolan, 'The paradoxical liberty of bio-power: Hannah Arendt and Michel Foucault on modern politics' (2005) 31(3) Philosophy & Social Criticism 369, 372 <https://doi.org/10.1177/0191453705051710> accessed 10 February 2023.
700 ibid.
701 Franěk (n 600) 299.
702 ibid 300.
703 ibid.

power distribution – thus suggesting reconfiguring prevailing relations.[704] It is therefore not a mere passive submission, but rather 'patient labor giving shape to our impatience for freedom'.[705]

As such, Foucault's understanding of freedom as not complete liberation obviates problematics stemming from truth's relativisation: if truth is a political and social construct, in which power is continually at play, then complete liberation would have proved elusive.[706] Rather, by suggesting reconfiguring existing relationships, carefully reconsidering existing power-knowledge ties could both constitute freedom practice and result in concrete achievements.

Such vision of freedom, a practice prompted by concern for liberty, is akin to Arendt's as well. Foucault's account of constant struggle for freedom may be instructive in determining Arendt's own political action.[707] She conceptualises freedom as action itself and claims for politics enabling its experience.[708] Both propose freedom as practice, a permanent resistance against threatening forces in freedom and the public sphere.[709] However, Arendt's inflated view of politics, distinguishing social and biological from political, opens question about the purpose of political action: if a power over bios is wielded by politicians, hindering freedom, how can political action enabling resistance – or freedom struggles – occur?[710] Focusing rather on the critical nature of enabling freedom than on the prescriptive aspect – the distinction between public and private – political action can be defined as resisting forces exerted on the *bios*, thereby becoming primary objective of political action.[711] Thus, to safeguard public realm, it is necessary to repoliticise depoliticised matters, and highlight political relevance of biological issues.[712] Such conclusion appears paradoxical: to render Arendt's account of political action intelligible, it is

[704] Franěk (n 600) 300.
[705] Michel Foucault, *The Politics of Truth* (Sylvere Lotringer ed, Semiotext(e) 1997) 119.
[706] Franěk (n 600) 301.
[707] ibid 303.
[708] Hannah Arendt, *Origins of Totalitarianism. Part 2. Imperialism* (Mariner Books Classics 1968) 146.
[709] Franěk (n 600) 303.
[710] ibid 298.
[711] ibid 303.
[712] Franěk (n 600) 304.

necessary to disregard her distinction between political and biological.[713] Arendt's critical approach constitutes resistance against powers endangering freedom.

Arendt and Foucault do embrace a common approach to freedom, albeit Arendt's approach tends towards political concreteness.[714] Freedom empowers individuals to transcend biological requirements for action.[715] Her discussion of plurality, natality and action builds upon the freedom concept, essential to the philosophical understanding of resistance.[716] As Arendt declares, 'because he is a beginning, man can begin', thus asserting how human beings and freedom are inseparable.[717]

Assemblage theory seemingly supports these theoretical points: resistance appears possible within existing power relations, yet solely therein. It was noted how failure to acknowledge Afghans or the 'forgotten' as refugees impedes resistance within such power relations. However, it was equally pointed how alternative relations – or various agencies an individual is associated with – could be invoked. If such groups fail to resist inside refugee power relations, it may be necessary to mobilise other power relations within which they are embedded. Resistance may be conditioned by specific power and recognition relations these groups find themselves in, yet alternative relations could also be leveraged to resist. In this respect, and given the concrete examples outlined above, refugees could exploit the intersectional dynamics of inclusion (such as perinatal healthcare) and exclusion (such as migration policy); empathy and emotion, such as the death of a refugee child (Alan Kurdi); juridical grey areas (such as the example of economic migrants exploiting inconsistencies in laws and regulations to challenge their illegal status and promote legitimacy); and alternative power relations within which they are embedded – for example, their professional, familial, ethnic or religious, gender or political identities.

