

The Precarious Truth of Asylum

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Civilized countries did offer the right of asylum to those who, for political reasons, had been persecuted by their governments, and this practice, though never officially incorporated into any constitution, has functioned well enough throughout the nineteenth and even in our century. The trouble arose when it appeared that the new categories of persecuted were far too numerous to be handled by an unofficial practice destined for exceptional cases.
Hannah Arendt, *Imperialism*, 1951

“What is Truth?” asked, in a Symposium of the Aristotelian Society, one of Oxford’s most distinguished philosophers, John Langshaw Austin (1950), quoting ‘jesting Pilate’. His famous answer to this question was not very engaging *prima facie*: “ ‘Truth’ itself is an abstract noun, a camel, that is, of a logical construction, which we cannot get past the eye even of a grammarian. Philosophers should take something more nearly their own size to strain at. What needs discussing rather is the use, or certain uses, of the word ‘true’. *In vino*, possibly, ‘*veritas*’, but in a sober symposium ‘*verum*’ “. As it happens, at the same time that this Symposium on truth was held in England, an Ad Hoc Committee of the United Nations was meeting in Switzerland to discuss asylum. The draft it submitted to the General Assembly evolved the following year into the “Convention Relating to the Status of Refugee”, usually referred to as the 1951 Geneva Convention. The chronological coincidence between the philosophical symposium and juridical meeting was purely fortuitous, but had it not been, the exchange between the two sets of experts could have been remarkably heuristic, not only because the legal specialists would have been inspired by the definitions of truth and of true propositions made at Oxford, but also because the philosophy of language would have been put to the test of the formulations of the conditions of asylum in Geneva.

Of this imagined encounter, I would like to make the matter of a reflection on truth and asylum, not in the historical moment of the fabrication of the new

international law, but in the current state of the “refugee question”. So, instead of being discouraged by Austin’s humorous remarks, I will take them as my point of departure. His distinction between truth and true, *veritas* and *verum*, will serve to address this question by distinguishing two interrogations: What is the *truth* of asylum? And how are the accounts of asylum seekers recognized to be *true*? These interrogations raise significantly different issues. In the first one, the emphasis is on the substance of asylum, on the way it is permanently transformed through international debates and national jurisprudence as well as by the daily work of officers and magistrates confronted with concrete cases. In the second one, the focus is on the evidence of the asylum seekers, on the relations between what is told and what really occurred, and between these alleged facts and the legal definition of the refugee. The distinction between “truth” as substance and “true” as evidence is, I contend, crucial to our understanding of asylum both as an anthropological object and as a political issue. Of course, I do not mean to reify the truth of asylum (what I call truth here is a historical construction) or the true propositions of asylum seekers (what is considered as true is precisely the result of complex negotiations). On the contrary, by showing the permanent interpretive work of which asylum is the object, I want to de-essentialize what is often represented, in reference to the founding text, as an immutable reality, and, in the investigation of the claimant’s past, as the search for an ultimate veracity.

To apprehend these two dimensions, I will ground my analysis on material collected in France, but I believe these findings may have a broader relevance for our comprehension of the refugee question. My inquiry into the French system of asylum includes the study of a corpus of asylum seekers’ files and of three hundred medical and psychological certificates in support of their applications; interviews with claimants to the refugee status, lawyers, rapporteurs and magistrates involved in asylum granting, activists and physicians from non-governmental organizations; and observation of the everyday work of the National Court of Asylum during the first semester of 2009 as well as of the Conference of the European Ministers of the Interior for the establishment of the Pact on Immigration and Asylum in September 2008. Moreover, at different moments, I have been involved in these issues via what

one may call observant participation (as opposed to participant observation), as a physician writing medical certificates, as an activist chairing the French Committee for the Exiles, and more simply as a citizen involved in public debates in France. In other words, my reflection could be viewed as inscribed at the crossroads of classical ethnography and public anthropology. In the following pages, I will analyze, from a long-term perspective, the contemporary reconfiguration of asylum, then discuss, through various philosophical paradigms, the diverse approaches of asylum seekers by institutions, and finally conclude by articulating the two dimensions of truth making and truth telling.

The Changing Truth of Asylum

Winner of the 2003 Golden Bear Award at the Berlin International Film Festival, among many other prizes, Michael Winterbottom's *In This Word* tells the story of the epic journey of two young Afghanis trying to reach Britain across Asia and Europe. The movie, which belongs to the genre of the docudrama, begins in the Shamshatoo Refugee Camp in Northeast Pakistan, where 53,000 Afghanis, who have fled their country as a result of the successive invasions by the Soviet army and the Allied forces, survive in miserable conditions. As many others do, the Udin Torabi family decides to send their son Jamal and his cousin Enayatullah to try their luck in London where they have relatives. With the help of smugglers, their venture brings them through Iran, from where they are deported back to Pakistan the first time, but which they manage to cross on their second try, and Turkey, which is the meeting point for migrants of the whole region who embark in Istanbul inside a shipping container. On arrival in Italy, Jamal discovers that his cousin as well as other refugees have died by suffocation during the crossing of the Mediterranean Sea. He continues his odyssey to Paris and Sangatte, where a warehouse supervised by the Red Cross and overseen by the French police provides shelter for those en route to England. Stowing away on a truck he crosses the Channel and calls his uncle to tell him he has succeeded – but alone. The last images of the film revert to the refugee camp in Pakistan, with a sentence which appears on the screen as a realistic

epilogue indicating that the young man playing Jamal, who is not a professional actor, was himself granted asylum at his request – although only until he would reach the age of majority at eighteen.

