This chapter starts by problematizing the politico-legal distinction between ‘economic migrant’ and ‘refugee’ in the Swedish and wider European contexts. It goes on to discuss the procedural similarities and differences of the Swedish, German and Danish asylum systems, their different appeal instances and their implications regarding the question of who can be granted (refugee) protection status. Drawing on insights from my PhD thesis (Joormann, 2019) and building on its analysis of semi-structured interviews, which I conducted from 2015 to 2017 with judges at Sweden’s Migration Courts, I develop the discussion against the backdrop of a literature review of other relevant studies. Besides legal procedures, the discussion focuses on social class. With a close look at some classed aspects of the Swedish, German and Danish asylum systems, the chapter argues that international migration marks – and is marked by – the border crosser’s access to social, cultural and, in particular, economic capital. Hence, relying on Pierre Bourdieu’s (1984) conceptualization of classed distinctions rooted in these three forms of capital, the chapter shares the following understanding. Migration and indeed human mobility in general ‘cannot be analysed without reference to class and capital […] while mobility in asylum seeking is both socially stratified and socially stratifying’ (Ihring (2016) cited in Scheinert, 2017, p. 133).

**Sweden’s migration bureaucracy and access to (economic) capital**

Political scientist Livia Johannesson (2017, p. 1) stresses the assessment of many legal scholars, finding that ‘asylum determinations constitute the most complex decision-making in contemporary Western societies.’ While understanding law as part of society, I first need to problematize hegemonic definitions of who ‘the refugee’ is. Embedded in dominant discourses about ‘deserving refugees’ (see also chapter 8) there is the (often implicit) demand that an armed conflict and/or the persecution of an asylum-seeking
individual must be evidenced so that the person in question can be eligible for (full) refugee status. In contrast, when individuals or families escape from economic hardship, this is not accepted as a reason to be granted any international protection status. In this context, I give an excerpt from an interview I recorded in 2017 with a judge at Sweden’s Migration Court of Appeal (hereafter MCA). The judge claimed that:

those unaccompanied [asylum-seeking] minors, especially in Stockholm, have been the Moroccan\textsuperscript{1} children on the street. I can say that I think that we have many LVU [cases that include the treatment of minors] which concern precisely unaccompanied minors, because they have a socially disintegrating behaviour, they are addicted to drugs, they roam around, as one talks about in the Social Service Act, they have not stayed in one place and so on. I think that, in the eyes of the people, this becomes a problem as well. So everything is affected by everything else in society, because it is connected. And it happens a lot – especially the Moroccan boys – that they do not get a residence permit, and then they don’t get any housing or they get housing and then one is so aggressive (utåtagerande) that one cannot stay at the housing. And so they live at Sergels Torg [a square in central Stockholm], by selling drugs, and by prostitution. This is a vicious circle, because this does lower people’s tolerance, and then, those who really need protection, they ride along in the same category. (Swedish judge, quoted in Joormann, 2019, pp. 28–29)

I asked the judge what was meant by ‘category’ in this context: ‘if one looks at how they have come, then I think that many [are] actually economic asylum seekers – because they need to earn a living, they have already lived on the street, and then they have a perspective of getting a better life’ (pp. 28–29, my emphasis).

When following this line of argumentation, ‘economic asylum seekers’ (pp. 28–29) cannot be considered refugees because they have not fled from war, other armed conflict or (fear of) persecution. Depending on the national context, in the respective legal texts often referred to as ‘humanitarian grounds’, certain migrants might not be granted full refugee status but ‘subsidiary protection’ (see e.g. Johannesson, 2017). If neither is deemed to be the case – or if, as currently in the Swedish context, a ‘temporarily’ more restrictive refugee policy is enforced (see also Introduction to this volume) – such people might not receive any protection status at all. Instead, the affected groups tend to be labelled ‘economic’ migrants who left their countries of origin due to material circumstances such as unemployment or poverty.