[713] Franěk (n 600) 305.
[714] Gordon, 'On Visibility and Power' (n 693) 136.
[715] ibid.
[716] ibid.
[717] Hannah Arendt, *Between Past and Future* (Penguin 1993) 167.

3.3.2 Organisation of resistance: Deploying (alternate) subjectivities

Visibility assumes primary relevance in any power form outlined by Foucault. In addition to its role in controlling individuals, it constitutes a prerequisite to power itself.[718] Put differently, visibility constitutes an effect of power and its condition of possibility.[719] Discursive practices, for example, depend on visibility for meaning and power. It both precedes the internalisation of norms and also allows it, given individuals' requirement to sense and comprehend norms to comply or contest them.[720]

However, as the migration and refugee analysis underlines, certain forms of power may render parts of migrants' lives invisible. In these cases, modern securitarian power functions by visibilising individuals themselves – refugees are visible objects of control – but invisibilising their power and control over specific realities of their existence. In other words, governing power's visibility has been reversed, making its power invisible but its individuals visible.[721] It would explain why refugees are constantly visible as objects of power, but why certain aspects, directly linked to the invisible exercise of governing power, are minimised or concealed. Concrete examples may illustrate the latter. The three camps at Dadaab, sheltering 300,000 people[722] and dating from the 1990s, are still not mapped,[723] thereby reducing their realities. Similarly, Ilfo, Dagahaley and Hagadera camps, opened contemporaneously, remain invisible.[724] Furthermore, in Calais, French authorities implemented an 'invisibilisation policy' whereby exiles are never permitted to settle in a given location for over 48 hours,[725] distancing migrants from public view whilst creating an illusion of

[718] Gordon, 'On Visibility and Power' (n 693) 129.
[719] ibid 132.
[720] ibid.
[721] ibid 131.
[722] Felix Maringa, 'Cholera: Health crisis threatens Kenya's Dadaab refugee camp' (*Deutsche Welle*, 6 June 2023) <www.dw.com/en/cholera-health-crisis-threatens-kenyas-dadaab-refugee-camp/a-65827400> accessed 21 June 2023.
[723] Zygmunt Bauman, *Liquid Times: Living in an Age of Uncertainty* (Polity 2007) 38.
[724] ibid.
[725] Bérengère Viennot, '«Zéro point de fixation»: la politique migratoire honteuse de la France vis-à-vis des exilés de Calais' (*Slate*, 17 February 2023) <www.slate.fr/story/240973/zero-point-fixation-politique-honteuse-france-exiles-migrants-refugies-calais-grande-synthe-livre-battue-louis-witter> accessed 21 June 2023.

migrant solution.[726] Likewise, despite media coverage of crowded boats, migrants' deaths at sea generally remain invisible, with exceptions such as Alan Kurdi's images.[727]

Accordingly, it may provide valuable guidance on matters of agency and resistance in Foucault's thought. Resistance, in such context, strives to render visible invisible aspects,[728] overcoming securitarian control and protesting power holding migrants in shadow. Resistance therefore seeks to render publicly accessible refugee's material conditions, raising public awareness and challenging invisible mechanisms of power that oppress them. As such, a tension between visibility as a condition of power's possibility under Foucault and the invisibilisation of specific facets of migrants' lives may be clarified by evolving forms of power and their reliance on modern securitarian mechanisms. Examples of the latter range from technologies such as video surveillance, telephone tapping,[729] to 'superpanoptic filing',[730] using databases to screen, exclude and monitor migrants, thereby restricting their mobility through electronic and economic barriers.[731] The tension emphasises the need of understanding power within specific settings, and the potential for resistance to emerge by revealing what is concealed.