In the vein of the “cinéma vérité”, coined by Edgar Morin fifty years ago, the film offers a compelling picture of the contemporary truth of asylum on several accounts. It illustrates the division of the world between poor countries where refugees are doomed to inhabit huge camps under dire circumstances, and rich countries where access to the refugee status remains the uncertain result of a perilous voyage – economic precariousness, on one side, juridical precariousness, on the other. In fact, whereas in Pakistan, the notion of asylum is taken for granted, as refugees are confined in camps, by contrast, in Europe, the granting of asylum becomes an ordeal, because of geographical as well as administrative obstacles. When compared to the context in which the Geneva Convention was ratified, a major change has indeed occurred: absent from the initial text, the Third World has since then become a major part of the refugee scene, giving rise to an implicit political division of asylum between mass treatment in the global South and individualized selection in the global North.

Longue Durée

As long as it remained a marginal phenomenon, asylum was conceived as a social and spatial exception – a special protection infringing the normal functioning of human relations and a hospitality obligation revealing a deep ambivalence towards aliens. The increase of refugees and stateless people after the two world wars transformed it into a political and legal issue involving sovereignty and rights, progressively shifting from a European problem to a global one having increasingly to do with the control of population flux – thus losing its foundational dimension of exception. This major shift was accompanied by profound changes in the moral and ethical contours and content of asylum: contrarily to what genealogical approaches going back in time to Antiquity usually imply, what one considers as a refugee has never ceased to evolve.

It is generally assumed that the notion of asylum finds its origins, both etymological and historical, in the immunized space of Greek temples (from “*sulon*”, right to seizure): priests invented the principle of “*asulon*” (refuge) to protect themselves from invaders and warriors. Translated in Latin as “*asylum*” (sanctuary), the word took on a substantially different signification, designating a safe place outside the city where pariahs, criminals, slaves, and (significantly for its contemporary interpretation) political opponents, could escape justice and punishment: these sites were inviolable (Fustel de Coulanges 1900: 182). Both Greek and Roman notions refer to sacredness, that is, a separation, in these cases physical, from the profane world: they designate a space of exception. But from one world to the other, the beneficiaries of this sacred place shifted from the religious/sacerdotal to the social/political. Beyond this literal origin, the archeology of what we think of as asylum is also grounded in another tradition, that of hospitality. Philological inquiry into this concept reveals its remarkable ambiguity in Indo-European languages, since the word is derived from *hospes*, the guest, itself stemming from *hostis*, the enemy, which provides the root for hostility (Benveniste 1969: 87). Both terms thus refer to the stranger, who can be viewed under a favorable or inimical light and is differentiated from a third term, *peregrinus*, which corresponded initially to a free provincial subject who was not a Roman citizen, and later designated all foreigners, with the exception of the barbarians: an interesting distinction was therefore established between strangers, as potential guests, and foreigners, as non-citizens, the relations of equality and reciprocity existing only with the former. Considering this dual semantic as well as historiographical legacy, we have then two founding truths of contemporary asylum: the sacred right to protection in an inviolable space, independent of the refugees’ condition, and the ambivalence of hospitality, always in danger of hostility.

The modernity of asylum, as it emerges slowly from the end of the 18th century, but on a much firmer pace since World War I, is shaped by two factors: one demographic, the other political. On the one hand, asylum tends to no longer refer only to individuals or groups of individuals. It encompasses thousands and sometimes millions of potential refugees: Russians fleeing the Bolshevik regime,

Armenians attempting to escape Turkish massacres, Republicans pursued by the Spanish Nationalists, Jews persecuted by the Nazis, and, finally, immense masses of displaced persons after World War II. On the other hand, asylum is no longer the province of cities, but of states, where the logic of universal protection competes with the logic of national sovereignty. Under this new configuration, an increasingly bureaucratic control is exerted over those trying to cross borders: the distinction between immigrants and refugees starts to become problematic. The ratification of the Geneva Convention, on the 28th of July, 1951, preceded by the creation of the High Commissioner for Refugees and followed by the establishment of specific bodies in charge of the practical regulation of asylum in most countries, provided both a legal framework and an institutional network to address this dual issue of numbers and states. Although still fragmentary, the historical reconstitution of the negotiations that led to the signing of this important text of international law reveals that, behind the scenes of the preparation of the final document, governments were much less generous than the mythical narrative of the origins would have us believe (Noiriel 1991). However, the expectations and hopes were so high that the most celebrated chronicler of the saga of refugees in Europe concluded his book prophesying the “apparent end of a refugee problem” (Marrus 1985: 371) – a humbling experience for any social scientist inclined to prediction. The return of this “problem” is not, though, a mere repetition of what it was at the end of World War II. Today’s configuration presents unprecedented characteristics, which reveal less an idiosyncrasy of asylum than a sign of the times.

A Divided World

The Geneva Convention, it is rarely acknowledged, is limited in scope to the victims of “events occurring before 1 January 1951”, meaning that it exclusively pertained to Europeans who were the victims of World War II. It was only in 1967 that the Protocol of New York, “considering that it is desirable that equal status should be enjoyed by all refugees”, generalized the protection to anyone corresponding to the definition of the refugee. However, it soon became obvious

that the globalization of asylum, with its ambition of fair treatment of all victims, was assuming a profoundly asymmetrical and unequal path. To put it schematically: in the South, are the refugees; in the North, the asylum seekers. The former are supposed to need protection without prior evaluation, whereas the latter are still in a process of assessment of their situation. This is not just a difference of vocabulary or even status. It is a difference of regime of recognition: quasi absence of inquiry but poor benefits provided, on the one hand; in-depth investigation but significant advantages expected, on the other hand.