If we take a step back while looking at this problem, we see the classed aspects of it. The class background of groups facing material hardship does of course play a central role in the question of whether lack of employment in the country of origin will lead to lack of food on the table. In other words, while it is clear that a person’s class position is crucial to assess the risk that this person will starve, become homeless or lack access to (physiological
and psychological) health services, coming from a lower class position is in general not considered to be a legitimate reason for cross-border migration that ‘deserves’ protection (see Khosravi, 2010, p. 111; De Genova, 2015, pp. 192ff.). Illustrating this hegemonic discourse about ‘undeserving economic migrants’, the Swedish office of the United Nations High Commissioner for Refugees (hereafter UNHCR) uses the term ‘economic migrant’ (ekonomisk migrant) on its webpages:

As a rule, an economic migrant leaves a country voluntarily to seek a better future somewhere else. If the person would choose to return home, they would benefit from the protection of the home country. Refugees flee because of war, conflict or threat of persecution and they cannot return safely to their homes under prevailing circumstances. (UNHCR Sweden, 2018)

Free will and individual, rational choice characterize the travel of the ‘economic migrant’, this argument implies. On the other hand, as such discourse about ‘deservingness’ propagates, the ‘refugee’ had to leave, they were forced, had no alternative. The term ‘economic migrant’ is of central discursive importance here. It becomes the binary opposite of ‘refugee’. The ‘economic migrant’ choses actively, as UNHCR Sweden (2018) argues in the definition cited above.

From a critical discourse-analytical perspective (Fairclough, 2003), the reader’s attention is drawn to ‘voluntarily’ and ‘choose’. Linked to ‘economic migrant’, these terms contribute to the construction of the ‘(un) deservingness’ problematized above. On the other side of this discursive binary, refugees ‘flee’. Yet they are supposed to ‘flee’ not in order ‘to seek a better future’ (see chapter 10), but ‘because of war, conflict or threat of persecution’ (UNHCR Sweden, 2018). UNHCR Sweden’s refugee definition, as exemplified by the excerpt above, is thereby in line with how ‘the refugee’ is produced as a politico-legal category with its roots in the 1951 UN Refugee Convention. Based on the Convention and its 1967 Protocol, this category emerged during the Cold War and contributed significantly to the framings of today’s international refugee regime (Barnett, 2002; Mayblin, 2014; McAdam, 2017).

While refugee migration is as much gendered and racialized as it is a classed social process (Holm Pedersen, 2012; Wikström, 2014; see also chapter 6), we need to pay attention to the classed selectivity of ‘Fortress Europe’ (Odugbesan and Schwiertz, 2018). Due to this selectivity, people who are socio-economically disadvantaged in their countries of origin face certain class-based obstacles when aiming to reach a European country of destination. To put it simply, there are (almost) no legal ways2 to apply for refugee status without first having to reach the country of destination. Many asylum seekers aiming for European countries need to pay for smugglers and forged identity papers (Khosravi, 2010). Humanitarian visas to enter countries like Germany are the exception (Scheinert, 2016), while
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UNHCR-organized ‘re-settlement’ programmes to countries like Sweden have in recent years concerned not much more than a couple of thousand refugees annually (Swedish Migration Agency, 2017). Denmark has recently decided to restart its resettlement programme – for about 500 ‘quota refugees’ a year (DR, 2019).

Taking into consideration the circumstances in many refugee-sending countries, as Khosravi (2010, p. 111) aptly reminds us, forced displacement has not only an economic but also a political dimension:

In most refugee sending societies, the boundary between politics and the economy is blurred. Not even forced displacement due to environmental disaster can be defined as completely ‘natural’ and ‘non-political’. Famine, for example, is a political as well as an economic phenomenon (supranote: Turton 2003). While drought is a natural condition, famine is a consequence of political circumstances. People who starve in a famine in fact suffer from insufficient entitlement to food; they do not starve because no food is available (supranote: Sen, 1981). They simply do not ‘deserve’ to have food.

The deservingness not to be exposed to hunger is, in this sense, not only classed but also dependent on the political circumstances that lead to certain groups being forced into displacement – and being or not being entitled to food. To give a well-known historical example, Jews were deliberately exposed to starvation and other of the Nazis’ necropolitics (see Mbembe, 2003). Many of the people who were murdered in the Third Reich’s ghettos and concentration camps were indeed from middle-class backgrounds.

In contemporary Europe, refugees are frequently pushed into lower-class positions after their migration and asylum determination processes have been completed (Mulinari and Neergaard, 2004; Schierup et al., 2006; Holm Pedersen, 2012; see also chapter 9). In spite of the omnipresent, catch-all phrase of integration (Loch, 2014; cf. Wieviorka, 2014), social inclusion is often a very difficult and lengthy process for many newly arrived refugees (see e.g. chapter 4 in this book). An important aspect that shapes this difficulty is structural violence3 (Galtung, 1969), which, in today’s Europe, is oftentimes rooted not only in racism, orientalism and Islamophobia (see Holm Pedersen, 2012) but also in those classed processes of social exclusion which I will further problematize below.