Arendt maintains plurality is essential to power – the individual's ability to act in concert in pursuit of common goals.[732] Plurality is essential to visibility, as signification arises from interpersonal experience.[733] For his part, Foucault emphasised how visibility is both the effect and condition of power. Power operates through monitoring and publicising individuals, and may not be subjective.[734] Interestingly, if power, for its visibility, depends on plurality, then plurality becomes indispensable to power's possi-

[726] Lieneke Slingenberg and Louise Bonneau, '(In) formal migrant settlements and right to respect for a home' (2017) 19(4) European Journal of Migration and Law 335, 335ff <https://brill.com/view/journals/emil/19/4/article-p335_335.xml?language=en&ebody=pdf-63199> accessed 21 June 2023.

[727] Alice Massari, *Visual Securitization. Humanitarian Representations and Migration Governance* (Springer 2021) 168.

[728] Gordon, 'On Visibility and Power' (n 693) 137.

[729] Mathieu Bietlot, 'Du disciplinaire au sécuritaire : De la prison au centre fermé' (2003) 11(1) Multitudes 60.

[730] Zygmunt Bauman, *Le coût humain de la mondialisation* (Fayard 1998).

[731] Bietlot (n 729) 66.

[732] Hannah Arendt, *The Human Condition* (The University of Chicago Press 1958) 200.

[733] Gordon, 'On Visibility and Power' (n 693) 137.

[734] Michel Foucault, *The History of Sexuality, Vol. 1: An Introduction* (Robert Hurley tr, 5th edn, Vintage 1990) 94-94.

bility. Hence, plurality and visibility are intimately joined in their power relations. Complicated by governing power's invisibility, but the visible nature of its object, it must therefore be appreciated how the refugee – a visible object – derives their significance from intersubjective experience,[735] in terms of various categorisations, while power mechanisms underlying the latter are now rendered invisible. In fact, rather than complete invisibility, there would be a racial visibility or production of the visible.[736] Put differently, 'the act of seeing is simultaneously an act of reading, a specific interpretation of the visual'.[737] Meanwhile, refugees' resistance to invisible power mechanisms, along with attempts to expose them, all require a plurality. Thus, refugees' distress becomes visible at European borders, when part of their assemblage – conflict refugees – interacts with the other, such as European borders.[738] For example, it was at borders where Alan Kurdi's body hit international headlines, thereby achieving visibility and convincing audiences the debate needed changing.[739]

Resistance therefore hinges on visibility, individuals' ability to be seen and heard, amidst plurality.[740] However, for existing meanings to be replaced and newly created, it requires an ability to create 'anew'.[741] While the notion is linked to birth, it extends to human capacity in creating newness, a capacity enabling individuals to sustain uniqueness lifelong.[742] In other words, man's essence is beginning or natality, in Arendt's language, also meaning freedom.[743] She adds further that all human actions are ontologically grounded in natality.[744] For one, Arendt contends there are no prediscursive agents, implying no individual who exists autonomously from their cultural context.[745] For another, speech is

[735] Gordon, 'On Visibility and Power' (n 693) 137.
[736] Jasbir K Puar, *Terrorist Assemblages: Homonationalism in Queer Times* (Duke UP 2007) 183.
[737] ibid.
[738] Mushtaq (n 635).
[739] ibid.
[740] ibid.
[741] Arendt, *The Human Condition* (n 732) 9.
[742] Gordon, 'On Visibility and Power' (n 693) 138.
[743] ibid.
[744] Arendt, *The Human Condition* (n 732) 247.
[745] Judith Butler, *Gender Trouble* (Routledge 1990) 142.

contingent on natality and human plurality.[746] It signifies how the possibility of expressing oneself via speech hinges on birth and being among others sharing sensory experience.[747]

As a result, whereas Foucault's analysis implies how power shapes knowledge and objects of research, thereby shaping subjectivity as well, Arendt's natality and plurality assume how humans may overcome structures and generate anew.[748] It would not follow that new beginnings are achieved by emerging beyond existing power relations, but that new words and actions may arise from structures themselves, due to human capacity for natality.[749]

In discussing assemblage theory, whilst abstractly summarised presently, much emphasis focused upon visibility of refugee resistance, whether regarding materiality of life, inconsistencies arising from capillary power, or refugees' alternative agencies and subjectivities, any example of which highlighted a need for plurality in rendering visible the invisible governing powers.

