Desirable Victims

Systems of Refugee Selection in Swedish and Canadian Migration Governing

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To my family

Abstract

This thesis explores how states try to govern refugee migration by classifying and ordering its subjects. It argues that a unifying construct of state migration control is selection: to maintain a system that offers protection to wanted people and keeps out unwanted people. This in turn requires an administrative machinery which efficiently renders people as cases. While the Refugee Convention provides a baseline definition of what a refugee is, there is widespread variation in its application across countries. In recent years, there has been a growing interest in classification in migration studies, but the dominant theories on migration control tend to assume that ”refugee” is a neutral construct. This study challenges that assumption by seeing refugeehood as a status which comes about through its regulation. Its aim is to contribute to theoretical development on how states make refugees governable through classification and contribute to a better understanding of how people processing differ across countries.

This is conducted through a comparative case study of Sweden and Canada. The thesis builds a framework from historical institutionalist theory and writings on government classification to study classification systems as institutions. The data consists of documentary and archival material left by policymakers, officials, and administrative courts. The study is divided into two parts. Part I, set in the mid-1960’s to the early 1990’s, details the historical origins and institutionalization of a new type of migration governing, which centered on the idea of actively molding migration through making its subjects administratively legible. Part II studies the judicialization of migration control by unpacking the contemporary application of these control systems in administrative courts. This part questions the widely held hypothesis that courts protect migrant rights. Here, it is compared how Canadian and Swedish courts assess individuals from Afghanistan during the 2000’s, where issues such as age and nationality are made governable through law.

The study makes contributions to both migration studies and public administration and policy. The results show how similar regulatory frameworks for processing refugees in Sweden and Canada were animated by enduring differences in immigration tradition, welfare models and administrative-legal traditions. This in turn gave rise to different moral vocabularies of what deserving refugee is. The result also show how enduring legal traditions lead to judicialization having different implications in different contexts. The conclusions point to how the sorting of people for purposes of governing over them has increasingly moved from a means to an end in itself. This implies a shift from an ideal of control as the flexible choosing of deserving victims, to one of control as the precise sorting of people into rigid legal frameworks. The concluding discussion outlines future avenues of research into comparative people processing.

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Högsbohöjd, Gothenburg, December 2023
Andreas Asplén Lundstedt

I will try to express myself precisely. We are *on* the border. That means we are between two borders. No one knows exactly where the real border is right now, for it hasn't been drawn yet. We are encircled inside and by a border, wrapped inside a border as if by a rope. Call it a noose if you will. Do you understand?

Eyvind Johnson, *Lägg undan solen*

1
The Systems of Selection

This study explores the systems of selection at the heart of migration governance, investigating how states try to govern refugee migration by classifying and ordering its subjects. In recent decades, the control of national borders has become one of the most heated issues in politics, with asylum seekers at its epicenter (Brown 2010, Jones 2016, Betts & Collier 2017, Eule et al 2018). Reforms aimed at effectively managing migration arrive in quick succession across EU and North America, with border control playing center stage in elections and sprawling regimes of migration agencies, police and courts engaged in implementing policies. A key argument in this study is that a unifying construct of all aspects of state migration control is *selection*: how to establish and enforce a system that offers protection to the wanted and keeps out the unwanted, maintaining an effective separation between the deserving and the undeserving. This requires rendering people as cases – to assess actual people seeking protection against administrative identities used by states for processing asylum. For someone seeking shelter, to be declared a "refugee" means to be fitted and measured against abstract legal categories (Zetter 2007).

This process is anything but simple. The refugee is one of the most contested figures in contemporary politics, and from the perspective of state agencies, it's one of the most elusive. Assessing protection is rife with uncertainty: aimed at judging future risks, often characterized by a lack of documentary evidence, with extremely high potential danger (Goodwin-Gill & McAdam 2007:ch1). It requires the complexity and nuances of individual life stories to be assessed against administrative and legal standards. For the asylum seeker, this is another step in the migratory process, an administrative journey where they are forced to navigate vagaries of opaque rules and obscure procedures under great stress (Anderson 2013). For policymakers and officials, it can be understood as endeavor in making refugees governable: an attempt to impose order and regularity on the uncertainty represented by people on the move.

It used to be that the gate to protection had one door. The 1951 Refugee Convention, ratified by almost 150 countries, provided the post-War definition

of what a refugee is. Drafted on classically liberal ideals, it defined refugees as individuals suffering political persecution and forced to move. This implied a distinction from migrants, who were seen as moving voluntarily for collective and economic reasons (Gatrell 2013, Bakewell 2008, 2021). The Convention was a product of its time: its drafters' understanding of refugeehood was heavily influenced by the Nazi persecution of Jews, the circumstances of post-War Europe, and realpolitik considerations in the emerging Cold War (Goodwin-Gill 2008, Gatrell 2017).

In contrast to the past, however, today there are many doors to protection. Even in the abstract world of legal definitions, refugee isn't a unified category anymore. Like a river fracturing into a delta, it has been sub-divided in different directions. Reviewing EU asylum statistics, for example, we find people separated into refugee status, subsidiary protection, and humanitarian reasons (EASO 2021). Each has many subdivisions – to name a few, unaccompanied minors, or people persecuted for reasons of sexuality, ethnicity, or political beliefs. People are separated based on nationalities, how their application was filed, whether they are first-time applicants, and more. States use a range of bespoke categories for sorting applicants into fast-tracks to speed up processing (Ghezelbash 2021). This categorical fetishism (Crawley & Skleparis 2018) echoes the super-diversity popularly attributed to contemporary migration, with the movement of more and new groups of people across borders adding up to rich mosaics of immigrants; not in the least because government statuses keep proliferating (Vertovec 2007).

Not only do the categories of refugees seem to increase, but the boundaries they draw between people matter more. They set the trajectory of lives, establishing a framework around people's stay which regulates the right to work, social benefits, and access to citizenship. According to Collyer & de Haas (2012:471),

> As recently as the 1960's, state categorisations of migrants had relatively limited sociological impact on the migrants themselves. Migrants without the proper documents were largely able to travel in the same ways, apply for the same jobs and live in the same areas as their co-nationals who had obtained visas and work permits. The situation is now rather different… The ways in which migrants are assessed by the state (asylum seeker, refugee, economic migrant, family migrant, irregular migrant, victim of trafficking), often after a short official interview, will affect issues of resource distribution, residential location, labor rights and ultimately for the most serious questions such as refugee status determination, life or death.

The consequential nature of these boundaries is expressed in the dizzying array of physical and administrative barriers used by states to regulate human

movement (Brochmann & Hammar 1999, Guiraudon & Freeman 2001). Often working through methods of remote control, policy instruments such as biometric identification registries, visa requirements and safe country declarations aim to lock people in place and prevent them from seeking asylum (FitzGerald 2019). Contemporary migration policy is heavily focused on enforcement (Hollifield et al 2022), and Western states spend far more resources on the bureaucracies that process asylum seekers than they do on international refugee assistance (Betts & Collier 2017). All of this can be understood as attempts to sort individuals into groups and maintain boundaries between them. Antje Ellermann (2020:2465) argues that

> Immigration and citizenship policy has always been an exercise in boundary drawing. By regulating access to territory and membership in a world populated by nation-states, immigration policy remains one of the most consequential tools for the demarcation of social inclusion and exclusion.

This harks back to a fundamental aspect of the nation state: that it is an expression of what Max Weber called social closure, a community built on a distinction between insiders and outsiders. But more than a conceptual or philosophical issue, in the last decades, the systems of selection have become the stuff of policymaking and massive bureaucracies. They amount to the administrative and physical gates through which people are granted entry into a nation's social closure – the categories can be seen as carriers and embodiments of the social closure they aim to guard.

While the importance of selection has increased, who is deemed fitting for selection differs across states. The Refugee Convention, while international in origin, has always in effect been defined by state-level interpretations. The Convention itself provides no rules on how to assess refugeehood, which is left entirely up to states (Goodwin-Gill & McAdam 2007:ch2). And interpretations have varied over time and space: what constitutes a refugee in one country, differs from another. (Neumayer 2005) In the days of the Cold War, the East-West divide often guided interpretation of whether someone seeking protection was a terrorist or a freedom fighter. Today, the differences are rampant. For example, in the EU in 2021, the proportion of Afghan asylum seekers granted protection ranged from 15 % in some countries to almost 100 % in others (EASO 2021).