We see that an (upper) middle-class background can be advantageous when it comes to passing through not only the unauthorized (Carling, 2007) border-crossing into Europe4 (Scheinert, 2016) but also through the asylum process itself. To be legally recognized as a refugee, Europe’s different national systems of asylum determination all include the possibility to pay for lawyers who have specialized in immigration and refugee law (see e.g. Eule et al., 2019; Gill and Good, 2019). In certain countries (including Denmark and Sweden), the state provides publicly paid legal aid for asylum seekers. In other countries (for instance Germany, see Schittenhelm, 2018),
there is no guarantee that asylum seekers will be legally represented or at least receive support from a legal professional. So, how much does it matter if someone can or cannot pay for a lawyer who has specialized in asylum cases? Regarding the legal aid paid by for by the Swedish state, a judge told me:

unfortunately, this business, if one speaks from the side of the lawyers, is not so lucrative. It is quite a limited number of hours that the public counsels get [paid for], so how one [as a public counsel] writes an application for leave to appeal⁵ becomes, maybe, not so stringent, because it is indeed still like this. For us to process this [as an appeal], we need to get help from the [legal] parties, who stress that this question is of interest for a legal precedent. And not only say – sometimes when we get applications for leave to appeal at the Migration Court of Appeal, they [the legal party of the asylum seekers] say that there are reasons to grant leave to appeal, there is importance for the application of law, or there are special reasons, and then they don’t develop it. Instead, one must write indeed why there is importance for the application of law, which specific legal question it is that has importance for the application of law and lends itself to pick up precisely this [legal] case. And we would wish that they were better at highlighting the questions of interest for a precedent. (Swedish judge, quoted in Joormann, 2019, pp. 31–32)

In line with Johansson’s (2017) findings, this part of my data adds to previously published criticism of the Swedish asylum system (Stern, 2014; Wikström, 2014; Martén, 2015; Wettergren and Wikström, 2014). Legal aid provided by public counsels is no guarantee that the power imbalance between asylum seekers and the Swedish Migration Agency (hereafter SMA) is affected. When decided at a Migration Court, asylum cases entail that the SMA becomes the legal party that opposes the asylum applicant(s) in court. In ‘normal’ (more than 99 per cent of)⁶ asylum cases, a judge then decides based on claims presented by the two legal parties that represent a) the applicant(s) and b) the SMA (Johansson, 2017). Given several important details not illustrated in the image below – for example, the possibility that a unanimous decision of the three ‘lay judges’ (nämdemän, recruited from the political parties) can overrule the presiding judge’s verdict (Johansson, 2017) – the Swedish migration bureaucracy’s layout is explained in figure 2.

When it comes to cases in which decisions are appealed to the MCA as the highest legal instance, I was told the following:

The SMA often has better applications for leave to appeal, because they stress precisely that which is of interest for a precedent, and it is not so many cases that they appeal. So, often, they [the lawyers of the SMA] indeed get – what can one say – a little bit of cream on top, because they appeal so seldom. So, one looks a little bit more carefully into this [kind of appeal], maybe there is something in it. (Swedish judge, quoted in Joormann, 2019, p. 32)
Swedish Migration Board

- The Swedish Migration Board considers the application
  - Application granted

Migration Court

- The decision is reconsidered
  - Appeal granted

Migration Court of Appeal

- Leave to appeal not granted - the rejection decision remains in force
  - Rejection
- The Migration Court of Appeal considers leave to appeal
  - Grants leave to appeal
  - Appeal granted

The Swedish migration bureaucracy

2 Swedish migration bureaucracy
In this excerpt from an interview with an MCA judge, the interviewee confirmed that the power imbalance between the legal parties also persists at the highest legal instance. The judge compared the public counsels’ applications for leave to appeal with those of the SMA and stressed that providing legal aid to an asylum seeker is ‘not so lucrative’. In addition to that, the SMA files fewer appeals, which tend to be, according to the judge, ‘better applications’. As illustrated above, if an asylum case is decided at court, the SMA, which is the decision-making state agency in the first legal instance, finds itself in the position of opposing the asylum seeker as the other legal party. This is due to the adversarial principle of two legal parties opposing each other in administrative courts. Johannesson (2017, p. 98) refers to this as the ‘dual role’ of the SMA: the first instance being an ‘expert agency on asylum’ (p. 98); in the second instance, becoming one of the two legal parties. Meanwhile, as the MCA judge quoted above claimed, the SMA’s applications are often ‘better applications’. In other words, when asylum seekers and their public counsels write an appeal to the MCA, their formulations are often not as legally convincing as those crafted by the immigration law specialists of the state agency. The judge identified one main source of this problem. Providing legal aid as a public counsel was ‘not so lucrative’ for a Swedish lawyer. My research thereby identified an institutionalized power imbalance that is built into the Swedish migration bureaucracy and its asylum system (Joormann, 2019). I base this finding on the observation that the procedural power imbalance between the asylum applicant and the SMA – given the SMA’s ‘dual role’ (Johannesson 2017: 98) as, first, decision-making state agency and, then, the opposing legal party in the appeal instances – shifts yet persists throughout all three instances. To pay privately for a legal professional who has specialized in immigration law is a possibility to balance this disadvantage. The problem is that not every asylum seeker has the money to do so. This strengthens the link between the ability to successfully claim asylum and one’s access to economic resources.

