

# Collapsing Discourses in Refugee Protection Policies

## Exploring the Case of Germany's Temporary Humanitarian Admission Programmes

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LAURA SCHEINERT

**Abstract:** Current discourses of migration like to talk in oppositions: Of refugees versus migrants, of humans versus citizens, and of international/transnational rights versus national sovereignty. This contribution uses the case of Germany's Temporary Humanitarian Admission Programmes (THAP), and federal state admission programmes of 2013–2015 to examine how these alleged opposites play out and collapse in a particular policy and practice case. Looking simultaneously at struggles over asylum and struggles over citizenship, it is this contribution's aim to help bring these opposites together. I will make three points: 1) that the admission programmes both draw and blur the economic/migrant-humanitarian/refugee distinction, 2) that citizenship remains a central criterion for defining access to admission, and 3) that the admission programmes perpetuate a layering of statuses and rights that fall short of addressing the questions of political participation and democratic legitimacy.

**Keywords:** refugees, citizenship, humanitarian admission programmes, sovereignty, Syria

In 2013 and 2014, Germany introduced so-called *Temporary Humanitarian Admission Programmes* for Syrian refugees. Until mid-2015, around 35,000 admission visas had been granted and just over 26,000 people reached Germany (SVR 2015). While the admission programmes have been applauded by some for providing legal entry routes into a European country and for serving as a model for other EU-states (e.g. Orchard/Miller 2014), others have criticised that the programmes have not been extended and that they only provided protection to a highly selective group of beneficiaries (e.g. Pro Asyl 2016). Although we are witnessing a moment in time where an all-time high of millions of people are fleeing war, conflict and persecution, and people keep dying in an attempt to reach Europe (UNHCR 2016), the admission programmes have not been extended and EU-wide programmes for humanitarian admission and safe and legal entry seem very far-off. Security responses and efforts to declare ever more countries as so-called *safe countries of origin*, however, are on the

rise, and a deal was struck with Turkey in March 2016 to deter people from reaching EU countries.

At this moment in time, it seems fruitful to examine the German admission programmes from a critical sociological and historical angle. The aim is to offer a reflection on the following questions: In how far do the German admission programmes fit into the tradition of responses to refugee movements since the creation of the legal category ›refugee‹? In how far do discourses around refugee protection crystallise and fragment in the prism of the admission programmes? What kind of a ›refugee‹ do they construct and what implications does this have for asylum policy and democratic legitimacy? Using critical discourse analysis, I examine documents from the admission programmes to tease out the explicit and implicit images they promote to show how discourses of refugee protection and state sovereignty play out in a particular policy and practice case. I will make three points: 1) that the admission programmes both draw and blur the economic/migrant-humanitarian/refugee distinction, 2) that citizenship remains a central criterion for defining access to admission, and 3) that the admission programmes perpetuate a layering of statuses and rights that fall short of addressing the questions of political participation and democratic legitimacy.

The next section gives a brief introduction to the admission programmes and outlines the methodological approach. Subsequently, the argument will be developed in three steps, looking at ›migrants‹ and ›refugees‹, citizenship, and democratic legitimacy. The conclusion synthesises the key points and relates them to the wider questions posed by this contribution.

## **THE TEMPORARY HUMANITARIAN ADMISSION PROGRAMMES**

In addition to the established asylum, visa and family reunification procedures, Germany set up federal and state level admission programmes specifically geared towards Syrian refugees (Scheinert 2016). On the federal level, three so-called *Temporary Humanitarian Admission Programmes* (THAP) were set up through which the government pledged to take up a total of 20,000 Syrians. The explicit admission criteria were: 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).

While the first THAP (30.05.2013) put humanitarian criteria first, the second and third admission regulations (23.12.2013 and 18.07.2014) prioritised those with family ties to Germany. Within the federal states, admission programmes focused exclusively on kinship connections (unbound by quotas): Relatives of Syrian nationals living in Germany could apply for their family members to come to Germany, but had to covenant to cover all costs and finance their stay. The legal basis for the admission programmes are provisions in the Residence Act (*AufenthG* 2016: Article 23, Section 2 for the federal, Article 23, Section 1 for the state programmes), which allow the Federal Ministry of the Interior (BMI) and the federal states to grant admission and residence to citizens of specific countries or other groups of foreigners – without them having to pass through the conventional asylum procedure.