However, the concept of natality itself may also be found and confirmed. For, firstly, the refugees' visible and material actions, through flags, photographs and physical distress, arise as newness from the structure itself, demonstrating concretely their capacity to create novelty and challenge existing norms. Secondly, by combining Arendt and assemblage theory in the present analysis, the natality of the former offers an understanding of individuals' creative power to begin new, whereas the employing of Deleuze and Guattari's 'becomings'[750] helped to suggest an expansion of pathways through which such natality may be realised, detaching from rigid identities, and engaging transformative and creative possibilities. As such, when reference was made to refugees' capacities for shaping alternative subjectivities and inducing discordance within biopolitics, it highlights individuals' potential to disengage from prescriptive categorisations and representations posited by the state. It may be construed as natality, whereby individuals build alternative subjectivities and existence not entirely caught by existing power structures and generate new social configurations.

[746] Gordon, 'On Visibility and Power' (n 693) 139.
[747] ibid.
[748] ibid 140.
[749] ibid.
[750] Deleuze and Guattari (n 609).

The comprehending of natality as a desire to transform existing power relations should be commented, as failure to do so – thus merely preventing the exercise of power (over refugees by the latter) – would equate not with natality but with an Arendtian violence.[751] While she does not regard violence as inherently evil, she maintains that violence is instrumental rather than productive.[752] Violence devoid of purpose will not inspire meaningful change. Therefore, any refugee movement must not only resist, but demand change, or risk becoming merely futile violence in face of biopolitical migration violence. Indeed, it was discussed how, to justify control and violence, security arrangements prevent, define and, if necessary, create disorder. Resistance should operate in ways other than triggering or consolidating prejudices used to justify measures of control and violence described above, as these would not bring change but confirmation of repressive policies. Hence, resistance must not confirm fear-inspiring attributes, such as violent acts per se or terrorism, of which some are often accused. The related 'policing' of refugee violence, encompassing such conflation, may be briefly mentioned, notably as refugees are conscious thereof. In August 2017, for example, forced eviction from a building by the police prompted refugees to protest displaying signs: 'We are refugees, not terrorists',[753] blaming authorities for deeming them offenders, thereby demanding deconstruction of such amalgams.

In practical terms, while refugees' resistance is largely motivated by desire to change their circumstances, it may take many guises, including demonstrations, hunger strikes, occupations of public places, etc, but may not centre explicitly upon calls for change, focusing instead on asserting refugees' humanity and dignity. For example, artist-cultural projects raise awareness of refugee realities, without demanding policy changes. Yet they should be appreciated as valid resistance too, as raising awareness and visibility will implicitly contribute to changing views, attitudes and, eventually, policies towards them.

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[751] Maze (n 639) 134.

[752] Hannah Arendt, 'Truth and Politics' in Peter Baehr (ed), *The Portable Hannah Arendt* (Penguin 1967) 557.

[753] Al-Jazeera Plus, 'Police Clash with Evicted Refugees' (*Facebook*, 25 August 2017) <www.facebook.com/watch/?v=1030828263725347> accessed 21 June 2023.

Finally, the question arises where such visibility, theoretically, might occur. For Arendt, visibility of individuals and their actions becomes significant in the public realm.[754] Public realm is the place where people encounter and engage in common affairs.[755] It enables individuals to publicise themselves, their opinions and position in the public sphere. Foucault's writings on Emmanuel Kant and Enlightenment suggest a proximity to Arendt's conception of politics.[756] He recognises how effective critique of existing power and knowledge relations cannot be undertaken within existing power mechanisms[757] – to be distinguished from power relations from which individuals may not depart themselves from.[758] Rather, it requires the public or political realm, a public space of discussion required for political action and thinking.[759]