In developing countries, where the so-called 'population of concern', in the UN High Commission for Refugees' lexicon, reaches ten million in Africa and eighteen million in Asia, refugees are often enclosed in camps, under the official protection of international agencies and with the assistance of non-governmental relief organizations, a setting which does not prevent them from being permanently threatened, whether the danger emanates from outsiders (belligerents) or insiders (other refugees and sometimes even humanitarian workers). This limbo often lasts for decades, the camps being progressively transformed into cities, where the population continues to experience the same vulnerability and which can always return to their initial usage as a camp, as it occurred in Dadaab, Kenya, with the drought in Somalia (Agier 2011). In these contexts, refugees are recognized as such simply because they are assumed to be what they say they are: there is hardly any inquiry into their past to verify whether their situation satisfies the criteria of the Geneva Convention. By contrast, in the rich world, where the 'population of concern' represents one and a half million in Western Europe and half a million in North America – in other words, fourteen times less than in the overburdened developing world – only a minority of asylum seekers will officially become refugees. Each application for the precious status is the object of a cautious investigation and of a possible appeal, the whole process often implying years of inquisition into the person's past and speculation about his or her future. A small proportion successfully navigates this ordeal, but the happy few who do receive, in terms of physical security as well as social welfare, the much-valued care of the state (de Swaan 1988). In summary, mass treatment with precarious living conditions in the

South, parsimonious casuistry potentially leading to substantial benefits in the North, which entails that a vague collective evidence suffices on one side, whereas unequivocal individual proof is demanded on the other. Certainly, this opposition simplifies the picture since certain African, Asian or Latin American countries, which have become attractive for refugees, have begun to develop their own bureaucracies for the treatment of their asylum seekers, but the global landscape largely reflects the dichotomy I have presented.

As a result, the distribution of refugees worldwide has considerably changed, the burden being increasingly borne by two continents: Africa and Asia. Conversely, Europe and North America take a decreasing share in it. As an illustration of this trend, one can consider two Western countries that represent, both numerically and symbolically, significant host nations. In 1960, after the settlement of the post World War II crisis, out of 1.6 million refugees, 250,000 were in France and 530,000 in the United States. In 2010, sixty years after the ratification of the Geneva Convention, out of 10 million refugees, only 135,000 are in France and 275,000 in the United States. In other words, while the total number of refugees has multiplied by six worldwide, it was almost divided by two in these countries. Whereas the global presence of refugees has become much more significant, their protection has been continuously restricted in affluent societies. In fact, the reversal is even more complete, since in these countries, asylum seekers have been criminalized in discourses as well as in practices (Pickering 2005). Most end up as “illegal aliens”, facing the risks of being incarcerated and deported.

The Loss of Trust

The prominence of the figure of the asylum seeker over that of the refugee in Western Europe and North America, is the symptom of the divergence between two curves: over the past three to four decades, the flow of asylum seekers has generally augmented, whereas the percentage of those granted a refugee status has dramatically dropped. This simultaneous evolution is often presented as logical: in a context of growing restrictions on immigration implemented from the 1970s on,

individuals would seek asylum as a substitute to the residence permit they cannot get on the basis of employment or family reunification. As a consequence, administration and jurisdiction facing this flood of so-called “bogus refugees” have to be more selective in granting the status (Neumayer 2005). In fact, the relation between the two curves is more complex. In France, for instance, the official interruption of immigration intervened in 1974. Regarding the evolution every five years over three decades, the number of applicants was 18,000 in 1976, 20,000 in 1981, 36,000 in 1986, 48,000 in 1991, 17,000 in 1996, 47,000 in 2001, 26,000 in 2006, while the proportion of favorable decisions by the French Office for the Refugees and Stateless People was 95% in 1976, 80% in 1981, 40% in 1986, 20% in 1991, 13% in 2001, and 12% in 2006. In other words, although the increase of asylum seekers in the 1980s had for corollary a decrease in the rate of recognition (the latter being however much stronger than the former, since the absolute number of individuals granted asylum diminished from 16,000 to 9,600 during that decade), the stabilization or even contraction of the number of applications during the following two decades did not lead to any inflexion in the regular decline of the proportion of applicants obtaining a refugee status.

Qualitative studies confirm this absence of strict relationship between the volume of asylum seekers and the rate of recognition of refugees in the context of restrictive immigration policies. It thus appears that, until the 1970s, the reason why there were fewer applicants was that, for most potential claimants, a work permit would suffice to ensure their continuing presence in their host country. It is the change in the practices of employment agencies, which would no longer accept and place these workers, that prompted asylum seekers to differentiate themselves from other immigrants (Spire 2004). But even when they did so, their image remained positively connoted. On the one hand, the victims of Latin American dictatorships, Chileans after 1973 and Argentineans after 1976, were somewhat regarded as heroes, most being politically engaged intellectuals. On the other hand, the victims of Southeast Asian Communist regimes, mostly Cambodian and Vietnamese boat people from 1979 on, were viewed as sufferers, which led to a remarkable humanitarian rescue undertaking. The same French president, who had

put a halt on immigration, Valéry Giscard d'Estaing, received in 1979 the Nansen Award for his dedication to the cause of refugees, a sign that the two populations – candidates for immigration and applicants for asylum. Since then, it is not so much the demography of the latter but their image that has changed. Whether they are Kurds from Turkey, Chechens from Russia, Afghanis, Congolese, or Colombians, claimants no longer elicit admiration or compassion.

In three decades, asylum granting has thus plummeted from nine to one out of ten applications in France – a dramatic change which is paralleled by the evolution in other European countries. With increased restrictions on immigration to limit the access to the labor market for non-European foreigners, the refugee question was redefined by the economic needs and asylum was subsumed under the logics of immigration control. This evolution is accompanied by a profound loss of credibility of asylum seekers within the institutions in charge of assessing their applications. There was a time, not so long ago, when the relationship between the administration and the claimants was one of trust. It has reversed into mistrust (Daniel and Knudsen 1995). The paradox is that, to justify this suspicion, one has to overestimate the value of asylum. It is because officers and magistrates regard the status of refugee as an almost unattainable goal that it becomes normal to exclude the great majority of claimants, who are viewed as unworthy of it. The lack of confidence in asylum seekers has for corollary an idealized construction of the truth of asylum. But beyond this major trend of declining trust, two more subtle phenomena are profoundly, but almost invisibly, transforming what we see as asylum. One is an internal change, which affects and expands what is viewed as the legitimate grounds for seeking asylum. The other one is an external mutation, which reduces the realm of asylum and weakens its social significance.