In this contribution, I will use results from my thesis (Scheinert 2015) in which I examined the THAPs' and state programmes' admission regulations and information sheets, as well as the THAPs' accompanying letters to the State Ministries of the Interior. All documents are publicly available via Internet (BMI 2014; Pro Asyl 2016). Viewed as data in their own right, they represent a specific version of (an institutional, bureaucratic) reality, designed for the specific purpose of refugee admission, constructing ›refugee‹ identities (Flick 2014). The analytical approach taken follows Fairclough's (2001) Critical Discourse Analysis. It provides a useful tool for linguistic and social analysis, linking the discursive construction of identities and realities in specific cases to their institutional and societal contexts. It thus allows for working from theoretical concepts to a specific case and back again. For reasons of scope, I focus on the *legal* construction of the ›refugee‹ and its implications, leaving the link to the *lived experiences* of those labelled acknowledged but unexplored.

## ›MIGRANTS‹ AND ›REFUGEES‹

The development of the ›refugee‹ as a legal label and the ›refugee regime‹ as a set of institutions governing the former can be traced back to post-WWII Europe (Malkki 1995; Scalettaris 2007), although international cooperation on ›managing‹ high numbers of people on the move was stepped-up well before then (Nyers 1999). From the start, international refugee movements have been framed as a ›common problem‹ to states, and it has been in the interest of states, wanting to maintain definitional power, to construct the ›refugee‹ (Watson 2006). Core elements of the legal definition as set out in the *Geneva Convention Relating to the Status of Refugees* (GC) are: *Persecution in the country of origin or residence* on grounds of (at least) one of *five reasons* (race, religion, nationality, opinion or group membership) and seeking *pro-*

*tection from persecution*, i.e. asylum, in another country. Other key provisions of the GC are the interdiction of discrimination, of criminalisation for illegal entry and of *non-refoulement*, i.e. of forced return to the country of origin (UNHCR 2010 [1951, 1967]).

Arguably, the GC refugee definition contributed to an arbitrary separation of ›refugee‹ and ›migrant‹ categories, enabling, in consequence, a separation of humanitarian and economic discourses (Long 2013). This distinction and mutual discourse exclusion is consequential for two reasons, especially from the perspective of (West-)ern states: Firstly, it allows for constructing the ›refugee‹ as devoid of any economic aspirations and ignores that refugees have long been using existing migration channels, or that ›economic‹ and ›forced‹ migration often go together. It was the Cold War era that helped draw the migrant-refugee boundary more sharply, as especially the US government was keen to define refugees in political terms and to grant protection to persons fleeing the communist bloc (ibid.). This made for »refugees [...] as a form of moral power«, constructing ›refugee-producing states as morally bad, and receiving states as good« (Watson 2006: 320). Linking ›refugees‹ to humanitarianism, secondly, places the power to determine who counts as refugee and who does not in the hands of states (ibid.). Humanitarian protection is offered by the powerful to the vulnerable and therefore »rests on a profound inequality between haves and have-nots«, which is, arguably, »in harmony with [...] restrictive immigration laws« (Dauvergne 1999: 623). Constructing the ›refugee‹ as vulnerable and in need of help thus enables states to display moral superiority when providing humanitarian protection, while the very voluntariness of humanitarian action allows them to deliberately define the beneficiaries of their benevolence.

German approaches to asylum display both morality motives (by enshrining political asylum in the Basic Law after WWII) and economic elements (by making employment and self-sufficiency requirements for residency). This drawing and overturning of the economic/migrant-humanitarian/refugee distinction is also seen in the admission programmes: On the one hand, the words and grammatical structures implicitly perpetuate classic conceptions of the *vulnerable refugee*. The THAP speaks of ›persons‹ that had to flee war and are in another country – echoing the GC refugee definition. To ›flee‹ (*fliehen*) and to ›be‹ (*sich aufhalten*), however, are the only active verbs used in connection with the refugees. Almost all other grammatical forms construct the refugee as *recipient* (being granted something), as *follower of orders* (having to do something) and as a *passive subject* (having to be nominated for admission). This image of the *humanitarian aid recipient* is subverted by a decisive admission criterion, the so-called ›declarations of commitment‹ (*Verpflichtungserklärung*). Through these declarations, Syrians in Germany have to commit to covering their family mem-