Thus, a reading of Foucault's oeuvre in conjunction with Arendt's views reveals the presence of uniquely Arendtian elements, notably public space, and public use of reason, which are otherwise lacking in Foucault's earlier work, thereby enabling an interpretation of Foucault's insights into power, politics and freedom much closer to that of Arendt.[760]

[754] Hannah Arendt, *Essays in Understanding 1930–1954* (Harcourt Brace 1993) 149.
[755] Arendt, *The Human Condition* (n 732) 200. See also Hannah Arendt, *Lectures on Kant's Political Philosophy* (Ronald Beiner ed, The University of Chicago Press 1982).
[756] Franěk (n 600) 303.
[757] ibid 300.
[758] ibid 299.
[759] ibid 303.
[760] ibid 306.

4. ‘The right to have rights’ for the ever-fluctuating subject of politics

Throughout the previous chapter, it was attempted to appraise what would constitute resistance for refugees inscribed in the object/power dynamics of migratory biopolitics. However, the question arises on how to build the political space for refugees at large, namely, what a ‘right to have rights’ would entail for the ever-fluctuating subject of politics, including those refugees left ‘to live’ and ‘to die’ (to paraphrase Foucault), whose position varies with prevailing political climate and interests. Before continuing the analysis, the previous clarifications of Arendt’s and Foucault’s theories should be resituated.

To begin with, although Foucault’s resistance lacked both normative content and configuration, it was agreed, echoing Arendt, that its objective was the preservation of freedom and public space – portrayed as ongoing struggle with forces threatening both – and that resistance – construed as effective critique of current configurations of power and knowledge relations – ought to occur in public or political realms, a public space of discussion and visibility required for political action and thought.

Secondly, a convergence of thinking on public and political space emerges between Foucault and Arendt. Nonetheless, Arendt’s restrictive approach to political space, excluding the biological and hence refugees’ resistance to biopolitics, was ignored, as such narrow definition is no longer defensible. If power, in the Arendtian understanding of concerted action, constitutes both the embodiment of freedom and a central element guaranteeing political freedom, while biopolitics is the political use of power over the biological, thereby impeding freedom, it appears inconsistent for the aim of resistance to be unattainable due to an overly re-

stricted political definition.[761] If power may be comprised as expressing freedom and guaranteeing political freedom, and if biopolitics is a power exercised over the biological which restricts such freedom, then the limitation of political space in Arendt's vision may not prevent refugees' resistance. The narrow definition of politics appears inconsistent with reality. This perspective challenges Arendt's conception and suggests that refugees, despite the limitations imposed by traditional definitions of politics, can and must find ways to resist biopolitics and assert their freedom and political existence.

Given resistance to biopolitics may now occur in the Arendtian sense, and considering Foucault appears in agreement that resistance must also operate in the public sphere, whereby visibility derives from plurality,[762] how to guarantee them a 'right to have rights'? When considering the question for refugees, two levels must be distinguished: that of considering them as human subjects in terms of universality, and that of considering them as refugees, a specific category of subjects facing distinctive challenges.

For one, when it comes to refugees' rights, it is possible to consider them as universal subjects. Some have suggested that a 'right to have rights' should equate to the existence of a 'universal right to politics'[763] for all individuals – including refugees. However, such approach may be challenged by critics of Arendt's approach to human rights. According to the latter, if human rights – as Arendt argues – are seen as the rights of citizens, it results in a tautology, since they are ultimately the rights of those who already possess rights.[764] Consequently, to consider 'the right to have rights' as a universal right to politics would run the risk of reproducing such tautology, and of not being universal at all. It would rather be another right granted to those who already possess them.

[761] Jakub Franěk, 'Arendt and Foucault on Power, Resistance, and Critique' (2014) 6(3) Acta Politologica 315 <https://acpo.vedecke-casopisy.cz/publicFiles/00785.pdf> accessed 21 February 2023.