The classifying of subjects has become the subject of a growing literature in the field of migration studies (Zetter 2007, Gupte & Mehta 2007, Long 2013, FitzGerald & Arar 2018, Hamlin 2021). However, in dominant theories of migration control, the issue is largely neglected, with categories treated "as if they

simply exist, out there, as empty vessels into which people can be placed in some neutral ordering process" (Crawley & Skleparis 2018:49).

Neutral categories: A dominant view

An extensive literature has developed since the 1990's with the purpose of explaining how states try control migration and why they are seen as failing. The explanatory focus within this literature is generally on politics as a competition of organized interests (e.g., Joppke 1998, Joppke & Guiraudon 2001, Hollifield 2004, 2008, Czaika & de Haas 2013, Castles et al 2014, Hollifield et al 2022). Douglas Massey (1999:307) sums up this view:

> Immigration policy is the outcome of a political process through which competing interests interact within bureaucratic, legislative, judicial, and public arenas to construct and implement policies that encourage, discourage, or otherwise regulate the flow of immigrants.

A famous example is Freeman's (1995) theory that interests with concentrated benefits, such as business lobbies favoring access to cheap labor, tend to triumph over diffuse opposition, such as large but unorganized voter opposition to wage dumping. Migration policy essentially is the outcome of the balance of power between such actors and the efficiency of the strategies they utilize (Guiraudon 2000, Guiraudon & Lahav 2000).

Such approaches have been used to explain James Hollifield's (2004) "control gap" between the declared ambitions of state migration control and its seemingly faltering results. Observations that state control ambitions rarely seem to be fulfilled have led to discussions on whether states are losing control over human movement due to different forms of globalization (Massey 1999, Hollifield et al 2022). Specifically, human rights are often seen as an important counterweight to the power of nation states (Benhabib 2004). In searching for answers why states accept seemingly "unwanted migrants", i.e., refugees, the inability to restrict immigration is explained by a conflict: between security-oriented and restrictive actors such as justice ministries and the police, on the one hand, and rights-oriented ones such as courts, on the other (Joppke 1998). An independent judiciary, in this view, works as a constraint on the discretion of restrictive actors, and the increased prominence of courts, and the law more generally, is assumed to equal more rights for immigrants (Joppke 1998, Hollifield et al 2022):

> A constraint on the restriction of immigration is the existence in most representative democracies of an independent judiciary that is shielded from the political pressures to which elected politicians must respond. (Massey 1999:314)

In this mode of analysis, refugees, labor migrants and other classes are essentially seen as objectively existing phenomena. Rather than viewing the ability to classify and order as central elements in the state's capacity to control, categories are seen as neutral, taken for granted, and assumed to mirror groups of people existing in the world (Bakewell 2008, Crawley & Skleparis 2018).

The production of subjects: An alternative

Treating migration policy primarily as a conflict between organized interests means to overlook a fundamental aspect of migration control: that the regulation of human movement has come to center on the separation of people into classes. Even though not characterized as such, issues of classification are at the heart of public debates about asylum ("are these actually genuine refugees?") as well as policy development, with huge bureaucracies built up to interpret and enforce administrative and legal categories. Classifying subjects is central to control – as Roger Zetter (2007:184) has argued, "bureaucracies need labels to identify categories of clients in order to implement and manage policies designated to them." This is necessary for borders to function as filters, "sorting out the desirable from the undesirable, the genuine from the bogus, the legal from the illegal, and permitting only the deserving to enter state territory." (Anderson 2013:2)

The tacit acceptance of state-designed classifications as neutral in much of migration research relies on what Hein (1993) has described as a realist conception: that the categories used to govern migration are seen as reflecting real social groups. A burgeoning literature has proposed a different set of assumptions, often under the guise of labelling (Zetter 1991, 2007, Sajjad 2018, Robertson 2019). Bridget Anderson, for example, writes how categories can be analyzed as "producing rather than reflecting status, as creating specific types of social, political, and economic relations." The classification work of migration concerns "judgments about who is needed for the economy, who counts as skilled, what is and isn't work, what is a good marriage, who is suitable for citizenship" (Anderson 2013:2) Here, refugees are seen as constituted through policymaking (Soguk 1999, Nyers 2006). In Hein's (1993) terminology, this amounts to a nominalist view, where categories used by states are seen as "social constructions that, in turn, shape the subjects of that policy into sociologically relevant categories" (Elrick & Lightman 2016:353). Rather than see state classifications as neutral, this implies to see migration control as producing subjects, what Ian Hacking (1986, 2007) has called the state's making up of people. In other words, the categories don't correspond to that to which they

refer but constitute it (Jenkins 2008:ch9). Zetter (2007:172) argues that this status production derives from concerns with controlling migration - that policymakers have fractured the original refugee definition, ”driven by a need to manage globalized processes and patterns of migration and forced migration in particular.” A classification system, then, should be seen an exercise in power, an overt attempt at ordering the world (Bowker & Star 1999).

The aim of the study

There is still much we don’t know about the systems of selection. Castles et al (2014:ch2) have discussed how migration studies can be conceptualized on the micro, meso and macro levels. In the evolving studies on labelling and classification, these tend to zoom in either on the micro, such as the development of specific categories or the effects on those categorized (Schuster 2011, Wettergren & Wikström 2014, Crawley & Skleparis 2018, Wernesjö 2020). This concerns subjects such as how refugees navigate barriers to accessing protection and how the complexities of human experience are poorly captured by government categories. Such studies tend to be more focused on the refugees and less on policymaking and bureaucracy. Alternatively, the focus is on the macro, such as discursive constructs of nationhood and the ideas which animate societies to erect boundaries to outsiders (Soguk 1999, Torpey 2000, Nyers 2006), or in the autonomous migration literature, which explores the political agency of migrants and contemporary citizenship, often on a conceptual level (Papadopoulos & Tsianos 2013, Nyers 2015)

What is largely missing from these accounts, however, is the meso level. This is crucial, because it is the one of state capacity, the authoritative level of institutional design and implementation of the systems – the nexus of those who engage in making up people. We lack systematic, empirically grounded accounts of how systems of selection originated, how they developed over time, as well as comparative works on how they differ across countries. There is an abundance of studies that point to refugeehood being interpreted in different ways across time and space, depending on notions of who deserves protection or not (Goodwin-Gil & McAdam 2007, Feldman 2007, Gatrell 2013, FitzGerald & Arar 2018). But there is less of a systematic understanding of how and why. As Erving Goffman observed in his work on stigma, notions of normality and deviance are culturally contingent. A society “establishes the means of categorizing persons and the complement of attributes felt to be ordinary and natural for members of each these categories” (Goffman 1963/2022:1). So, too, for refugees – so how does it differ across societies?

Related to the neglect of the meso level, the classification of migrants is often studied as specific to the migration field, rather than as an instance of larger phenomena that pervade public administration and management. And yet, this new field of studies in migration are important for policy and administration, as they center on an issue which has been described as the essence of politics: the distribution of benefits and burdens (Schneider & Ingram 1997). In other words, to approach the systems of selection from a broader perspective can enrich our understanding of migration policy, while the specifics of migration can contribute to broader debates in public administration.

The aim of this study is to contribute to theoretical development on how states make refugees governable through classification systems. This will be achieved through a comparative study of the systems of selection in Swedish and Canadian migration policy, exploring how refugees have varied over time and space. Through a study of issues which are conceptually developed but empirically understudied, the study will also contribute by exploring the general dynamics of the how states categorize and classify people for purposes of governing over them.

Target populations and state capacity

> To recognize a class of things is to polarize and to exclude (Douglas 1986:60)

Outside the migration literature, the classification of subjects is often seen as foundational to the exercise of state authority. In the writings on public policy, administration and management, migration is hardly the only area concerned with "people processing" (Prottas 1979), about sorting people into categories for the purposes of realizing political goals. Robert Merton (1940:561) long ago asserted that the reliance on generalized rules in modern bureaucracy "requires the constant use of categorization, whereby individual problems and cases are classified on the basis of designated criteria and are treated accordingly." Policymaking, according to Deborah Stone (2012:381), is "centrally about classification and differentiation, about how we do and should categorize in a world where categories are not given." To realize policies requires target populations, according to Schneider & Ingram (1993, 1997): for the purposes of designing and implementing policies, state agencies require categories of people. Through such authoritative classifications, subjects are rendered governable: individuals with complex, nuanced life trajectories are fitted into administrative shorthand, a key component in modern bureaucracy (Weber 1922/1987:ch2).