bers' living expenses, including accommodation and health insurance (cf. section 2). This can amount to large sums – admitting refugees thus becomes a matter of affordability.<sup>1</sup> In making family ties and private sponsoring the only admission criteria in the state programmes, this *classed* refugee is foregrounded even more. As it is required of refugees, respectively their families, to *have the economic means to afford protection*, the admission programmes are highly selective. This highlights how movement cannot be analysed without reference to class and capital, how mobility in asylum seeking is both socially stratified and socially stratifying (Ihring 2016). Shifting the task of sponsoring from the state to private persons<sup>2</sup> as well as seeking to admit persons with special qualifications, furthermore clearly adds a utilitarian layer to the refugee conception, both building (through discursively distinguishing ›refugees‹ from ›migrants‹) and collapsing (through introducing economic admission criteria) the refugee-migrant distinction in the interest of the German state.

## CITIZENS AND STATES

The admission programmes are informed by certain conceptions of citizenship and, in turn, promote particular practices of citizenship. This is mirrored in the admission criteria defining access and in the entitlements granted to those admitted. In terms of access, both the federal and state admission programmes grant admission only to persons holding Syrian citizenship. Their legal status, then, is a decisive feature defining the ones eligible for admission. Regarding entitlements, those admitted were granted a two-year (prolongable) residence permit, were allowed to work, and had access to social and health benefits.<sup>3</sup> I argue that the THAPs and state admission programmes simultaneously solidify the classical conception of citizenship as membership-regulating national citizenship (see Benhabib 2007) and dilute this very unitary conception of citizenship. A turn to theory will provide more clarity.

The word citizen originally meant ›member [...] of a city‹ (Turner 2005: 29) but has come to denote membership in a so-called nation-state (ibid.), in a ›bounded community‹ (Benhabib 2007: 47). Nations, a form of such a bounded community, emerged as an idea of modernity in the West (Bhabha 1990), and were postulated to

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1 | Recognising this, some federal states eased restrictions of the declaration of commitment, e.g. by exempting health expenses.

2 | See Maaroufi (2015) for a discussion of the implications of reducing state responsibilities towards refugees.

3 | Note, however, that this access was limited in the state programmes.

merit self-determination, i.e. to have their own government (Hindess 2005a). The idea of sovereign states as it developed in the nineteenth century is thus tightly tied to the idea of the nation (Haddad 2003). National citizenship became the core membership-regulating device of this ›nation-state system‹ that assumed their people as both the authors and subjects of laws, as homogenous, and as being territorially self-sufficient (Benhabib 2004). Characterising, first, the dominant order in Europe, colonialisation as well as post-colonial processes subsequently spread the concept to globally establish ›this national order of things‹ (Malkki 1995: 516). Although so-called ›nation-states‹ prevail, ›nations‹ and ›states‹ can be constructed separately (Hindess 2005b). I will use the notation (*nation-*)*states* to express this.

(Nation-)states have become the very context within which the ›refugee‹ has to be seen. This is because the refugee regime has originally been developed *within* the national order: It is assumed that refugee protection steps in when states fail to protect their citizens' human rights (Malkki 1995), which at the same time makes states the locus for the implementation of those rights. The notion of the ›refugee‹ as resulting from failed protection simultaneously evokes the discursive discomfort of something unwanted, of this ›liminal ›state‹ outside the defined territory of the nation-state, where the displaced are found, [that] is regarded as a threat to the world order« (Chatty 2016: 3). In this vein, ›refugees‹ have come to be perceived as a problem, their movement as a crisis requiring temporally limited but immediate ›control‹ and emergency ›management action‹ (Nyers 1999).

The admission programmes constitute such an example of emergency ›management action‹, which features both the topoi of temporality and territoriality. Indeed, the THAP is a temporally limited action and only few state programmes have seen further extensions. At the same time, according to the THAP regulations, the admission of refugees should last ›for the duration of the conflict and its consequences relevant to the refugees‹, which has the potential of prolonging the intended temporality well into the unforeseeable future. Territory, on the other hand, plays a role both in terms of where applicants need to be<sup>4</sup> and of where they will be admitted to. The discourse of territory is coupled with the discourse of membership: Residence in the German *territory* is granted to Syrian citizens (*state membership*) sojourning in certain countries (*territories*) if their kin (*family membership*) can finance them. Membership and territorial mobility thus become the prime resources in gaining admission.