[762] Neve Gordon, 'On Visibility and Power: An Arendtian Corrective of Foucault' (2002) 25(2) Human Studies 136-41.

[763] Etienne Balibar, *Masses, Classes, Ideas: Studies on Politics and Philosophy Before and After Marx* (Routledge 1994) 212.

[764] Jacques Rancière, 'Who is the subject of the Rights of Man' (2004) 103(2-3) South Atlantic Quarterly 302.

For another, the Refugee Convention itself carries criticism for failing to reflect contemporary evolutions in its definition.[765] Such criticism suggests that refugees' rights must not be confined to a legally predetermined status. Put differently, it is problematic to make the granting of rights conditional on a specific qualification or 'status' for displaced persons who do not correspond to these criteria. For example, de facto refugees are individuals who may lack the legal qualification to obtain entitlements, and it raises questions about securing their rights. It therefore proves crucial to identify an approach that reflects realities of this situation, rather than limiting rights to policies and statuses to which they may be subject.

Taking both dimensions and criticisms thereof into consideration, a unified solution for refugee rights is important. A 'right to have rights' for refugees, beyond their mere categorisation as such, would rather be a right to constitute themselves as vocal beings acting and self-affirming by creating their position in the 'common' world, thereby holding rights irrespective of the policies and status they might be subjected to.[766] It involves conceiving refugees not merely as objects of (bio)policies and statuses, but also as political subjects who can demonstrate their entitlement and claim their place whilst resisting constraints under the (bio)policies governing them. In other words, to conceptualise a 'right to have rights' for an ever-changing subject – the refugee – and thereby personifying Deleuze and Guattari's concept of 'becomings'[767] where all 'states' are 'sensitive to time and temporality',[768] accentuating processes rather than static identities.

Rights should therefore belong to those who, even if they do not possess all the necessary qualifications, claim them, assume them and put them into practice. Thus, to be a subject of rights should not be limited to depending on a predetermined legal status, such as the refugee defined by the Refugee Convention, citizens identified by constitutions or the human person described in

[765] Maryam Mushtaq, 'Refugee Assemblages: The Figure of the Refugee during the "Crisis" of Europe' (*The Georgetown Public Policy Review*, 2022) <www.gpprspringedition.com/refugee-assemblages-2022-5> accessed 10 February 2023.
[766] Alison Kesby, *The Right to Have Rights. Citizenship, Humanity, and International Law* (OUP 2012) 118.
[767] Gilles Deleuze and Félix Guattari, *A Thousand Plateaus: Capitalism and Schizophrenia* (University of Minnesota Press 1987).
[768] Venn Couze, 'A Note on Assemblage' (2006) 23(2-3) Theory, Culture and Society 107.

international human rights law.[769] These predetermined roles or categories, while they may be useful, do not solve the problem for de facto refugees, as they run the risk of excluding those who cannot conform to them, either by not fitting the definition or by being denied entitlements to exercise their rights (for example those by virtue of belonging to humanity).

Against this background, it is therefore not a question of rejecting all universal legal rights instruments, but rather of recognising that their applicability can no longer be restricted to specific membership. It will involve considering the heightened vulnerability to which refugees – along other groups – are subject when it comes to the recognition of their fundamental rights. These people may find themselves unable to exercise their rights due to varying circumstances, such as their social, economic or legal vulnerability. Thus, considering differences in power, agency and political subjectification is essential to understanding obstacles vulnerable people face when claiming their rights. As such, to ensure effective equality – whether as human beings or members of specific refugee groups – social institutions should offer tangible protection to vulnerable individuals, including refugees. These include equitable asylum and legal protection, dignified living standards, integration and autonomy, anti-discrimination and anti-violence guarantees, along with social services. Recognising that unequal capacity to exercise rights depends on power structures and social relations, a vulnerability-based approach advocates sensitivity to marginalised people's specific needs – including de facto refugees – as well as the provision of protection and support measures to ensure genuine equality of rights.