The Rise of Intimacy

A remarkable fact went unnoticed in recent statistics of asylum in France. In 2010, 13.5% of asylum seekers were granted an international protection by the Office for the Refugees and Stateless People under the Geneva Convention or the

recently introduced subsidiary procedure, a figure representing a slight increase in comparison with previous years. But quite unexpectedly the country for which the proportion of favorable decisions was by far the highest, 75%, is Mali, which has been considered during two decades as peaceful and democratic, without recent history of persecutions of ethnic groups, religious minorities or political opponents. By contrast, among asylum seekers, Russians, who are Chechens in a proportion of 80%, have a 14% rate of asylum granting; citizens of the Democratic Republic of Congo, where the lives of civilians are probably the most exposed to violence worldwide, culminate at 12%; applicants from Haiti, where a natural disaster recently added its toll to chronic political insecurity, do not exceed 10%; and Bangladesh, where political and religious minorities are under pressure, hardly reach 1%. The reason why Mali is an exception to this general severity resides in the recognition in 2001 by the National Court of Asylum of a “social group”, according to the official terminology, composed of “women who fear with reason to be submitted to a genital mutilation against their will”, were they to return to their country – and this protection that was extended to parents who oppose traditional circumcision for their daughters and thereby invoke for themselves the risk of persecution. As this jurisprudence came to be known, a growing number of couples, often in France for years as undocumented, sought asylum, arguing that were they to be deported, their daughter would have to submit to the ritual cutting. In 2009, it was decided that this subsidiary asylum would be renewed annually on the condition that parents present a medical certificate proving that their child had not undergone a genital procedure. Thus, in 2001, before the jurisprudence was implemented, 3,000 Malians sought asylum in France and 2, representing 0.1% of the total, were approved. In 2010, as the new ruling was routinely enforced, 570 Malians applied for the refugee status, which 430, that is 75%, obtained.

This remarkable recognition of a new entitlement to asylum, grounded in the protection of the body of girls and women from violation of its integrity by traditional practices, indicates a reconfiguration of the perimeter of persecution to include the intimate. The case of female mutilation is indeed part of a broader process in which feminist organizations played a crucial role (Ticktin 2011). The

‘well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion”, as defined by Article I of the Geneva Convention, has followed a silent revolution: a deflationary trend of recognized persecutions ‘for reasons of race, religion, nationality and political opinions’, on the one hand; an inflationary tendency of the open category of the “particular social group”, essentially in relation to gender-based (Musalo 2010) and sexual orientation-based (Berg and Millbank 2009) persecutions, on the other. In most Western countries, genital mutilation, forced marriage, domestic violence, and homophobic abuse are increasingly invoked by applicants, who are granted protection by officers and judges more easily than those who declare other causes of mistreatment. Whereas most accounts of ethnic, religious, or political violence are obsessively scrutinized, stories of gender torment and sexual harassment receive favorable attention, arouse sympathy, raise little questioning and, ultimately, often benefit from a positive assessment.

The inclusion of the intimate in the recognition of claims should not merely be viewed as a de-politicization of asylum, but rather as a reconfiguration of what is considered to be political, as reminded by Éric Fassin (2009). The evolution of asylum illustrates a contemporary redefinition of politics, to henceforth include gender and sexual issues. Today, one is more legitimate claiming to be the victim of cruel treatments on the basis of gender and sexuality than of political engagement, religious belief or ethnic belonging. One could speak of intimatization of asylum. The fact that in the French National Court more cases are presented behind closed doors instead of being publicly presented, precisely because of the inquiry into these intimate matters, is illustrative of this evolution.

The Empire of Humanitarianism

Parallel to this transformation of the core of asylum, another evolution redefines its contours. It emphasizes more suffering than rights and appeals to compassion rather than it claims entitlement. Under this requalification, situations

that used to be considered as relevant to the refugee question become interpreted in a different language – that of humanitarianism.

An illustration will help clarify this transformation (Fassin 2011). On February 17, 2001, a Cambodia-registered cargo ship ran aground on the French Riviera. The 900 men, women and children from the Middle East who were on board explained to the French authorities that they were Kurds fleeing the Iraqi regime and that they intended to seek asylum in Germany or Britain. The first reaction of the French Socialist government was to deny them entry to the French territory, considering them undocumented immigrants and denouncing the human traffickers behind this operation. The survivors of the shipwreck were imprisoned in an improvised camp. However, broadcasted images of crying children, desperate women and the crippled elderly behind the barbed wires shocked many and, after pressure from the public, the media and non-governmental organizations, the Prime Minister Lionel Jospin reversed course, declaring that “priority should be given to the humanitarian route”. The survivors received a safe-conduct, but in fact, the great majority of them did what they had announced and pursued their journey to neighboring countries. However, from the inquiry into their applications, it appeared that they were not Iraqis but Syrians, and not Kurds but Yazidis. They had been informed by smugglers that their chance of being granted asylum would be much higher if they declared that they came from Iraq rather than from Syria (one can guess that the reverse would be true a decade later). This anecdote is revealing of the moral geography of tyranny, as it is constructed in the contemporary world and translated into local imaginaries. Commenting on the story of this shipwreck, a columnist compared it to a new Exodus which had “come to test the humanitarian principles of France, the home of human rights” and, in the same newspaper, the main editorial paraphrased Blaise Pascal in enthusing that “the heart has its reason that reason must comprehend” (*Le Monde*, 22 February 2001). Whereas the Geneva Convention should have sufficed to take decisions regarding the cases, politicians as well as journalists were invoking humanitarian principles and moral sentiments. Instead of being entitled to asylum, the survivors were treated as obliged to public generosity. What was a question of rights had become an object of compassion.