(The business of) bordering Europe

In Illegality Inc., Ruben Andersson (2014, p. 273) writes about the business of bordering Europe. I understand this business as, primarily, a complex and multi-dimensional process of accumulating capital, from which various social actors profit. There is, of course, the business of smugglers, which is indeed an economic activity based on the fact that, for asylum seekers, there are, as mentioned above, almost no ‘legal ways’ to Europe (Scheinert, 2017). This being noted, residence permits – and sometimes citizenship – can be bought entirely legally in many countries of the Global North (see e.g. Barbulescu, 2014; Boatcă, 2016; Keshavarz, 2016, pp. 136ff.; Farolfi et al., 2017). To give an example, London-based Henley & Partners is one of
the law firms that have specialized in providing their wealthy clients with legal advice when ‘investing’ in an EU country in order to gain citizenship. In the case of Malta, they advertise such citizenship-by-investment as follows:

The Malta Individual Investor Program (IIP), which Henley & Partners was contracted in 2014 by the Government of Malta to design and implement, is the most modern citizenship-by-investment program. The IIP is one of the most exclusive citizenship-by-investment portfolios worldwide. It offers clients the opportunity to acquire citizenship in a country that has one of the strongest, most stable economies of the EU and Eurozone. ... The combined upfront financial requirement, including applicable government charges and citizenship application fees, is just under EUR 900,000. These costs will increase slightly depending on the family size. (Henley & Partners, 2019)

At the time of writing, there are no IIPs for gaining residency in Sweden. In other words, there are no schemes through which wealthy people can use their economic capital to buy a Swedish residence permit or citizenship. However, as Vanessa Barker (2018) has observed, since the late 1980s, the ‘walls’ of the Swedish welfare state have opened up to a certain extent based on (neo)liberal ideas of attracting investment and labour. For individual migrants, earning more than SEK 13,000 (approx. EUR 1,300) per month throughout the year is currently the legally defined minimum to receive a Swedish residence permit based on employment. That said, starting a business as ‘self-employed’ (egen företagare) in Sweden can be grounds for granting residence permits – if the applicants ‘have enough own money to provide for [their] livelihood and, if applicable, that of [their] family during the first two years (equivalent of SEK 200,000 for [the main applicant], 100,000 for [the] spouse and 50,000 for every child’) (Swedish Migration Agency, 2019). The Swedish state, therefore, defines either a minimum monthly income (SEK 13,000), or a minimum of financial assets in cash (SEK 200,000 for individuals without family members) as needed to be eligible to apply for a Swedish residence permit based on (self-)employment.

In the context of refugee migration, such regulations have significance. As legal professionals whom I interviewed explained (Joorman, 2019), many asylum cases are not only concerned with the question of whether the application is ‘in need of protection’ but also with the applicant’s ties to Sweden (including family, study, work and Swedish language skills). In certain cases, when asylum seekers who are already in Sweden apply for residence, legal decisions can therefore justify a permit based on such ties, thus making an ‘exception to the rule that residence permits must be arranged prior to entry’ (MCA precedent MIG 2011, p. 27, cited in Joormann, 2019, p. 201).
The largest total number of refugees in the EU: Germany

During 2015’s long summer of migration (Odugbesan and Schwiertz, 2018), Germany and Sweden received the largest total and, respectively, per capita number of asylum applications in the EU (see UNHCR, 2016). In both countries, as exemplified with the description of the Swedish migration bureaucracy above, these asylum claims are in the first legal instance processed by a state agency (Germany: Bundesamt für Migration und Flüchtlinge (BAMF); Sweden: Migrationsverket), where case officers take decisions on the asylum seekers’ residence permit applications (Hinger et al., 2016; Parusel, 2016). In 2017, 56 per cent and 59 per cent of all first instance applications for international protection were rejected in Germany and Sweden, respectively (BAMF, 2018; Migration Agency, 2018).