For the European Court of Human Rights (ECtHR), vulnerability concerns are gaining ground in its decision-making process. The ECtHR acknowledges the relevance of vulnerability in cases regarding socio-economic rights and civil and political rights.[770] Within refugee and migration cases, while the ECtHR approached vulnerability in complicated and questionable ways, cases exist whereby it acknowledges asylum-seekers' vulnerability and held

[769] Kesby (n 766) 121.

[770] Alexandra Timmer, 'A Quiet Revolution: Vulnerability in the European Court of Human Rights' in Martha Albertson Fineman and Anna Grear (eds), *Vulnerability: Reflections on a New Ethical Foundations for Law and Politics* (Routledge 2013) 151.

authorities liable for ignoring the latter.[771] Encouraging evidence also emerged in cases where the ECtHR revealed an increased recognition of agency in relation to vulnerability, particularly in cases concerning participation.[772] Such precedents provide avenues of reflection to those neglected, emphasising alternative perspectives which concede the link between vulnerability and agency.

The case of Ahmed Al-Kateb illustrates how such refugee rights theory could be applied. Al-Kateb, a stateless asylum-seeker, was detained in Australia for an indefinite period, denied return to his country of origin or resettlement to third countries.[773] The case could be analysed in terms of the dual dimensions – that of considering individuals as human subjects in their universality, and as refugees facing specific challenges.

As a human being, Al-Kateb holds inherent fundamental rights, irrespective of his refugee categorisation. Prolonged detention with no prospect of satisfactory solution undermines universally recognised rights. As an asylum-seeker, Al-Kateb's situation prompts concerns over how refugee rights are defined and applied. The 1951 refugee definition, based on flight from fear of persecution in country of origin, fails to accommodate situations whereby refugees like Al-Kateb, not directly persecuted, face indefinite detention without adequate resolution, thereby exposing the definition's inadequacies in relation to statelessness. Such situation exposes the necessity for flexible approaches sensitive to refugee realities and their specific vulnerability which, in the present case, arises from a lack of legal status, prospects and psychological impact. Considering a heightened vulnerability would recognise Al-Kateb's status as a human being with fundamental rights, while accounting his specific situation as a stateless asylum-seeker. As such, judicial decisions might be driven by understanding power differentials, agency and political subjectification, ensuring resistance to obstacles faced in exercising fundamental rights. Concretely, and building on ECtHR developments, it could broaden existing rights and/or prioritise affairs involving vulnerable subjects.[774]

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[771] *MSS v Belgium and Greece* App no 30696/09 (ECtHR, 21 January 2011); Timmer (n 770) 159.

[772] Wouter Vandenhole and Julie Ryngaert, 'Mainstreaming children's rights in migration litigation: ECtHR, Muskhadzhiyeva and others v. Belgium' in Eva Brems (ed), *Diversity and European Human Rights* (CUP 2012) 68-92.

[773] *Al-Kateb v Godwin & Ors* (2004) HCA 37 219 CLR 562.

[774] Timmer (n 770) 163-167.

Thus, rethinking the notion of rights as a human subject or refugee is essential, drawing on a more holistic perspective transcending strict categories and acknowledging complex individual realities. It entails ensuring effective access to rights for all, independently of their status or legal definition, and introducing measures catering to the needs of the more vulnerable.

5. Conclusion

If – as Aristotle suggested – man is a political animal,[775] while politics is always in motion, then refugees must no longer be limited to a mere static object of political power, but recognised as the ever-fluctuating political subject they are, for whom no definition or status – whether international or community-based – would be adequate. The refugee is, by definition, a sufferer/an agent of politics, the latter no longer to be denied.