States have two main means of resolving the tensions between the loss of credibility of asylum seekers and their inevitable presence due to persecutions around the world: repression, aimed at deterring or even punishing them; and compassion, rendering them acceptable (Fassin 2005). In the case of the shipwreck, the government initially tried the first option, declaring the survivors “illegal immigrants” and putting them in a camp, and eventually turned to the second one, invoking a “humanitarian route” and granting them safe-conducts. Criminalization and humanitarianization do not simply function as alternative policies. They often operate in a dialectical way, as was paradigmatically illustrated by the Sangatte center, in the North of France, where thousands of refugees were temporarily confined before crossing the Channel: in the same restricted space, the National Police and the Red Cross cohabited in paradoxical positions, the former protecting the migrants from violent confrontations between ethnic groups (rather than arresting them as undocumented) and the latter exerting a control over the flow of populations (as much as assisting them). When the right wing coalition came into power in 2002, the Minister of the Interior, Nicolas Sarkozy, immediately decided to close the centre, surprisingly invoking humanitarianism. Soon after, however, the police began to brutally harass migrants who continued to flock onto the beaches of Sangatte in the hope of crossing over to Britain.

This combination of repression and compassion had been inscribed in the French legislation during the 1990s (Fassin 2001). On the one hand, the most restrictive and punitive laws were passed to limit immigration, reject into illegality previously legal migrants, and imprison the undocumented before deporting them. On the other hand, a special article was added in order to legalize migrants with a threatening medical condition for which no treatment was available in their home country, under the so-called humanitarian rationale. This clause had the unintended consequence that many asylum seekers whose claims had been dismissed were advised and tempted to reorient their applications toward this new avenue for legalization. The strategy only worked if a physician could certify the existence of a serious disease – fortunately a rare case – leaving other applicants ironically disappointed for not being sick enough to be granted their documents. But beyond

these individual outcomes, it was clear that a shift of legitimacy had occurred from protection entitlement to humanitarian obligation, as a partial remedy to the loss of credibility of the asylum seekers.

The Questioned Truthfulness of Asylum Seekers

On August 23, 2011, in the case of *New York v. Strauss-Kahn*, all charges of sexual assault and attempted rape against the former head of the International Monetary Fund were dismissed by the court as requested by the prosecutor. Three months earlier, the French politician had been accused of abuse by an employee of the Sofitel hotel chain and arrested on the grounds of four felony crimes plus three misdemeanor offences. The 32-year old housekeeper, Nafissatou Diallo, was a refugee from Guinea who had sought and been granted asylum in the United States. When asked by New York prosecutors if she had been the victim of other assaults in the past, she told them on two occasions that she had been gang-raped by soldiers in her home country, gave vivid details about the scene, exhibited great emotion in recounting the event, and showed scars on her body that were the consequence of the violence to which she had been submitted. After having changed civil lawyer, she was advised to be honest with the prosecution and, in subsequent interviews, she forswore, admitting that she had fabricated this story, but explaining that after having provided it in her asylum application, she had kept up the deceit. Yet, when they examined her written statement to obtain the refugee status, the prosecutors found no trace of what the young woman declared she had told the administration. Actually, it appeared that at the time she was filing her asylum application, she consulted a man who gave her a tape recording including the account of a rape that she was directed to memorize and repeat, but she had finally renounced using it – which she had forgotten. This lie – coming on top of false declarations on her income tax returns and contradictory versions of the assault in the hotel – discredited Nafissatou Diallo and made her accusation untenable. On June 30, the district attorney disclosed these developments to Dominique Strauss-Kahn's defense in a

letter, which was soon released to the media, letting the public know that the charges would certainly be dismissed before long.

Remarkably, one month later, in its August 1st issue, the *New Yorker* published a story by Sukhetu Mehta entitled “The Asylum Seeker” with the following heading: “For a chance at a better life, it helps to make your bad story worse”. It concerned a young African woman, Caroline, whom the author had interviewed and followed in the course of her asylum application process, thus discovering that she had forged a narrative of beating and rape by government soldiers in her country. Caroline explained she had been tutored by her landlady in the Bronx as to how to act as a rape victim, which included attending group-therapy sessions, getting prescriptions from a psychiatrist, and obtaining a certificate from a gynecologist. However, she confirmed that, as she had declared, her parents were political opponents and she had been harassed by the army, feeling threatened because of her family’s past. The author was neither cynical nor moralistic about the fabrication of the young woman’s story. Basing her analysis on comments by immigration experts, she considered that individuals in situations like Caroline had no choice but to enhance the tragic dimension of their personal narrative: “Atrocity stories get inflated, as applicants compete with the lore of other applicants”, ran the caption of a photograph. Certainly, the reader could not avoid a parallel with the Sofitel affair, with the same blurring of lines between truth and lies, pure invention and mere exaggeration, legitimate justifications to fabricate facts and bad reasons to exploit public administration. The conjunction of the two stories was part of a larger picture, which suggested the banality of deception in asylum claims and elicited diffuse mistrust toward refugees.

Contradictory Injunctions

At the time when the refugee question seemed on the verge of being resolved, that is, in the 1960s and 1970s, the word of applicants telling the story of their persecutions to the officers in charge of granting asylum generally sufficed. The generosity that prevailed in those years was largely a consequence of economic

needs for the reconstruction of Europe and the growth of North America: a convergence existed between the moral ideals of the Geneva Convention and the material interests of the Western world. This period lasted a quarter of century, until immigration started to be viewed as a problem instead of an opportunity for industrialized societies. Although asylum was supposed to continue to be treated separately, the two issues became increasingly conflated in national and, later, European policies (Zetter 2007). This evolution resulted in asylum being viewed as subsidiary to immigration, and human rights as secondary to policing logics.