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4 | Admission could be granted to Syrians sojourning in Lebanon, Jordan or Syria (THAP1); Syria, its neighbouring countries or Egypt (THAP2); Syria, its neighbouring countries, Egypt or Libya (THAP3).

Finally, the admission programmes can also be seen to be in the interest of (inter-) national security when analysed through the lens of ›managing‹ and controlling the ›security threat‹ the refugee is constructed to pose (Haddad 2003). The admission criteria allow for a careful selection of persons to be admitted, and a security screening is introduced (consisting of security checks and entry debarment conditions). Not only do ›security concerns‹ limit the places that are offered for admission, they have also proliferated EU-wide. Abolishing internal border controls for the benefit of the freedom of movement of workers, goods, services, and capital *within* the EU, the controls of *external* borders and treatment of so-called *third-country nationals*, i.e. non-EU citizens, became stricter during the 1990s and 2000s (Drywood 2014). The year 2015, then, has seen the construction of new border fences, the launching of initiatives to deter »migrant traffickers' boats« (Mahony/Nielsen 2015) and the EU-Turkey deal (Nielsen/Maurice 2016) – all aimed at keeping migrating people out, showing how security measures that allegedly protect states are being stepped up, while protection for refugees decreases (Watson 2006).

The prominent featuring of the discourses of territory, temporality, and membership in the admission programmes implies an assertion of national sovereignty by the German state, and this sovereign voluntarily grants protection to nationals of a war-torn country. So far, the citizen-state-system seems to go unchallenged. Or does it?

## **POLITICAL PARTICIPATION AND DEMOCRATIC LEGITIMACY**

The previous sections suggested that the German state asserts its sovereignty through the voluntary commitment to humanitarian admission, both drawing and blurring the economic/migrant-humanitarian/refugee distinction and corroborating the citizenship-system. I now set out to show how the *consequences* of the construction of the admission programmes contribute to undermining the very sovereignty they sought to affirm.

As shown above, those admitted were granted a residence permit, were allowed to work, and incorporated into the social benefits system. Apart from the privileges of political participation and unlimited residency, then, they became basically legally coequal to German nationals. The admission programmes made for the label *Kontingentsflüchtling* [quota refugee], which combines the popular construct of the ›refugee‹ as someone fleeing and needing protection with the narrow legal criteria that lead to guarantees similar to yet less favourable than the ones granted under GC status (e.g. imposed limits to choosing a place of residence in the state programmes, no

*non-refoulement*). Paraphrasing Zetter (2007), the admission programmes thus contribute to constructing another label, but fewer refugees. So, not only does the »quota refugee« occupy a lower position in the *hierarchy of refugee statuses* (ibid.), this label also perpetuates a *hierarchy of citizenship statuses* within Germany (see Pettigrew 1998).

This warrants a look at wider questions of citizenship, participation, and belonging. Benhabib (2002) argues that citizenship as a sociological category or social practice – entailing political membership privileges, collective identity, social rights and benefits entitlements as well as the classical (T.H. Marshall's) political, social and civil rights – has become disaggregated. Foreigners are incorporated to varying degrees into the various categories of citizenship, with political membership usually being the most access-restricted (Benhabib 1999). This would, problematically, create groups of people »participating in global markets but lacking a *demos*« (Benhabib 2004: 23, emphasis in original). The unbundling of the originally unitary concept of citizenship into its various components thus entails a corrosion of state sovereignty (Benhabib 2007) – when state sovereignty is understood as an expression of the political (and democratic) self-determination of a bounded community (cf. section 4). I argue that this political legitimacy is called into question by current responses to asylum seeking, like the German admission programmes, as they effect the persisting political exclusion of (long-term) residents. In the same vein, Benhabib (2004) argues that political membership, *democratic attachments*, remain crucial for democratic sovereignty.