The present research revealed the value of exploring refugees' affairs from the philosophical lenses of Michel Foucault and Hannah Arendt. By revisiting concepts of biopower, biopolitics and resistance, philosophy emerged as critical in understanding current power dynamics and political stakes. A dialogue with Félix Guattari and Gilles Deleuze's insights was made equally relevant, in highlighting new perspectives on migratory experiences and emerging forms of resistance to violent biopolitics. Lastly, and drawing on the concept of 'the right to have rights', the study sought to develop the political space of refugee resistance, thereby raising the significance of ever-fluctuating political identities and challenging current migration policies.

In a prospective outlook, the investigation on the differentiated treatment of refugees – through biopolitical studies – opened avenues for alternative refugee representation, and for shifting the course of migration policy. In developing a political scene in the Arendtian and Foucauldian construed sense of the fluctuating political subject, the pursuit of a 'right to have rights' for refugees – in their duality as human subject and as refugees facing specific challenges – explored how empowerment could be gained by those who were formally denied status from which such 'right' de-

[775] Aristotle, *Politics* (Harris Rackham tr, Harvard UP 1990) 12531- 2.

rived.[776] Moreover, considering the subject of rights in its vulnerability to (bio)politics – of which the refugee is a relevant manifestation – diverts attention from a status regarded necessary for rights enjoyment, and independently of the societal evaluation associated therewith. On the contrary, the emphasis is placed on the degree of vulnerability to enable their claims as bearers of rights, reckoning power, agency and political-subjectification differences and apprehending the obstacles (vulnerable) refugees meet. The subject of rights would no longer be limited to the passive sufferer on whom rights are conferred from above and whose place in society is assigned[777] – but evolve into a vocal individual acting and affirming within a space finally commensurate to their vulnerability, in what Arendt would term the 'common world'.[778]

Such perspective embraces refugees' capacity to act as active actors rather than passive objects of migration policies and legislation. By emphasising vulnerability and acknowledging diversity in refugee experiences, it enables moving past narrow categorisations and definitions of legal status towards equality of rights. It is, therefore, essential to revisit conventional rights frameworks, recognising refugees' voices and actions, and fostering an environment – a scene of plurality and visibility in the Arendtian and Foucauldian sense – where their ability to exercise their rights is recognised. This calls for the questioning of predetermined classifications and statuses, and promoting an approach grounded in vulnerability, agency and active participation/resistance.

As such, and far from conceding to an almost Arendtian pessimism described, it would be of interest to take notice of the 'Calais Jungle' for example, which, far from fitting its appellation, has attempted to create a political representation with its 'Council of Exiles' meeting once a week.[779] As Michel Agier comments, 'this is the moment, that of speaking out "in the name of the refugees", *all "vulnerable"*, that politics is introduced into the camp'.[780] Unknowingly, perhaps had Agier already succeeded in covering the

[776] Alison Kesby, *The Right to Have Rights. Citizenship, Humanity, and International Law* (OUP 2012) 118.
[777] Alison Kesby, *The Right to Have Rights. Citizenship, Humanity, and International Law* (OUP 2012) 118.
[778] Hannah Arendt, *The Human Condition* (The University of Chicago Press 1958) 52.
[779] Vincent De Coninck, 'Un conseil des migrants à Calais' (2017) 3(358) Revue Projet 12 <www.cairn.info/revue-projet-2017-3-page-12.htm> accessed 9 March 2023.
[780] Michel Agier, *Managing the Undesirables: Refugee Camps and Humanitarian Government* (Polity 2011) 156 (emphasis added).

prospects outlined herein for refugees' rights and political scene: a heightened vulnerability should no longer preclude one from being a political subject.

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The present thesis - ***The Good Ukrainian, the Bad Syrian, the Ugly Afghan (and the Forgotten Ones). Reframing Migration Governance through Michel Foucault's and Hannah Arendt's Legacies*** written by **Clarisse Fagard** and supervised by Graham Finlay, University College Dublin - was submitted in partial fulfillment of the requirements for the European Master's Programme in Human Rights and Democratisation (EMA), coordinated by Global Campus Europe.

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