The practical consequence of this new situation has been the increasing sophistication of the process of inquiry into each application for asylum. Indeed, governments are confronted with a tension between two logics: the first one requests a strict selection of refugees to reduce the flow of immigrants; the second one imposes the formal respect of the rule of law and of human rights. Important financial and human resources have thus been dedicated to the fabrication of a system that could combine efficacy in terms of triage and fairness in terms of decisions. The investigation of each application relies on a costly bureaucracy, which is entirely devoted to the search for the truth. But here it is not the truth of asylum that is at stake; it is the truth-telling of the asylum seeker. This administrative apparatus is assumed to be the guarantee that the process of granting asylum or denying it will be just: the “false refugee” will be differentiated from the true one, a task probably more difficult than one imagines, since most evidence – from facts told to documents presented – can be contested.

In France, as in most Western countries, the bureaucracy of asylum comprises two levels and two institutions. A first step in the procedure is administrative, in the French Office for the Protection of Refugees and Stateless People: on the basis of an examination of the application, usually complemented by an interview of the applicant, officers decide whether asylum should be granted. The second step is juridical, consisting in an appeal to the National Court of Asylum: during the public hearing, the rapporteurs, who have gathered the pieces of the application, including complementary geopolitical or legal information, make recommendations either to proceed with the initial decision and reject the claim, or

to contradict the administration and grant asylum, or sometimes to suggest further inquiry; then the lawyer defends the claimant and the three magistrates ask questions to the latter; eventually, a secret deliberation is held and the adjudication is announced a few weeks later. To be complete, one should add that besides this official process, an invisible phase has acquired a growing importance: the selection of asylum seekers upstream in the consulate of their country or at the airport when they deplane, that is, before their entry onto the French territory.

Doing Justice

One could view the two moments – administrative and juridical – as two trials. And this is the way claimants experience them. In the French Office, applicants are alone with the officer as they would be with an examining magistrate. Before the National Court, they are confronted by three judges, a rapporteur and a secretary in a room full of other applicants, relatives, friends, lawyers, interpreters, and observers. Officers and judges have to make a difficult decision concerning the validity of the claims in a context where public discourses stigmatize asylum seekers, suggesting that most of them are economic migrants exploiting the system. They cannot seem to be too generous but they must be fair.

Using the language and form of justice invites two observations. First, in philosophical terms, these institutions function as the symmetrical of the retributive justice (Griset 1991): it is not a suspect who is judged, but an alleged victim; the outcome is not punishment, but recognition. However, by a troubling moral shift, contrary to regular tribunals where the accused is presumed innocent until proven guilty, the claimant is usually treated as suspicious before proven sincere. In other words, as shown in various contexts (Coutin 2001), the alleged victim becomes a suspect – a situation that may also exist in ordinary courts when the lawyer of the accused attempts to disqualify the accuser. The entire investigation, as well as the public hearing, is oriented toward the search for errors or contradictions, which could reveal the bad faith of the applicant. This systematic suspicion regarding the asylum seekers transforms the inquiry on truth-telling into a process of lie-

detecting, which can sometimes turn into an exercise of public cruelty. Second, in sociological terms, these institutions adopt the principles of what is generally described as local justice (Elster 1993): they act as if they had to fairly distribute a rare resource, that is, the precious refugee status, although there is no quota they are supposed to respect. The scarcity of goods is not material, as in the distribution of organs to be transplanted (Calabresi and Bobbit 1978); it is symbolic, based on the value attributed to the refugee status. Yet, in both cases, one can speak of tragic choices since, considering the potential risks of a deportation, decisions made by officers or magistrates involve the very existence of asylum seekers.

The association of these logics, with alleged victims transformed into suspects and tragic choices rendered necessary by resources imagined to be scarce produces a unique setting in which the applicants put their life at stake a second time, the first one being in their home country under the persecutions they claim to have endured. At the end of the process, that is, very concretely, the day the final decision regarding their refugee status is published, the only option for the vast majority of asylum seekers, who are rejected, is to return to their country, where they affirm they will be in danger, or becoming clandestine, which means facing on a daily basis the fear of being arrested and, eventually, deported. The whole question to be ultimately determined is thus, for the officers, rapporteurs and magistrates, whether or not they are being told the truth. But how can they approach it? To analyze their evaluative work, I will refer successively to the three major theories of truth in contemporary philosophy – taking the liberty to adapt them freely to my demonstration – in order to suggest, or even show, that if they are theoretically mutually exclusive, they may be empirically combined.

Objective Correspondence

The truth that officers, rapporteurs and magistrates seek is apparently easy to describe. It comprises two parts. Can the account of the applicant be regarded as true? And, if so, does it conform to the criteria previously defined as the truth of asylum? This exploration may be described in the terms of the correspondence

theory of truth (Russel 1910), according to which, at least in some later formulations, truth is a relation between propositions and the world, such as the world contains facts structurally similar to the propositions.

The first question posed to the applicants is: are you telling us the truth about what happened to you (persecutions endured) and about what could happen were you to return to your country (risk of persecutions)? That is to say: do the propositions written in your application and uttered during your hearing correspond to facts in your past life (violence) and in the present situation (danger)? The second question is: if we accept that you are telling us the truth, does the reality you describe satisfies the definition of the Geneva Convention (well-founded fear of persecutions) and its permanent reinterpretation through jurisprudence? In other words, do the propositions and statements made accord with the established criteria for asylum? Fair assessment by the French Office and the National Court depend on this dual evaluation of truth-telling on the one hand (does the narrative reflect reality?) and of truth-matching on the other (does the reality conform to the international norm?).