Beyond the policy literature, a range of sociological writings on the development of the modern nation state and the various forms of power and control associated with it further illuminate the importance of classificatory practices. Brubaker & Cooper (2004:42) highlight how classifying people is central to state power, seeing how "formalised, codified, objectified systems of categorisation developed by powerful, authoritative institutions" are the means by which the state exerts symbolic power to "name, to identify, to categorize, to state what is what and who is who". To be able to externally impose categories onto people is here seen as a vital element of the modern state (Brubaker & Cooper 2004, Jenkins 2008). Overtaking the ability to authoritatively describe the world, more generally, is often portrayed as an integral part of the historical rise of the state as a dominant entity in social life (Giddens 1987, Hacking 1990, 2007, Scott 1998, Brambor et al 2020). Over the course of the 18th and 19th centuries, classificatory systems such as population registries were established at the deepest recesses of state power, ones which embody a symbolic and informational capital to, in Bourdieu's (1998:ch3) terms, describe and therefore order the world. They make individuals and populations governable by conceptualizing them as subjects of rule (Caplan & Torpey 2001). Classically employed for purposes of taxation and warfare, population registries allow officials to make people legible to their rulers, in the metaphor employed by James C. Scott (1998). Such legibility serves the purposes imposing order, simplifying the ambiguity of people and things into administrative categories. It implies a specific vision and imagery of governing:

> Certain forms of knowledge and control require a narrowing of vision. The great advantage of such tunnel vision is that it brings into sharp focus certain limited aspects of an otherwise far more complex and unwieldy reality. This very simplification, in turn, makes the phenomenon at the centre of the field of vision more legible and hence more susceptible to careful measurement and calculation. Combined with similar observations, an overall, aggregate, synoptic view of a selective reality is achieved, making possible a high degree of schematic knowledge, control, and manipulation. (Scott 1998:11)

Bridging the literature to public policy, classification systems can be understood as policy instruments in the sense defined by Lascoumes & Le Gales (2007:1), allowing us to reveal

> a (fairly explicit) theorization of the relationship between the governing and the governed: every instrument constitutes a condensed form of knowledge about social control and the ways of exercising it.

What the study of migration can bring to the literature on target population and state classification is an empirical examination of how states reproduce and

maintain such populations over time. This has been singled out as key to the exercise of state power (Schneider & Ingram 1997, Capoccia 2016), and can be seen as an instance of the basic capacity of the state:

> At the most general level, the term "state capacity" refers to the ability of a state to produce the outcomes political leaders attempt to achieve, whether to "make and enforce" rules, to "carry out" policies, or to "control" populations and territories. (Brambor et al 2020:177)

To maintain target populations can be understood as the ability of the state to reproduce its vision of the world. Migration is an apt case for studying such maintenance because it represents a challenge to the nation state, a continuous "matter of contestation and negotiation" (Eule et al 2018:5) – as Sayad (2004:279) writes, migration is one of the best ways of exploring the state, since it "constitutes the limit of what constitutes the national state. Immigration is the limit that reveals what it is intrinsically, or its basic truth."

The problem of enforcing target populations, in a more general sense, is rooted in the fact that people are moving targets who react to the regulations imposed upon them (Hacking 2007). The state classification of people has an interactive nature, a dynamic between the classified and the classifiers, and this is an area in which migration can contribute to the broader literature in policy and administration. There are frequent accounts in the migration literature of how state control forces migrants into administrative fictions which poorly capture their lived experience (Schuster 2011, Robertson 2019). One of the most common is the separation of political and economic reasons for movement, while actual people often flee both poverty and violence (Crawley & Skleparis 2018). The challenge of effectively rendering people as cases are endemic to maintaining target populations, and Deborah Stone explains how boundaries between state categories are "border wars waiting to happen":

> Each mode of social regulation draws lines around what people may and may not do and how they may or may not treat each other. But these boundaries are constantly contested, partly because they are ambiguous and don't settle conflicts, and partly because they allocate benefits and burdens to the people on either side. (Stone 2012:15)

A comparative case study in two parts

To explore how refugees are made governable through classification, this study employs an institutional perspective, as opposed to the interest-oriented one which dominates migration control research. Rather than neutral or peripheral, this means to approach classification systems as enduring rule systems

which influence and mold human behavior (Scott 2014), and which sit at the heart of migration control.

The study is focused on two issues that are central to understand state classification systems: the origin and historical development of systems of selection, and shifts in the distribution of authority among actors within them. First, historical institutionalist literature holds that institutional arrangements are substantially impacted by the context which they arise, and it offers concepts for exploring classification systems as historically contingent artifacts (Thelen 1999, Streeck & Thelen 2005). For this purpose, the study explores how state classification systems for migrants originated and developed over time. Second, the balance of power among actors is often singled out as being of key importance in institutional development (Streeck & Thelen 2005, Mahoney & Thelen 2010). For this reason, the study explores the ascendant role of migration courts, as they have become increasingly influential in many countries (Hamlin 2014, Johannesson 2017, Dauvergne 2021). Together, the parts generate knowledge within and beyond the field of migration: on how state systems for producing administrative status originate and develop, and on how they are undergoing processes of judicialization.

For purposes of contributing to theory development, the study is designed as comparative case study of Canada and Sweden. A central insight in writings on classification systems is that they are locally rooted phenomena, substantially informed by the time and place from which they grow out of (Douglas 1986, Bowker & Star 1999). It's well established that interpretations of refugeehood differ across countries and that people from the same nationality or group are considered refugees in one country and not another (Neumayer 2005). This means that in-depth contrasting design is well-suited to explore them. Contrasting across contexts allows through in-depth case studies is suitable for middle-ranging theory-building (George & Bennett 2005), seeking to understand how refugees have been administratively imagined and the development of regulatory systems for upholding this imagination.

Sweden and Canada are two countries which offer an intriguing contrast. Since 1980, around one million refugees have passed through the classification systems of each country. From afar, they are frequently portrayed as internationally leading countries in refugee protection, while at home, their governments are frequently criticized for violating human rights (Pratt 2005, Eastmond 2011). Like all states, they aim to exercise selective control over who enters. In both countries, the judiciary has come to play an increasingly important role in this control. And today, they share intricate, complex infrastructures of migrant classification, expansive systems of selection for the purpose of managing migration.

Yet, Canada and Sweden are very different when it comes to migration. Canada is an archetypical country of immigration (Hollifield et al 2022), a colonial project where immigration has been utilized for nation-building purposes since the 19th century (Macklin 2017). Historically, Canadian immigration policy has often been driven by economically liberal ideas and a desire to populate the country. For a long time, the consensus among policy elites has been that immigration is key to economic growth, and aside from being economically beneficial, immigration is frequently portrayed as a cornerstone of Canadian national identity (Kelley & Trebilcock 2010). Sweden, by contrast, is an example of a more recent immigrant country, experiencing substantial emigration a century ago, but having sizable immigration for decades. In the post-War period, Swedish immigration policy has been informed by the dominance of social democratic ideas, with aims to limits on immigration in line with the capacity of the country's welfare programs (Hammar 1999, Brochmann 2014). Moreover, immigration generally doesn't play a central role in narratives of Swedish national identity.

Finally, in terms of legal culture, the countries greatly differ: Canada is a common law country, where courts function in a checks and balances perspective, seen as guarding individual rights against state infringement (Bogdan 2013). In Sweden's Nordic version of civil law, by contrast, the administrative law is often seen as part of the state machinery, fulfilling a role in implementing policy (Wockelberg & Ahlbäck Öberg 2015, Carlson 2019).

As a work in comparative public administration (Peters 2021), this study contributes to an understanding of how different administrative traditions influences similar governing structures in different nations. It's common for migration studies to contain comparisons within the country of immigration or immigration country typology. Contrasting across these ideal types, however, offers valuable nuance in the exploration of the systems of selection that these countries share. The study is divided into two parts, each guided by a research question.