If leave to appeal these decisions is granted, and if the case reaches the second legal instance, in both Germany and Sweden it is an administrative court that takes the second-instance decision (Schittenhelm, 2018). Thus, asylum appeals move the legal case from the inquisitorial setting of a state agency (case officer takes top-down decision on applicant’s asylum claim) to the adversarial setting of an administrative court. Compared with the Swedish context described above, there are no ‘lay judges’ deciding on asylum applications at German administrative courts; in Germany, the judge adjudicates and takes the second-instance decision (Arndt, 2015).

Another difference, which one can identify when comparing the two national contexts, is that the Swedish court system designates, as visualized in the image above, certain administrative courts (Förvaltningsrätt) as Migration Courts (Migrations-domstol). Moreover, in the first instance of the migration bureaucracy, the Swedish system already tends to employ caseworkers with (some) legal training. As Karin Schittenhelm (2018) puts it, when comparing the Swedish and German asylum systems, many of ‘the [caseworkers] interviewed in Sweden were university graduates, primarily holding law degrees, while administrative and vocational training have been more common in Germany’. In Germany, migration cases are ‘Ländersache’, which means they fall under the authority of the sixteen Federal States (Bundesländer), while the largest (Migrationsdomstolen vid Förvaltningsrätten i Stockholm) and the most authoritative (Migrationsöverdomstolen) of Sweden’s Migration Courts are both located in Stockholm (Arndt, 2015; Johanesson, 2017).

To summarize, in Germany asylum applications are in the first legal instance submitted to the local branch of the BAMF. When rejected – which in 2017 applied to more than half of all asylum claims – the decision can be appealed. In the second legal instance, then, the decision is taken by a judge at one of Germany’s administrative courts. One important difference in comparison with Sweden is that asylum seekers in Germany are not necessarily represented by a lawyer. In Schittenhelm’s (2018, p. 7) words,
‘legal assistance is funded by the Swedish state and covers both legal advice and representation during the personal interview and all subsequent steps in the regular procedures ... The absence of such free, institutionalized legal assistance by professional lawyers in the German asylum system is a critical difference’ (Schittenhelm, 2018, p. 7). This means that, while in Sweden asylum seekers can benefit from (the limited amount of) legal aid provided by public counsels (see above), in Germany they are largely dependent on their own access to economic capital when seeking professional advice and legal representation in court.

Temporary humanitarian admission programmes in Germany

Before the numbers of asylum applications peaked in 2015, the German government had established reception programmes, particularly for Syrian citizens (Scheinert, 2016). Outside the general rules of the asylum system, in which applicants must file their claims with the BAMF in one of the Federal States as described above, Germany implemented Temporary Humanitarian Admission Programmes (THAPs). As part of this initiative at the national level, the government had promised to receive 20,000 Syrian refugees in Germany. Syrians were invited to apply to UNHCR for resettlement to Germany, meaning that they did not have to enter Germany as ‘unauthorized border crossers’ (see above; Carling, 2007). In order to be selected for one of these programmes, however, the applicants had to fit into one of the following categories:

1) humanitarian criteria (special protection needs of children, sick persons, women, religiously persecuted persons);
2) ties to Germany (family ties, previous sojourns, language skills, receptive Syrian religious minority institutions);
3) ability to make a special contribution to rebuilding the country after the end of the conflict (possibility to expand existing qualifications in Germany). (Scheinert, 2017, p. 130)

In this way, until ‘mid-2015, around 35,000 admission visas had been granted and just over 26,000 people reached Germany’ (Scheinert, 2017, p. 129). Conceptually speaking, two of the categories listed above demonstrate the importance of economic, social and cultural capital in Bourdieu’s terms. The second and third categories make clear that refugees with a certain amount of social (‘ties’), cultural (‘skills’) and economic capital (‘contribution’) were high on the German authorities’ wish list. THAPs thereby looked for an ideal type of refugee whom Scheinert calls ‘the classed refugee’ (Scheinert, 2017, p. 132). In the context of her study, this term refers to people who had sufficient access to capital to deserve the right to reside in Germany. In Scheinert’s analysis, it was required of refugees to have the financial resources to be able to pay for protection. Hence, ‘the admission programmes are highly selective’ (Scheinert, 2017, p. 132). To
take up a term that is particularly problematic ethically, family members of Syrian refugees were in this way asked to sponsor (Scheinert, 2017, p. 132, emphasis added) the residence permits of their loved ones. In a similar vein as Sweden’s permits for the self-employed and other European countries’ more straightforward ‘Immigrant Investor Programmes’, a look at Germany’s THAPs thereby makes clear that, at least from a sociological perspective, the binary distinction between ‘economic migrant’ and ‘refugee’ does not make much sense.