Both questions are however highly problematic, the first one being even almost impossible to answer beyond the shadow of a doubt, while the second one is a matter of interpretation. In the courts, for instance, rapporteurs search for evidence of the persecution by comparing information produced by the claimants and events recorded by the press or non-governmental organizations, by confronting their account with the expert knowledge collected by political scientists or legal specialists of the institution and even, although exceptionally in France, by anthropologists (Good 2007). Judges cross-examine the applicants on their engagement as activists or on the violence endured, and ask for details about parties, religious groups, national leaders, street demonstrations, juridical procedures, and topographies of prisons or camps, testing the consistency of the narrative (Bohmer and Shuman 2008). Some elements of the accounts are relatively easy to confirm by material evidence, such as the identity of the claimant (although not always), but others, which are usually the most decisive, often give rise to suspicion. Certainly, applicants and their lawyers can produce documents, such as

an organization chart of a political party, the sentencing of a trial, the testimony of an activist, a newspaper article. Yet, this data can also be called into question: is it not forged? and even if authentic, what proof does it provide? In the end, establishing the correspondence between what is being told and what has happened or could still occur supposes a certain level of adhesion to or belief in the story: in the deliberations I attended, the last word was rarely that facts were undoubtedly established. Most of the time, the decision relied on personal conviction.

Subjective Coherence

To understand how magistrates arrive at this sense of conviction, the existence of discursive and material elements are not sufficient. Considering an account to be true is more than a question of veracity: it is a question of sincerity. The truth judges seek does not so much concern the correspondence between propositions and facts, stories and realities, as it assesses the coherence between the narrative and the person. In its strict original form, the coherence theory of truth refers to a vision in which truth, in singular, characterizes a significant whole and, therefore, that a belief is true as part of a coherent system of beliefs, rather than because of its relation to facts (Joachim 1906). This model can be expanded, though, beyond ideas – to subjectivities. In the case of asylum seekers, the coherence of their statements, that is, the relations between propositions, admittedly attests to their correspondence with facts; conversely, incoherence in the account frequently raises doubts. But the significant whole is more than the narrative and the documents related to it. It includes the person and her authenticity. Is the individual soliciting asylum the victim she says she is? To obtain the status of refugee, one has to express unquestionable signs of sincerity – all the more so as doubt is cast on veracity.

In this context, the presentation of the self and the moment of the hearing can be critical. The twenty to forty minutes that the public examination of the case lasts in the National Court become a performance in which veracity is put to the test of sincerity. Officers and magistrates expect the applicant to embody the affliction she has endured. This is not to say that applicants are playing a role. Actually, one

could even state that the less they seem to be acting, the better. But from my observations during the hearings and my interviews with judges, it appears that certain cases were confirmed (for rejection) or decided (for recognition) as a result of the impression of deception or candor made by the claimants on their judges. The way they dressed, held their head, expressed their feelings when telling the most tragic moments of their story, seemed firm in their assertions rather than hesitant or confused: every element of the performance could be interpreted as authenticating or discrediting the account. A modest exhibition of suffering would often provoke in return the compassion of the magistrates, whereas a display of dignity elicited their admiration. Emotions entered judgment just as they do in criminal courts (Bandes 1999). Obviously, the attitude of a person depends on cultural backgrounds and social habits that the judges usually admitted not to have the means to apprehend. Yet some of them, on the basis of their colonial past, exotic readings or touristic experiences, did not hesitate to utter definitive interpretations, to which few anthropologists would have subscribed.

As one may imagine, the evaluation of the sincerity of the claimant is extremely intuitive. This is what I realized by observing the discussions between the magistrates during deliberations: some were convinced by the expression of an affect or the formulation of a phrase, whereas others declared they were dubious or incredulous. Looking down when answering the questions of the judges could be regarded as a lack of genuineness by some, while others would relate this attitude to cultural differences, especially if it were a woman. Class affinities were important for certain magistrates who would project more easily their affects toward someone resembling them, whereas others would seem more touched by applicants situated at their opposite in the social scale. But beyond these somewhat expected interpersonal variations, it should be remembered that sincerity as an external evidence of truth has a history (Trilling 1971). The word itself appeared in the sixteenth century, precisely at a time when theater was developing and the distinction between reality and its representation, emotions and their display, became a public question in the domain of the judicial (is the accused sincere?) and of the religious (is the converted sincere?). It is generally assumed that sincerity no

longer attests to truthfulness in most domains, notably art or science (Shapin 1994). Yet, its value remains highly praised in certain realms. Asylum is definitely one of them. The thinness of the unquestionable factual evidence the claimants can provide calls for the assessment of who they are, rather than what they tell.

The End of Inquiry

But to what extent do correspondence and coherence theories of truth account for asylum granting? If one adds, so to speak, narratives and documents on the one hand, personalities and attitudes on the other hand, if one combines veracity and sincerity, what impact can one observe on the final decision of the judges? The answer to this question will certainly be disappointing to some (who think most applicants are entitled to the refugee status in light of the persecutions they claim to have endured) and comforting to others (who believe that most applicants are actually economic immigrants attempting to deceive magistrates). Indeed, both of those will observe that – to limit myself to the French case – the sum of the evidence drawn from the stories (veracity) and the persons (sincerity) only results in the refugee status being granted to one claimant out of ten (actually, due to certain jurisprudences, such as the already evoked case of female circumcision, the proportion recently increased to almost one out of five). The great majority of the accounts are therefore considered to be untrue.

This situation is what leads asylum seekers, lawyers, activists, as well as officers and magistrates, to look for new evidence of the alleged persecutions about which the veracity of the narratives and the sincerity of the narrators are called into question. The body has thus become the object of scrutiny in search of scars attesting to the violence exerted. Physicians have been asked to produce medical certificates (Fassin and d'Halluin 2005). But only some of the asylum seekers present physical marks of their oppression or torture and, even when they do, these evidences can be dismissed. As a judge commented to a Bangladeshi applicant belonging to a minority who had previously asserted that several of his close relatives had been murdered and provided a picture of himself lying wounded on an

hospital bed, there was no proof that his injury related to a beating, as the claimant affirmed: he could have simply fallen from his bicycle, the magistrate coldly commented. After the body, the psyche was thus explored, with psychiatrists looking for invisible but significant traces. Psychological certificates began to testify to the existence of trauma (Fassin and Rechtman 2009). Once more, they proved to be insufficient, since clinical examination could establish the symptom but not its cause, and even counter-productive, since from then on, those without psychological consequences might be viewed with suspicion.