Part I: Roots of the refugee

The first part explores how the new systems for governing immigration were devised in Sweden and Canada, looking at variation in classification systems across countries. The research question guiding this part is:

• How did migration classification systems become institutionalized in Sweden and Canada?

Here, the focus is on how categories of immigrants were imagined and made up (Hacking 1986) for administrative purposes, simplified into

administratively legible categories for the purposes of governing migration. This part explores the historical origins of contemporary legal-administrative ways of categorizing refugees and how these systems of ordering have developed over time. This means to trace how border control moved from being a conceptually important feature of states to also becoming a major exercise of state bureaucracy – of how governing refugeehood developed from a small, ad hoc issue to a core operation of migration management. The categorizers in this part are actors in what is seen as the migration regimes in both countries (Eule et al 2018): leading policymakers in government and senior officials. They can be seen as engaged in what Herbert Simon (1969:111) defined as design: ”To devise courses of action aimed at changing existing situations into preferred ones”. In doing so, they established new institutional arrangements for purposes of migration control.

The historical exploration of this section differs from the interest-oriented research of much migration policy research, as well as from neoinstitutional approaches to migration policy (Boswell 2007). There is, however, no reason to assume that migration is exempt from the patterns of inertia and institutional stability within Western politics observed in other policy fields (Pierson 2004, Streeck & Thelen 2005, Mahoney & Thelen 2010). Phenomena such as path dependency are sometimes highlighted in the migration field (Betts & Collier 2017, FitzGerald 2019), but stated rather than explored. Historical institutionalist approaches are rare in migration studies, but they offer useful tools for exploring both how policies originate in time and evolve over time. In the interest-oriented tradition, conflict between interests is assumed to drive policy forward. And yet, the foundations of modern migration control in Canada and Sweden were laid in periods of depoliticization (Hammar 1999, Kelley & Trebilcock 2010). This study sets out to explore how.

The time frame begins in the mid-1960’s and ends in the early 1990’s, a period witness to the creation and stabilization of modern migration regimes. Sweden and Canada both saw paradigmatic shifts to immigration policy in the 1960’s, with refugees rising to prominence in the 1970’s, to border control and asylum being main policy issues since the 1980’s (Hammar 1999, Kelley & Trebilcock 2010, Borevi 2012). Essentially, both ”migration” and ”control” were being reconceptualized during this period, with shifting views on the objective of immigration control and role of immigrants in society. Rather than looking at how a specific group or category is shaped, the study explores the growth of systems of selection as such: how they were imagined, designed and developed over time. Here, historical institutionalist theory offers valuable concepts for understanding how rule systems originate, persist or change (Thelen 1999, Streeck & Thelen 2005). The study looks at how classification

systems arose out of historically contingent circumstances and in what way they potentially stabilized or developed over time. This means to view classification systems as rooted in time, where early designs can have lasting impacts over time (Pierson 2004, Scott 2014). It is argued in the study that while both Sweden and Canada underwent momentous societal changes in the 30-year-period studied here, these changes only underscore the institutional stability in the systems of selection, which by the early 1990's had stabilized to the point that they set the parameters of contemporary migration control.

Part II: Boundary management in administrative courts

The second part focuses on an ascendant actor within the migration regime, exploring how migration courts apply the systems of selection designed in Part I. Originally, courts didn't form part of the study's design. But as the study of what became Part I progressed, it became evident that courts and administrative law are increasingly important in migration control. It is within the realm of courts and in the form of legal procedures, increasingly, that migrants are made governable. This redistribution of authority within the migration regime is itself a result of the development explored in Part I, contributing to an increasing judicialization of politics. Because of this, the second part of the study follows the procedures of classification as they moved into the hands of new actors, contributing to the study of administrative courts.

Both Sweden and Canada have established specific tribunals and migration courts since the 1990's, but the increasing role of law in migration governing is not specific these countries (Goodwin-Gill & McAdam 2007, Eule et al 2018, Dauvergne 2021). Courts, increasingly, have been assigned the role of authoritatively dealing with the uncertainty inherent in asylum processing, taking over tasks previously conducted by governments or immigration agencies (Hamlin 2014, Johannesson 2017). This means that they can be seen as managing the boundaries between different classes of refugees. To recapitulate, the dominant assumption in dominant theories on migration control is that courts protect migrant rights. (Joppke 1998, Guiraudon 2000) There is an assumption that courts matter, but much less research on how, especially in a comparative aspect. From the literature, we can derive a hypothesis of convergence across states: as courts and the law play an increasing role in migration policy, this should contribute to protecting migrants against discretionary authority by state agencies.

However, outside the migration literature, states are frequently sorted into different legal traditions, with common and civil law countries seen as having enduring differences in legal culture (Bogdan 2013). Such legal systems can be seen as enduring rule systems in the historical institutionalist sense, molding

the behavior and expectations of actors in migration policy. In Canada's common law tradition, the ideal of protecting individual rights against state infringement is stronger, whereas in the Nordic family of the civil law tradition, administrative law is often seen as part of implementing state policy (Bogdan 2013, Wockelberg & Ahlbäck Öberg 2015). Aiming to study such differences, the research question guiding the second part is:

• How has the existence of different legal traditions affected the role of courts in Swedish and Canadian migration regimes?

This part proceeds from the notion that law is indeterminate: it can never be as precisely elaborated as to apply to all cases, but develops through elaboration in specific cases. (Eule et al 2018) To conceptualize the difference between Canadian and Swedish legal systems, the study looks specifically at their different traditions of *legal interpretation*. Here, the study moves from design to application, zooming in on the assessment of individual cases. For purposes of exploring the role of migration courts, Part II focuses on classification problems: what happens to the people that don't fit into categorization systems, "residual cases" which are deemed uncertain (Bowker & Star 1999). The study compares how Swedish and Canadian courts assess individuals from Afghanistan, who are often perceived as cases that don't fit into the established scheme of things (Crawley & Skleparis 2018). Afghanistan is seen as opaque and illegible by both Swedish and Canadian state agencies, who distrust its population registry and official documentation, creating notorious problems of uncertainty in determining asylum cases. Because Afghan applicants challenge the envisioned order, categorization breaks down into an object of contention (Bowker & Star 1999:ch1-2). This means that courts deliberate on how principal issues of migration control are supposed to work, amounting to a concrete theorization of the relationship between the governing and governed. The proportion of Afghans granted asylum markedly differ across the countries: in the 2013-2021, the average recognition rate in Canada was 91 %, compared to 42 % in Sweden. The study focuses on prejudicial workings of migration high courts, which issue decisions that influence the work of frontline officials.

In moving from design to application, we get a more sense of concrete aspect of classification, as the courts engage in what Bowker & Star (1999:45) call a "fascinating practical ontology". For purposes of migration processing, they are assigned responsibility to decide on standards for making foundational parts of human existence governable: what does "identity" mean, for instance? How should we determine "age"? Or where and what a person's "home" is? In assessing individuals who span bureaucratic borderlands, they are responsible for maintaining the minutiae upon which state classification rests.

Outline

This thesis consists of nine chapters. First, chapters 2 through 4 set up the empirical study. Chapter 2 is a literature review on migration control and government classification – more than just recounting an established field, it sets out to gather literature on an emerging topic. Building on this, chapter 3 establishes a theoretical framework based on historical institutionalist theory and writings on classification, developing an analytical model for studying classification systems over time. Chapter 4 discusses the methodology and different forms of documents which make up the material of the study. Chapters 5-8 set out the empirical results in two parts. First, in Part I, chapters 5-6 chart the roots of the refugee in Canada and Sweden. Following this, a brief intermission sets out a tentative summary and an updated methodological discussion for Part II. Chapters 7-8 study boundary management concerning refugees in administrative courts. Finally, chapter 9 provides discussion and conclusion.

2
The Making of Migrants

People have fled danger since time immemorial. What this study is concerned with is the organized regulation of such movement by public authorities. To explore this, this chapter gathers previous insights on status production in the governing of migration. It starts by deepening the account of dominant theories in migration control introduced in the first chapter, which largely assume, as Elrick & Lightman (2016:353) have put it, that the ”categories contained in immigration policy – distinguishing among economic, familial, and humanitarian migrants – reflect real and distinct categories of newcomers”. After this, a range of works in a critically oriented tradition are introduced, in which classification is seen as an exercise in power. The chapter gathers research on how refugeehood historically became administered, in the words of a classic text, as ”a special kind of victimization, different from many other forms of oppression by the great and powerful” (Marrus 2002:8). Much of the literature reviewed here isn't primarily concerned about classification or status production, and the gathering together of these writings can be seen as a form of pre-study in which studies in the migration field have been sorted using the conceptual schema of this study.