**One of the most restrictive asylum systems in Europe: Denmark**

In Denmark, seeking asylum begins with the first interview, in many cases at a police station, where an officer takes the applicants’ fingerprints. Alternatively, people can file their asylum claims directly with the Immigration Service (*Udlændingeservice*) at Centre Sandholm, which is the largest reception facility for asylum seekers in Denmark (see also chapter 12 below). This first interview separates applicants according to three categories: ‘Dublin’, ‘manifestly unfounded’, and ‘regular procedure’ (Canning, 2019).

Persons sorted into the first category are to be expelled to the country where they were registered as having entered Europe, as defined by the Dublin system (currently Dublin III, officially called EU Regulation 604/2013). The second category, ‘manifestly unfounded’, means that protection is denied. These decisions can be appealed by a veto of the Danish Refugee Council (DRC), which is ‘an umbrella organisation consisting of members broadly representing civil society organisations in Denmark committed to the refugee cause’ (DRC, 2019). Such a veto moves the case to the category of ‘regular procedure’.

In this regular procedure, cases are once more separated and either processed according to the normal procedure or categorized as manifestly well-founded. Such well-founded applications are directly granted due to obvious reasons for asylum. In normal cases, which are the clear majority of asylum applications processed in Denmark, the Immigration Services conduct a second interview. The outcome of this interview can either be that asylum is granted or a preliminary rejection (DRC, 2019). In cases of rejection, the appeal ‘automatically goes to [the Danish] Refugee Appeal Board’ and the state ‘provides [a] lawyer’ (Canning, 2019, p. 14). Given this aforementioned detail that Denmark also provides publicly paid legal aid to asylum seekers, the Refugee Appeal Board (*Flygtningenævnet*) then takes the final decision, which is either some form of projection status or a definite rejection.

To summarize, in clear contrast to both Sweden and Germany, the Danish asylum system does not make use of administrative courts. Compared with Sweden, in Denmark there are no special migration courts (or Tribunals as in the UK, see Canning, 2019, p. 11) and neither is there the
possibility to file an appeal to a local administrative court as in Germany (Arndt, 2015). Instead, the Immigration Service is the first of two legal instances in Denmark. Its initial rejections based on manifestly unfounded claims can only be vetoed by the Danish Refugee Council. When vetoed by the DRC, manifestly unfounded asylum claims become normal procedure, which leads to a second interview by the Immigration Service. Rejections after this second interview can be appealed to and reviewed by the Refugee Appeal Board as the highest legal instance.

The Jewellery Law: a Border Spectacle against the ‘classed refugee’?

In spite of the news that, by January 2019, ‘three years after Denmark’s infamous “jewellery law” hit world headlines, not a single piece [of jewel-lery had] been confiscated’ (The Local Denmark, 2019), the regulation became quite well known throughout Europe and the world over. From February 2016, refugees in possession of belongings worth more that DKK 10,000 (about EUR 1,300) were to have their belongings confiscated upon entry to Denmark. Meanwhile, Danish police were ‘told not to take wedding rings or engagement rings and individual officers [were] left to determine the sentimental value of other items’ (The Local Denmark, 2019). Until 24 January 2019, precisely ‘one car and 186,000 kroner in cash have been seized – and no jewellery’ (The Local Denmark, 2019). Clearly, measures like the Jewellery Law were not really there to be implemented but, instead, to be talked about, in order to deter and to reduce the incentives of coming to Denmark. In a word, that law should make Denmark (even) less attractive for migrants. In line with a now notorious photograph of former Danish Minister for Immigration, Integration and Housing, Inger Støjberg, cutting a cake to celebrate the ‘50th amendment to tighten immigration controls’ (Pasha-Robinson, 2017), this specific legal norm about jewellery was thereby highly symbolic (see also chapter 5).