The THAPs and state admission programmes exemplify how this situation of legal residents without political participation rights is arrived at: On the one hand, the state with its power to define legal statuses and rights *disaggregates* citizenship by incorporating those admitted into the entitlement component (granting access to certain social rights and benefits). On the other hand, the state *adheres* to the concept of unitary national citizenship with regard to political privilege (in the double sense of barring non-citizens from political participation and in making Syrian citizenship an essential criterion for accessing protection). We are thus left with the conundrum of an admission programme, which, through its very construction, in the short-term, leads to a corroboration of state sovereignty, and, in the long-term, fosters the corrosion of political legitimacy, and thus sovereignty itself.



## CONCLUSION

In this contribution, I have argued that the defining criteria for admission in the German Temporary Humanitarian Admission Programmes for Syrian refugees both build and collapse the economic/migrant-humanitarian/refugee distinction and that the voluntary commitment to humanitarian protection enables the German state to simultaneously reference the international refugee regime, and to design a restrictive admission programme, corroborating the citizen-state-system. The admission programmes thus fit into the tradition of past and current responses to refugee movements: On the one hand, mirroring traditional responses to refugees since the creation of this legal label, they constitute an emergency action, aimed at temporarily ›managing‹ refugee migration. On the other hand, they construct the so-called ›quota refugee‹, trending the creation of »more labels, [but] fewer refugees« (Zetter 2007). This shows that, while the Geneva Convention might provide one dominant legal definition of the ›refugee‹, policy implementations can create multiple empirical ›refugee‹ labels, and thus a multifaceted theoretical approach to the construct is needed. In this vein, drawing on Zetter's idea that »forced migrants« should be conceptualised as carrying »multiple labels and layers of identity« (ibid.: 183), I advance the idea of a *layer concept*, conceiving of refugees, and indeed all humans, as persons holding several legal statuses (see Yuval-Davis 1999 for a similar approach with regard to citizenship). These legal statuses form interdependent layers of privilege, entitlements, and exclusion related to state membership, and residence rights. Class, capital, and other forms of social stratification can be both conditional to acquiring an additional status as well as affected by the status conferred. In the case of the admission programmes, e.g., the ›quota refugee‹ status is layered on top of the Syrian citizenship status (remember that Syrian citizenship is a central criterion for admission, as are sufficient economic means), and this top layer opens up German citizenship of sorts (residence, incorporation into the labour market and the benefits system), while the ground layer shuts the door on political membership.

The layer concept thus helps to understand how one and the same person can come to be constructed as ›citizen‹, ›refugee‹, ›migrant‹, and/or ›resident‹: It helps to analyse how different legal labels can be foregrounded in different circumstances; it helps to represent people's positions in hierarchies of refugee and citizenship statuses and to deduct people's political rights from this positioning. I have highlighted the situation of residents without political participation rights as problematic, since I argue that sovereign communities need to be legitimised by democratic attachments (Benhabib 2007). Current policy measures around migration and asylum seeking – the THAPs, the declaring of so-called *safe countries of origin*, the EU-Turkey deal, the further se-

curitisation of Europe's borders, potential consequences of the votes for ›Brexit‹, and Trump – attempt to assert national sovereignty and maintain an imagined status quo of a controllable, homogeneous, national community. Yet, they will fail to maintain their democratic legitimacy in the long-run if they continue to ignore the political incorporation needs of the ›other‹ (be they framed as ›outsider‹, ›refugee‹, or ›migrant‹): Short-term corroboration of state sovereignty can foster long-term corrosion of sovereignty due to deficient political legitimacy.

How to tackle this tension? Thinking *within* the national order, I call for designing admission programmes and other legal routes of entry that reconsider the ›emergency‹ approach to and find a new discourse of ›refugees‹ beyond the short-termist ›crisis‹ – offering equal and sustainable protection to ›refugees‹ EU-wide as well as granting political participation rights to those prospective (long-term) residents. Thinking *beyond* the national order, I call for envisioning open and constantly reshape-able communities that embrace heterogeneity and inclusion – and adhere to the discourse of territories as an auxiliary means for delimiting democratic attachments. This would lead to a reduction in layers of legal statuses to the inalienable one that guarantees also political participation but is transferable as people move, without discrimination, through different communities. Using particular policy and practice cases to examine how these re-conceptualisations play out and linking them back to wider developments and policy responses to people on the move, will prove a fruitful way forward.

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Umkämpfte Bewegungen nach  
und durch EUropa

[transcript]