Dominant theories of migration control

In the broad field of migration studies, there is substantial, ongoing debate on how states attempt to control or manage migration (Joppke 1998, Massey 1999, Brochmann & Hammar 1999/2020, Joppke & Guiraudon 2001, Hollifield 2004, 2008, Boswell 2007, Hollifield et al 2022). When summarizing migration control, Czaika & de Haas (2013:489) say that

> International migration policies are rules (i.e., laws, regulations and measures) that national states define and implement with the (often only implicitly stated) objective of affecting the volume, origin, direction, and international composition of immigration flows.

Such policies, they say, are typically the outcome of a compromise between a range of interests. (Czaika & de Haas 2013) As recounted in the introduction, much study in this area has since the 1980's concerned a widening gap between goals and results of immigration policy in major industrial democracies (Massey 1999). The literature largely revolves around explaining why and conceptualizing how migration policies, from the perspective of policymakers, seem to fail. In attempting to fashion an explanation, several key texts approach politics as a competition between organized interests, and search for conflicts within states (i.e. Freeman 1995). Joppke's (1998) analysis of attempts to control refugee migration is a clear example of this. How, he asks, should we understand that states implement restrictionist policies but continue to accept asylum seekers? (Hollifield et al 2022). Why spend massive resources on building barriers and making it harder for people to arrive, while still granting some who arrive access?

The answer, echoed in writings by James Hollifield (2004) and Virginie Guiraudon (2000), points to different sources of liberal constraint within the state. While a set of actors within the state, such as interior ministries or the police, engage in trying to restrict migration, the presence of an independent judiciary contributes to an embedded liberalism which hampers unhinged state sovereignty. Courts are thus assumed to protect a range of human rights institutionalized in law (Joppke 1998, Massey 1999). This builds on an assumption that courts, formally shielded from political pressure, don't need to take account of restrictive policies. It also assumes that "rights" are relatively straightforward concepts which give refugees access to protection. Guiraudon (2000, Guiraudon & Lahav 2000), in studying the 1980's origins of today's restrictive EU asylum policies, expanded on these notions by looking at how national policymakers established European co-operation on asylum policy as a venue shopping strategy for bypassing national courts. Using the multi-level nature of the EU system, restrictive actors found new opportunities of discretion at the international level, circumventing national obstacles.

Yet another contributing source to this embedded liberalism are international conventions on human rights. Multilaterally oriented states, such as Sweden and Canada, are often assumed to adhere to human rights norms in the interests of international co-operation (Boswell 2007). These discussions are situated in a large debate on the role of the state in globalization, which is seen as potentially limiting the ability of states to exercise sovereign border control (Benhabib 2004). Moreover, self-interested behavior in the international system has been described as potentially standing in conflict with societal preferences on a national level – such as the adoption of international conventions

and co-operation which increase the influence of small and medium states, but at the cost of national self-determination. (Boswell 2007)

The dominant theories have been highly influential. In well-cited volumes such as *The Age of Migration* (Castles et al 2014) and *Migration Theory* (Brettell & Hollifield 2023), they represent the discussion on state migration control. Broadly, they paint the following picture: The policymaking of migration is a conflict between organized interests such as business, government agencies, unions, political parties, and civil society organizations. As Johannesson (2018:1163) writes in a critique of the dominant theories, courts are assumed to have a "decontextualized and fixed inner logic which drives immigration policies in expansionist directions." Moreover, the actors of migration policy are generally assumed to be endowed with what James March (1991) has called a standard view of rationality. They have clear goals and consistent preferences, they are strategic in pursuing them, and generally act in a utility-maximizing manner. The state is treated as an arena in which these different groups, to varying degrees in conflict with one another, compete and act strategically to reach their goals.

An institutional critique

Christina Boswell has formulated a critique of the dominant views of migration control from a neoinstitutional perspective (2007, 2008). She centers on the issue of preference formation and argues that while the preferences of the organized interests are at the center of the explanation, they are hypothesized rather than explored, ascribed onto actors without examining their formation or variation. The preferences are treated as exogenous to the environment of the actors, with a certain type of actor assumed to have the same preference irrespective of the societal context they find themselves in – it assumes, in other words, that courts or unions are the same in different countries. Moreover, the preferences are largely assumed to be static.

Even though Boswell isn't concerned with classifying subjects, her critique has relevance for the system of selection. If preferences are static, how come there seems to be variations across states? If the classifying of people is some form of neutral and passive operation, it is hard to make sense of the great differences across and within states' interpretations of the Refugee Convention (Neumayer 2005, Goodwin-Gill & McAdam 2007:ch2). In-depth case studies and comparative work points to large variations within the actual behavior of one type of actor, such as interior ministries (Eule et al 2018), or cross-country variation in the values and behavior of others, such as courts (Hamlin 2014). As Johannesson (2017, 2018) has shown in in-depth studies of Swedish

migration courts, the actual behavior of judges and court actors is nuanced and can often be restrictive. More generally, there is good reason to believe that notions of who deserves protection would be culturally contingent.

Boswell's critique can be extended to other elements – "control" is treated as a stable construct with clear meaning, something which exists by itself rather than a human artifact which is rooted in a specific context. This makes it static, evidenced in the language used to discuss it, something states "have" more or less of, which they "fail" or "succeed" at. Perceived constraints on state action, such as human rights accords, are pictured as having objective meaning, rather than as items which allow for interpretation and the application of which can shift over time.

In contrast to the dominant theories of migration control, the issue of how environments shape preferences is of fundamental importance in institutional theory (Thelen 1999, Scott 2014). Here is held that rather than being exogenous to the environment in which they function and static in their nature, preferences such as what form of suffering makes someone worthy of protection is inherently tied to a specific context, a specific time and place, and potentially evolves with that time and place. Similar notions are important in writings on classification systems, which are often seen as rooted in a specific time and place (Douglas 1986, Bowker & Star 1999).

While offering clear analytical utility, the dominant theories of migration control have contributed to a lack of interest in the status production that is at the heart of governing human movement. By locating its explanation in the competition between organized interests, the relationship between governing and governed, between classifier and classified, has been neglected. The dominant theories of migration control have come to assume that the subjects of rule – the refugees – amount to objective categories, a form of neutral policy tools (Bakewell 2008). This assumption of neutrality in classification is open to the critique that Lascoumes & Le Gales (2007) direct to the literature on policy instruments – saying that, far from neutral, instruments are a major issue in public policy, and that instruments such as classification systems are condensed manifestations of social control. Exploring this line of thought, we now turn to a body of literature on the rise of the modern state which illustrates how classifying and enumerating people is at the heart of governing.

How states have made up refugees

Ruling over people can be seen as made possible through, and expressed in, systems of classification. First, we will explore a literature on refugees which focuses on macro level: concerning what might be called political ontology, it

explores the world's political geography and the placing of subjects in it. A common thread in these studies is what Pierre Bourdieu (1998:ch3) has called the state's symbolic and informational capital, in which a defining trait of the modern state is the authority to enforce systems of classification upon the world. Just as the state is defined, in the classical Weberian sense, by a monopoly on violence, it can also be defined as having a monopoly on categorization, a system of state thought which guides perception of the social world. It is often held that a fundamental part of asserting such capacity has been to control the "writing" of populations and managing the movement of people across borders (Soguk 1999:ch3, Brubaker & Cooper 2004:ch2).

With the expansion and establishment of modern states from the 18th century and onward, new imageries developed of what it meant to be inside, and thus also outside, of a state. The figure of refugee has been singled out as integral to the ascension of the modern nation state (Hobsbawm 1992), an outsider in a 'national geography' (Malkki 1992) – an aberration from an ordering system in which it is natural to belong to a national space. Barry Hindess (2000), for example, argues that modern citizenship fulfils a crucial role in the international system of population management, making people governable by rooting them in a territorial state. This spatial association of immigration with an outside has also led many to see it as a fruitful way of studying the inside of the state. Abdelmalek Sayad (2004:280) argues that the study of immigration is inherently a study of the state:

> Immigration is undeniably a subversive factor to the extent that it reveals in broad daylight the hidden truth and the deepest foundations of the social and political order we describe as national. Thinking about immigration basically means interrogating the state, interrogating its foundation and interrogating the internal mechanisms of its structuration and workings. Using immigration to interrogate the state in this way means, in the final analysis, 'denaturalizing' what we take to be natural.