Echoing Nicholas De Genova, the Jewellery Law is a good example of a ‘Border Spectacle’. As a scene of exclusion, ‘it affirms the obscene fact of a kind of subordinate inclusion’ (De Genova, 2013). This subordinate inclusion was directed at all ‘deserving refugees’. Asylum seekers with less than DKK 10,000 of valuables should immediately be granted access to the procedures, while people with more than that (arguably modest) amount of personal belongings should first pay for their right to have their claim processed. Hence understandable as a form of De Genova’s Border Spectacle, the law implied at least three messages with rather straightforward claims, yet addressed at different audiences:

1) Many asylum seekers have more than DKK 10,000 on them and they are not supposed to have ‘so much money’ (audience is mainly the Danish public);
2) Refugees are a cost to Danish society and we will make them pay, if they are rich (audience is mainly the Danish public);

3) Denmark is not a welcoming country; they will take your savings from you when you get there. Therefore, do not seek asylum in Demark (audience is mainly the potential asylum seeker outside Denmark).

Understood as a Border Spectacle, as De Genova conceptualizes it, the Jewellery Law is in this sense first of all a speech-act within domestic politics and only of secondary importance as a measure of deterrence directed against unwanted migrants. Now, if one understands such policies as communication primarily geared to harvest anti-immigration votes, one sees that they function to

a) maintain the dichotomy between economic migrants and refugees, and

b) convince the domestic public that no, ‘classed refugees’ (in Scheinert’s (2017) usage of the term, so defined by their secured access to capital, see above) will be allowed to enter Denmark without first having to ‘pay’ for their reception.

Firstly, thus, the Jewellery Law as a Border Spectacle gives an obscene but clear message: If people come here to make money (or to seek a better life, see above, UNHCR Sweden, 2018), they will have to start without any cash. In De Genova’s terms, asylum seekers are thereby subjected to victimization (they are constructed as deserving if they have less than DDK 10,000 on them), while some are exploitable (if they have more than DKK 10,000 they must pay for the hospitality). Secondly, in this context, the ideal type that Scheinert (2017, p. 132) describes with the term classed refugee – who were relatively well-off and were therefore wanted migrants in the context of Germany – is an image that is applicable in a different fashion in the Danish case. With the spectacle of introducing the possibility (rather than the practice) of confiscating valuables, it is claimed that

1) there are classed refugees (relatively well-off migrants), at the same time as,

2) the Danish state will make sure that these people (with more than DKK 10,000 of valuables on them) will cease to be classed refugees as soon as they decide to enter Denmark.

In brief, the Border Spectacle of the Danish Jewellery Law instrumentalizes the fear of (or hatred against) ‘undeserving’ refugees. More than anything else a spectacle for domestic politics – a race to the bottom for the toughest stance on migration – the law reifies the hegemonic discursive construction of the refugee as a passive victim who can only be welcomed if they did not leave ‘their country voluntarily to seek a better future’ (UNHCR Sweden, 2018, see above).

A look at the Danish context thereby highlights that, while migration regimes in general favour asylum seekers with more capital (as I have
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exemplified above in the cases of Sweden and Germany), the very same
regimes rest on the imagination that refugees must be destitute victims
without any access to (economic) capital. In other words, the refugee regime
becomes a Catch-22. This Catch-22 illustrates the violence built into the
political discourse and the legal practices that define national asylum systems
and the international migration regime at large.

Conclusion

The Danish, German and Swedish asylum systems are similar and yet rather
different. From the viewpoint of procedural (rather than substantive) law,
the three countries’ processes of appealing a first-instance decision are
organized quite differently. In all three countries, initial applications are
processed by a state agency (Denmark’s Udlændingesarvice, Germany’s
Bundesamt für Migration und Flüchtlinge, and Sweden’s Migrationsverket)
according to the inquisitorial procedures of administrative law. In Germany,
then, asylum appeals are decided by judges at the local administrative courts
(Verwaltungsgerichte) under the authority of the sixteen Federal States
(Bundesländer). In Sweden, appeals are adjudicated by a judge and three
lay judges (nämdemän, that is, individuals recruited from Sweden’s politi-
cal parties) who take the decision at one of Sweden’s four second-instance
migration courts (Migrationsdomstolar). In Denmark, the initial rejection
of manifestly unfounded asylum claims can be vetoed by the civil-society-
based Danish Refugee Council, while rejection decisions of the Immigra-
tion Service (Udlændingesarvice) can be appealed to Denmark’s Refugee
Appeal Board (Flygtningenævnet). To put it briefly, Germany uses its local
administrative courts under the authority of the Federal States to process
asylum appeals, while Sweden established distinct migration courts in 2006.
Denmark does not involve any of its administrative courts. Instead, similar
to how the system worked in Sweden until 1 April 2006 (Johannesson,
2017), the Danish Refugee Appeal Board processes appeals. At this board,
asylum cases are heard by three members: an appointed judge, an official
appointed by the Ministry of Refugee, Immigration and Integration Affairs,
and a member nominated and appointed by the Council of the Danish Bar
and Law Society (Flygtningenævnet, 2019). Given these procedural differ-
ences across the three countries, all of which are part of the Common Euro-
pean Asylum System (CEAS) operating within the overall legal framework
of international refugee law, it is remarkable that the three national systems
display this extent of procedural differences. This is important because it
illustrates different institutional settings in which asylum applicants must
make their case. If one compares, for instance, Germany with Denmark, the
Danish Refugee Appeal Board – where a judge and another legal profes-
sional must decide together with an appointee of the Immigration Ministry
Social class, economic capital and asylum systems