Such findings therefore suggest a third interpretation, based on the pragmatist theory of truth (James 1907), expressed in the sentence: "Truth is the end of inquiry". The general assumption shared by officers, rapporteurs, magistrates, as well as non-governmental organizations, lawyers, and even social scientists, is that there is a definitive truth of the asylum seekers: it lies in what did happen and what could occur, in other words, past persecutions and future risks, as described by the correspondence theory, and it can be validated through narratives and documents inasmuch as they are related to what appears to be a sincere presentation, as predicted by the coherence theory. Yet, from a sociological perspective, truth is not a given: objective facts are almost always inaccessible to the certainty of knowledge while subjective impressions about the individual cannot provide absolute evidence. Truth is rather the product of an investigation, which brings together all these elements. The observer is left with one truth: that which comes as the final decision of the National Court. In other words, truth is what institutions decide to be true. We do not have access to the ultimate truth of what really happened to the asylum seekers, or of how honest their recollection has been. But we do have access to what officers and judges think is true. Remarkably, when we consider the recommendations of the rapporteurs to grant asylum, their rate of such positive propositions is so low – 7% as a whole and only 3% if one does not take into account the cases which are entirely defined by jurisprudence and imply no interpretation on their part – that there is hardly any difference related to their academic background, activist past, and political sensibility, as one would have thought. Independently of their personal history, they all seem share the same

evaluation of the applicants' claims, the only difference residing in the "reserved opinion" that former human rights activists express more often than political scientists and legal scholars (Fassin and Kobelinsky, 2012). Indeed, each time I would ask a rapporteur or a magistrate, after a five hour hearing during which only one or two applicants out of ten or twelve were granted the refugee status, what they thought of the decisions that had been taken, they almost always replied that they had the conviction that the claimants had been treated fairly and no injustice had been committed. Their certainty sharply contrasted with my own wavering.

Conclusion

Asylum is one of the oldest social institutions. Yet it remains precarious. The ratification of the 1951 Geneva Convention seemed to put an end to the dual question of definition of asylum and numbers of refugees evoked by Hannah Arendt (1968: 174) in her book on imperialism published that same year. The broad consensus over the text was, however, a *trompe l'oeil* for three major reasons: it did not include the global South; its real issues appeared largely overlooked since work force needs for the reconstruction of Europe prevailed; and its apparent benevolence was partially motivated by ideological reasons related to the premises of the Cold War. The New York Protocol of 1967, the closing of borders after the 1973 Oil Crisis, and the fall of the Berlin Wall in 1989, progressively set up a new deal. Until the 1970s, as the majority of potential refugees were directed by national administrations of the host countries toward the labor market, asylum was generously granted to the relatively few applicants. When restrictions were imposed on immigration, more newcomers presented themselves as refugees, raising doubts as to the validity of their claim. Growing suspicion regarding asylum seekers was fuelled by stories of deception and forgery. Hospitality towards refugees progressively turned into hostility towards those who were viewed as economic immigrants. In this new context, the question of truth was posed.

In a similar way as Howard Becker (1963: 8-9) writes that "social groups create deviance by making the rules whose infraction constitutes deviance", which

has for implication that deviance is “created by society”, one could assert that officers and magistrates create the truth of asylum by practically deciding, on the one hand, which claims are legitimate, in other words, what are the changing content and contours of asylum, and on the other hand, which narratives are authentic, that is, how successfully asylum seekers get through the ordeals of the selection process. But they do not create this truth in a political vacuum: they do it in a social environment in which public discourses discredit and stigmatize refugees while officially defending the doctrine of protection and even extending it to new grounds related to gender and sexual questions. The tension induced by the contradiction between the spirit of the Geneva Convention, which still animates most of the rapporteurs and magistrates I encountered at the National Court, and the reality of the recommendations and judgments they made, restraining the refugee status to a small minority of applicants, is resolved by a paradoxical compromise: the more restrictive individual decisions are, the more consideration is demonstrated towards conventional principles. Thus, it becomes possible to articulate the truth of asylum, as a valued and scarce good, and the truthfulness of asylum seekers, as subjected to mistrust and inquisition.

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Abstract

Drawing on a distinction made by J.L. Austin in 1950, that is, in a time when the Geneva Convention on Refugees was in preparation, one can pose two complementary questions about the situation of asylum sixty years after its ratification: What is the truth of asylum? And how are the accounts of asylum seekers recognized to be true? The answer to the first interrogation is discussed in light of the foundational moments of asylum, both in Antiquity and Modern Ages. Recent trends indicate a dual movement: production of asymmetrical regimes of asylum at a global level, with increasing suspicion in the global North, and redefinition of the contours of asylum via the rise of the intimate and the empire of humanitarianism. The response to the second question relies on an understanding of asylum granting decisions in terms of correspondence theory, which emphasizes that accounts correspond to facts, and coherence theory, which supposes that narratives are coherent with the person. However, a pragmatist approach invites consideration that, in the end, truth is merely the result of the inquiry by officers and magistrates. The tension induced by the contradiction between the spirit of the Geneva Convention and the decrease in the rate of recognition of refugees is resolved by a paradoxical compromise: the more restrictive individual decisions are, the more consideration is demonstrated towards conventional principles. Thus, it becomes possible to articulate the truth of asylum, as a valued and scarce good, and the truthfulness of asylum seekers, as subjected to mistrust and inquisition.

Keywords: asylum, truth, anthropology, philosophy, social group, humanitarianism, Geneva Convention, France.