The 18th and 19th centuries were also periods in which, according to Ian Hacking (1986, 1990, 2007), officials at the centre of the state's growing administrative power increasingly started to engage in the making up of people for purposes of rule. Through statistics, a term which in its origins means "knowledge about the state" (Brambor et al 2020:175), state bureaucracies increasingly started to codify and classify types of people (Hacking 1990). The modern nation state in this sense contributed to a fundamental re-imagining of the relationship between the governing and the governed.

During the same period, as writers such as Rogers Brubaker (1992) and Nevzat Soguk (1999:ch2) have illustrated, migrants became fixed in terms familiar to us today, defined as people moving between nations. This means that

in a conceptual sense, the refugee was a figure which emerged from the process by which nation states overtook the authority to regulate human movement. From the 17th century onward, as John Torpey (2000) has argued, the state increasingly took monopoly on governing movement: replacing previous entities such as guilds and feudal lords, the rise of the modern state contributed to defining migrants as outsiders in terms of national space (Malkki 1992). With national borders increasingly solidifying as hard boundaries between united national legal spheres, movement over them became consequential in new ways (Brubaker 1992). Many current systems for regulating migration, such as passports and visas, emanate from the 19th century, as do many of the national borders which they regulate. (Caplan & Torpey 2001, Jones 2016) The passport is good example of a system of classification, authoritatively defining human identity as consisting of name, nationality, and birthdate (Torpey 2000). While often naturalized as objective phenomena, studies of the passport's origin show how its design was historically contingent. It was developed for purposes of rule and required an extensive bureaucracy to maintain. It required, for example, that states standardized personal names and set up population registries to keep track of people's chronological age (Caplan & Torpey 2001).

Historically, who has been defined as a foreigner has shifted, covering everything from rebels to aristocrats to renegade priests (Brubaker 1992, Torpey 2000). What is foreign naturally depends on the social relation from which one views the world; it could be class, it could be religion – or the nation. In the 18th and 19th centuries, Soguk (1999:83) has argued, from a "mélange of imprecise, ambiguous terminology, a specific cartography of the foreigner" emerged, juxtaposed against the new "normal" of the national citizen. In other words, the clarification of new types of people emerged from a clarification of borders between countries. In the words of E.J. Hobsbawm (1992:80), the modern nation state, in contrast to its predecessors, was defined as a "continuous and unbroken territory over all of whose inhabitants it ruled, and separated by clearly distinct frontiers or borders from other such territories." As a consequence, modern citizenship came to be associated with sedentary assumption that people belong to a certain space (Kalm 2008).

Several works in this tradition are inspired by the writings of Michel Foucault (Soguk 1999, Torpey 2000, Kalm 2008). Foucault's work was often occupied with the 'administering of lives' (Mennicken & Miller 2014), both as relates to establishing systems for surveillance and disciplining of subjects, but also the more general importance of classificatory practices in human knowledge of the world. One oft-quoted passage in *The History of Sexuality* vividly illustrates how new forms of governing human life emerged with the modern state:

> One of the great innovations in the techniques of power in the eighteenth century was the emergence of the population as an economic and political problem: population as wealth, population as manpower or labor capacity, population balance between its own growth and the resources it commanded. Governments perceived that they were not dealing simply with subjects, or even people, but with population with specific phenomena and its peculiar variabilities: birth and death rates, life expectancy, fertility, state of health, frequency of illness, patterns of diet and habitation (Foucault 1976/2020:25)

This singles out how state officials started establishing new information about what, from the perspective of the state, was becoming "its people". Such statistics, often seen as neutral and objective, are historically contingent, originating in a desire to govern populations in new ways. The Foucauldian approach implies to see the classification of people as an exercise in power and always in the making, never finished. In his study of the history of refugeehood, Soguk (1999:49) follows this route by discussing attempts at regimenting refugeehood as "processes and practices by which specific images, meanings and identities of the refugee have historically been produced". Somewhat paradoxically, attempts to pin down the movement of people in space, leads to the figure of the refugee always being in flux.

These writings give us an appreciation of the macro level of classification, the ordering of the world in a geographical space of states and the placing of people in them. But what do we know about classification in a more concrete sense, as an element of policymaking and administration? This is a level which historian Peter Gatrell (2017:177) has pointed out as an-underexplored, calling for more work which "specifically analyses the processes by which and the contexts in which the category of 'refugee' was fashioned".

A history of inclusion and exclusion

In their account of 20th century refugeehood, Zolberg, Suhrke & Aguayo (1989:8), portray the international development of the term "refugee". They say it began

> with particularistic judgments… contingent on the circumstances prevailing in a given country at a given time; to which, over time, other categories were added; and gradually becoming more universalistic until, after World War II, the general criteria for identifying refugees were institutionalized in a body of international law administered by a bureaucratic organization staffed by appropriate experts.

This is the arc we will follow for the remainder of the chapter: how, in the terminology employed by ministries and public officials, the refugee moved from being a particularistic, closed category to a formally universal, open one. This can be seen as a development in which refugees became bureaucratized in a Weberian sense – moving from a set of ad hoc, informal categories within temporary programs, to being governed through formalized rules administered by professionally trained staff. The quote exemplifies how the focus of research in the fields tends to be on the international level, which is seen as decisive in the development of modern refugeehood. However, the understanding of the refugee as it was developed in international conventions shouldn't be understood as a final stage, but rather as a starting point: one which is continually contested, interpreted and sub-divided into ever finer distinctions for purposes of managing migration (Zetter 2007, Crawley & Skleparis 2018, Eule et al 2018), with key developments taking place on the national level.

Proto refugees of the past

Three properties stand out as important in the early formation and regulation of Western refugeehood: religion, race, and nationality. From the 17th to the early 20th century, these all functioned as criteria by which specific groups of people were granted or denied entry.[1] The term refugee originates from the French *refuge* and originally singled out people fleeing religious persecution (Marrus 2002:5ff). While traceable to the 16th century, it's common to point to the expulsion of Huguenots by Louis XIV in 1685 as a catalyzing event, when Protestants in England welcomed their fellow believers from Catholic-controlled France (Soguk 1999).[2] This was among the first instances in which the term refugees was used to collectively categorize a group, seen as something more than just an aggregate of individuals fleeing danger (Zolberg et al 1989:ch1). In the tumults of the Napoleonic Wars and revolutions of the mid-19th century, political exiles joined the ranks of the religiously persecuted in Europe. These proto refugees were often the bourgeoisie, those who could afford to move (Zolberg et al 1989, Gatrell 2013).

By the latter half of the 19th century, the figure of a person fleeing war or religious persecution had become quite commonplace in the West, a part of the public imagination and increasingly viewed as a subject requiring government regulation (Soguk 1999). Movements were often caused by the formation of

[1] Zolberg, Suhrke & Aguayo (1989), Soguk (1999) and Gatrell (2013) offer rich accounts of the development of the modern refugee, mostly focusing on the 20th century.

[2] The concept of asylum, and its association with political rather than economic reasons for flight, dates to ancient Greece (Gray 2016). Even then, those seeking sanctuary had to argue their case. (FitzGerald 2019)

new states, such as when British loyalists who wound up on the losing side of the American Revolution fled to Canada (Zolberg et al 1989). But there was no governing of migration in the modern sense. Categories of people weren't administratively fixed, the boundaries around them were rarely set down in laws, nor did they figure as major operations of state administration. Overlapping terms such as expellees and émigrés were often used (Soguk 1999, Gatrell 2013). There was essentially no intergovernmental or national rule system for acknowledging, naming or fixing refugeehood as a political problem with which to deal.