(Flygtningenævnet, 2019) – is clearly a more politicized appeal instance than a German administrative court (Arndt, 2015).

Given such differences, a class background marked by a secured access to economic capital can be a significant advantage for migrants who aim to reside in either Sweden, Germany or Denmark. Within all three asylum systems, paying privately for a professional immigration lawyer strengthens the applicant’s position (the two Nordic countries here do provide some hours of publicly paid legal aid for all asylum seekers, see above). Outside the asylum system, larger amounts of economic capital – for Maltese citizenship, EUR 900,000 – open up mobility corridors for the ultra-rich (Barbulescu, 2014). This exclusiveness and, consequentially, the social exclusion that these potential and direct advantages of access to economic capital imply, is indeed a classed form of structural violence (Galtung, 1969).

With a closer look at the asylum systems of welfare states such as Sweden, Germany and Denmark, which are arguably still strong, it becomes clear that, similar to other social processes, even asylum determination procedures are classed. Embedded within the European migration regime, the asylum systems analysed here do not mitigate the disadvantages that migrants without sufficient amounts of (economic) capital must deal with. This chapter has shown that, firstly, there is the difference of the German asylum system not guaranteeing state-sponsored legal aid. Secondly, the Danish migration bureaucracy does not include any formal courts but a politicized appeal board, at the same time as Sweden’s migration courts are settings of administrative law where a judge decides together with three ‘lay judges’ recruited from the political parties. That said, to pay privately for a specialist lawyer is an opportunity to profit from economic capital that asylum seekers in Germany, Denmark and Sweden can make use of – if they have the money.

Notes

1 At the time, there was a moral panic (see chapter 7) in much of Swedish mainstream media about these unaccompanied minors – often presenting them as ‘undeserving’ (or ‘bogus’, see chapter 8) asylum seekers.

2 Carling uses ‘unauthorized entry’ for those border crossings that are completed without any state official checking the traveller. Conversely, he defines an ‘authorized entry’ as the border crossing during which the traveller is checked and allowed to enter (regardless of whether a forged or invalid passport or similar has been used). In relation to people seeking asylum, Carling writes as follows: ‘Unauthorized entry is legitimate under the 1951 Geneva Convention when it is done for the purpose of seeking asylum. Migration can therefore be “unauthorized” without being illegal’ (Carling, 2007, p. 6).

3 Going back to Johan Galtung’s Violence, Peace, and Peace Research (Galtung, 1969), structural violence can be defined as social structures and institutions
that cause different forms of violence, which harm people due to, for example, institutionalised classism, ethnocentrism, nationalism, racism and/or sexism.

4 Here referring to those (relatively) wealthy countries whose bureaucracies operate with the European migration regime defined by the Schengen Agreement, the Dublin Regulation(s) and the Common European Asylum System (CEAS).

5 To have an appeal processed at Sweden's Migration Court of Appeal, the court must grant leave to appeal, i.e. it must recognize that the case is (legally) interesting enough to decide it and thereby turn it into a precedent. Such precedents will be guiding for the lower legal instances, i.e. the second-instance Migration Courts and the first-instance Migration Agency.

6 One notable exception to this setup would be a ‘security case’ (säkerhetsärende, see Joormann, 2017), which is an immigration case deemed to be of importance for national security. In such cases, the Swedish Security Police (Säkerhetspolisen) become the first legal instance (UtlL 2005:716, Chapter 16 § 6).

7 In Swedish legal terms, such ‘ties’ are called anknytning.

8 On the Board’s homepage in Danish, Flyttingenævnet is described as an ‘independent, collegial, administrative body that resembles a court’ (uafhængigt kollegialt domstolslignende forvaltningsorgan, Flyttingenævnet, 2019)

References


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