Nor were there many dedicated, specialized bureaucracies employed for regulating migration. This is especially striking in latter half of the 19th century, which was an era of massive migrations, both from Europe to North America and within Europe (Hobsbawm 1992). The new imagery of regulating immigrants and citizens that developed with the modern state had, at this point, not translated into restrictions on movement. Instead, the opposite was true. Across the West, national controls on human movement were generally absent, in line with a hegemonic economic liberalism which advocated free movement of people, goods and capital (Hollifield 2004). Instead, regulations were often internal, controlling movement within nations (Brubaker 1992). In movement between nations, passport controls were rare and no distinctions were made between types of migrants. Refugees were seldomly recognized as a category, let alone distinguished as such for purposes of controlling migration (Zolberg et al 1989). With current legal frameworks, religious minorities such as those escaping Tsarist Russia to settle in Canada would probably be seen as refugees (Kelley & Trebilcock 2010), but they were not classified as such at the time.

However, this openness was always partial. Zolberg (1999) asserts that the first steps to our present world, in which a major portion of Western migration policy concerns restricting the movement of poor people, were already taken during these great migrations. Often, categorizations based on race were used to exclude potential immigrants. One example is the targeted exclusion of Chinese immigrants in the U.S. and Canada at the turn of the century. Throughout the "great waves of migration" to North America, as FitzGerald & Cook-Martín (2014) have shown, the dominant influence of racist ideas led to a consistent privileging of migrants from Northern and Western Europe.

The foundation of modern migration control

Ending previous decades of relatively unrestricted movement, the First World War is often seen as an origin for many features of the modern governing of migration (Soguk 1999, Hollifield & Wong 2023). At this point, security started to take on a central role in migration (Zolberg 1999, Gatrell 2013) and

the period witnessed the birth of many staples of migration control: visas, residency permits and modern passports, among others.[3] After the First World War ended, the wholesale transformations of national economies and the establishment of social welfare programs contributed to enhancing the citizen/migrant divide, and the subsequent introduction of barriers to movement aimed at limiting the access of outsiders (Kalm & Lindvall 2019).

In 1926, nearly ten million people were displaced across Europe, an unprecedented number in European history (Zolberg et al 1989).[4] With the increasing popularity of protectionist ideas, the onset of economic depression in the Inter-War period contributed to severe restrictions on immigration. By this point, migration control was starting to show nascent symptoms of bureaucratization. Categories of refugees were gradually clarified at the international level, albeit in an ad hoc fashion. Soguk (1999:18) describe the developments in the Inter-War period as decisive to "produce, transform and stabilize the images and identities" of refugees in terms set by state geography. The term "refugee" became part of public discourse, unavoidably present as great masses of people were fleeing violence, starvation, and destitution (Gatrell 2013). People seeking protection were starting to be seen as a separate category of migrants, defined by a need for protection. (FitzGerald & Arar 2018).

On the international level, this bureaucratization can be seen as bringing about new boundaries around categories of refugees, and triggered discussions on who deserved protection. Throughout the 1920's and 30's, under the guise of the new League of Nations, several attempts were undertaken to assist specific groups. During this period, a "group or category approach" was taken, as international regulations singled out specific groups, bounded by nationality, for protection (Goodwin-Gill & McAdam 2007:16). These included Armenians fleeing the 1915-1917 genocide and Russians fleeing civil war in the early 1920's. (Soguk 1999) Under the responsibility of a High Commissioner for Refugees, conventions were drafted for specific groups; the approach was intended to be temporary, and groups were singled out on a case-by-case basis in response to specific movements (Zolberg et al 1989, Gatrell 2013, FitzGerald & Arar 2018). Under the supervision of Commissioner Fridtjof Nansen, stateless individuals were given travel documents known as "Nansen passports" to facilitate protection. (Long 2013)

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[3] One example is the 1922 decision by the U.S. government to impose annual quotas on migration, sorting the world in regions with numerical targets, and requiring a visa for every immigrant. (Zolberg 1999)

[4] As in the 19th century, state building was a driver for refugee movements, as the ambition to create "coherent national states, each inhabited by a separate ethnically and linguistically homogenous population" led to "the mass expulsion or extermination of minorities and other unwanted populations" (Hobsbawm 1992:135)

Determining which groups to protect was a selective process driven by political considerations, such as bilateral relations. Early on, however, officials encountered problems: they always seemed to end up with "protection gaps" which meant certain groups fell outside state protection (Goodwin-Gill & McAdam 2007:ch1). In addition, the task of assessing claims was anything but straightforward. Proving people's identity and eligibility into a category became a major issue. Lacking identification papers, for example, became a problem for Russians in the 1920's. (Soguk 1999:ch4)

The League deteriorated throughout the 1930's and several of its conventions were poorly implemented, but its refugee programs represent important innovations. In the terminology of policy and administration, we can say that at this point, refugeehood was becoming legally recognized and designed top-down for the benefit of specific target populations. Specialized agencies were established and the rights of the categories awarded protection specified in law and regulation (Zolberg et al 1989:ch1). The League should thus be understood as representing the organization of a bureaucratic procedure for producing status. Previous research shows how a system of classification was growing at this point in history, stabilizing the refugee as a specific problem to be solved, and delineating a set of procedures to achieve this. But as the failure to protect Jews trying to escape Nazi terror showed, it seemed to be only through the machinery of nation states, rather than international protection, that such protection could be realized. (Gatrell 2013)

The international standardization of refugeehood

What's known as the modern refugee regime was formed at that most contingent of historical moments: the end of World War II. In 1945, the world saw unparalleled levels of displacement.[5] For the purpose of dealing with this, a system of international cooperation was designed, primarily by delegations from the United States and Western Europe. The international refugee regime has been defined as "the set of norms, rules, principles, and decision-making procedures that regulate states' responses to refugee protection" Betts (2010:17). It consists of the 1951 Refugee Convention and the United Nations High Commissioner for Refugees (UNHCR), the latter charged with monitoring the Convention's implementation.[6] Betts & Collier (2017:34) write that modern refugee regime was

[5] At no point since has there been anywhere close to comparable levels; nearly 8 % of the world's population were estimated displaced by the end of the War, a figure which hasn't reached 1 % since.

[6] According to Betts (2010), the refugee regime is the longest-standing and most well-established of international regimes – counterintuitive, given that refugees are seemingly the subject of constant controversy.

> profoundly shaped by the early-Cold War context in which it was created. It was generated because the norms of revulsion at the Holocaust happened to align with the strategic interests of the U.S. in the containment of Communism. Key decisions like how even to define a 'refugee' were shaped by the concerns of the U.S. and its Western allies to avoid the return of the displaced people to Communist Soviet bloc countries.

Here, again at the international level, we can see how the development of central components of migration control intimately centered on classifying what a refugee was. The drafters of the Convention drew on the experiences of the Holocaust and the League's failures (Zolberg et al 1989, Soguk 1999). The key question in front of them boiled down to classification: what was actually a refugee? (Gatrell 2013) Drafters considered if the new order should enumerate individual categories of people, as in the past, or formulate a broader definition. (Zolberg et al 1989:ch1). They chose a broader definition, partly because the enumerative strategy had been difficult to implement. This meant, however, that the scope of who to protect was among the most difficult issues in drafting the Convention (Goodwin-Gill 2008). It proved excessively hard to draw a definitive boundary around the refugee category.

For purpose of maintaining discretion and being able to direct aid, American policymakers wanted a restricted, temporary regime (Goodwin-Gill 2008). They forcefully objected to an open definition of refugeehood as they were afraid of "mortgaging the future" by allowing for "new groups of refugees who exhibited the specific characteristics" to qualify for protection (Zolberg et al 1989:24). By contrast, European delegations argued for a more open, universal category. The U.S. delegation insisted on a category bounded by restrictions in place and time, based on a strict definition of some forms of persecution as political. (Long 2013, Gatrell 2013, Betts & Collier 2017) Such persecution meant violence executed by states against members of their population, defined on an individual rather than group basis. The resulting Convention's definition of who qualified for protection has been described as "highly selective" (Zolberg et al 1989:4). Movement for economic reasons, such as poverty, was intentionally excluded. The Soviet Union disavowed the Convention, claiming the Convention was designed to help "capitalist states in search of cheap, exploitable labor" (Goodwin-Gill 2008:15).

This struggle around refugeehood clearly points to the centrality of defining target populations in the exercise of policymaking. Initially, U.S. policymakers largely got their way. Building on the forced-voluntary distinction, as encapsulated by the Greek concept of asylum, there was consensus on refugeehood being "political" rather than "economic" (Gray 2016). The Convention has been described as liberal in its focus on the individual and privileging of

political rights over economic ones (FitzGerald & Arar 2018). But the work of classification didn't stop at this point. What, exactly, should qualify as "political" reasons for seeking protection? Should it encompass people in the world who lived under colonial rule? As states' involvement in the economy grew in the post-War era, what part of a society was politics and what was economy? U.S. officials wanted to circumscribe protection, and the solution was to require a threshold of danger: a threat of persecution. This was purposely designed to make the refugee status exceptional and prevent too many people qualifying for it (Goodwin-Gill 2008). The Convention defined refugee in legal terms that persist to this day, as someone who

> owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it

When formulated in 1951, only Europeans displaced due to World War II qualified. This meant that nearly two thirds of the world's roughly 175 million displaced at the time were excluded (FitzGerald & Arar 2018). There were more displaced in China than in all of Europe, but due to geopolitical considerations, none of them qualified for Western refugeehood.

Contested categories from the start

Critically, the Convention didn't set out any procedures for determining who is a refugee, leaving the process entirely up to ratifying states. This meant that nation states remained the decisive level in implementing refugeehood. As Goodwin-Gill & McAdam show in their magisterial volume on international refugee law, there have been decidedly different interpretations of the same international standards in different countries (Goodwin-Gill & McAdam 2007:ch2). To take just one of the original five grounds for refugeehood, persecution due to belonging to a particular "social group", it has shown a "openendedness capable of expansion" (Goodwin-Gill & McAdam 2007:76), and has been used as introduce new protection grounds, like for gender and sexuality. All the grounds for asylum are undergoing "progressive development" (Goodwin-Gill & McAdam 2007:74), refined and negotiated as people apply and cases are processed. In other words, far from the Convention representing

a final stage, the target population set out by it has been continuously moving, differentially interpreted across states.

Today, researchers often reflect on how a refugee category invented in the 1950's doesn't seem to fit current realities (Hamlin 2014, Betts & Collier 2017). It is common to point out that the majority of those who are referred to as refugees in everyday speech, are not actually refugees in the Convention's sense – often because they are victims of civil war and haven't crossed an international border, or because they aren't individually persecuted, but rather part of a larger group suffering general danger. Such is the situation for many people fleeing the devastation of contemporary Syria, for example.

However, research shows that the problem of fitting people to categories isn't contemporary, but that the problem of maintaining boundaries between categories was present from the very start. In 1951, a study prepared for the new UNHCR noted "the increasingly fluid line between the migrant and the refugee" (Goodwin-Gill 2008:18). The crucial group in post-War Europe were citizens of formerly East Europeans countries, whose countries had now been incorporated into the Soviet sphere. Numbering in the hundreds of thousands, the majority lived in camps in Western Europe. The Soviet Union wanted them returned, but many resisted what they saw as deportation to danger. Their case can be seen as an illustration of the context-bound nature of refugeehood. For geopolitical reasons, U.S. representatives wanted to treat people resisting Soviet rule as refugees. According to Goodwin-Gill (2008:17), this guided eligibility determination: it was clear to officials that "only about 25% were refugees in the strict sense", but "practice nevertheless evolved to the point where only those naive enough to admit being economic migrants were rejected". When this informal rule ceased to be applied, roughly 650 000 people still managed to refuse relocation, such as by obtaining forged identification documents (Gatrell 2013:ch3).

At a parallel point in history, Feldman's (2007) study on 1948 Palestine is an illustrative snapshot of how vital the national context of interpretation was to the development of what refugeehood actually came to mean in practice. Feldman shows how American aid organizations struggled with administrative problems in defining target populations in Gaza. For the distribution of relief, systems of targeting were necessary, so residents were classified into those who qualified (refugees) and those who didn't (natives or citizens). This boundary work was integrally tied to the specific history of displacement in Gaza, but also impacted by the fact "there was almost no one in Gaza who was not in need of assistance in the aftermath of the war." (Feldman 2007:130) Since needs were de facto similar no matter which category people belonged to, relief organizations encountered great difficulties in the categorical work of

assessing who was a proper subject of assistance. The administrative simplifications of defining refugeehood didn't map well onto the realities of Gaza, and therefore, the native/refugee distinction was constantly in flux. It was hard to maintain accurate identification registries, with persistent problems of people trying to get onto lists they weren't eligible for, such as by claiming food assistance for inflated families and dead relatives. However, the emerging classifications were still consequential, as the native-resident categories "helped produce and sustain new sociological and regulatory categories within the population", leading to the "emergence of enduring distinctions within the Gazan population" (Feldman 2007:132).

These studies on the early history of the Refugee Convention indicate two things of central importance to the making of the target population that is refugees. First, that it was integrally bound to the context out of which it arose. And second, that the classification of people isn't just an issue of design or a one-off decision, but should be seen as a continuous activity, with the placing people into categories and the effective rendering of them as cases representing a persistent challenge of governing. This is grounded in a tension between governing and governed, one which centers on the state's ability to make the world governable according to the vision of its officials. The last part of the chapter will discuss the international arrangement left in place by the study's start, which Swedish and Canadian policymakers are set to interpret.

The expansion of refugeehood

In beginning of the post-war period, the literature points to major developments in refugeehood, two stand of which stand as especially important. First, refugeehood expanded from a closed to an open category. Second, refugeehood diversified, as new protection grounds were added to complement the original status, often offering protection to groups rather than individuals.

The 1951 Refugee Convention had included temporal and spatial restrictions, meaning that only Europeans fleeing due to World War II could qualify as refugees. These were removed with the 1967 New York Protocol, making it possible for anyone to apply for asylum.[7] (FitzGerald & Arar 2018) In the context of international politics, Betts & Collier (2017:ch3) portray the 1967 New York Protocol as a hasty decision dictated by Cold War realpolitik, which led to unintended consequences. Western policymakers were concerned about the destabilizing effects of refugees emerging in the Global South due to

[7] In addition, regional conventions for refugeehood were developed by the Organization for African Unity in 1969 and Latin American states in 1984 (Soguk 1999:ch5), both broader than the UN's Refugee Convention.

wars of liberation and de-colonization. They feared that, not offered Western assistance, these might fall under Soviet influence.

This transformation of refugeehood from a closed to an open category was a truly remarkable step with major ramifications (Soguk 1999, Barnett & Finnemore 2004:ch4). Aside from representing a huge increase in the potential number of applicants, it also shifted the dynamic in the relationship between governing and governed, as it entailed a responsibility for states to process applications. What has been described as the "cardinal" rule in the Convention is *non-refoulement (*Soguk 1999:168, Goodwin-Gill & McAdam 2007:50), the obligation to not send back a person to harm (FitzGerald 2019). Unless everyone is granted access or the Convention is directly violated, this requires a system for assessing claims. As Goodwin-Gill & McAdam (2007:51) put it, the need arises for a "determination by some or other authority that the individual or group in question satisfies the legal relevant criteria." Asylum is, in a basic sense, responsive to people who arrive.

This represented a total reversal from historical precedent, where state officials had made top-down decisions on ad hoc groups that were to be granted protection. While the effects weren't made manifest instantly, the expanded right to asylum meant that states had taken on a responsibility to react to the needs of those seeking protection, rather than deciding beforehand who deserved it. This is repeatedly violated by the use of barriers and violence to stop people from being able to apply for asylum, but the right to seek asylum still functions as a normative and legal constraint on discretionary border control in many countries (Boswell 2007).

An important consequence of the Convention's design is that its rules were territorialized (Joppke & Guiraudon 2001, FitzGerald 2019). The right to seek asylum can only be exercised where you happen to be. That the Convention territorialized asylum, FitzGerald (2019) claims, incentivized states to keep refugees away. This explains why much contemporary migration regulation is characterized by remote control or the externalization of borders (Brochmann & Hammar 1999, Joppke & Guiraudon 2001, Boswell 2003). The literature on this topic describes the ways in which states utilize a range of policy instruments to prevent people from arriving, making it impossible for them to seek asylum. As a result, many people seeking protection are presented with an "impossible choice" (Betts & Collier 2017:ch1) between desperate situations in refugee camps or life-threatening journeys. FitzGerald (2019) claims that remote control practices aim to lock people in place, and if they move, to force them into perilous journeys over land and sea, and for those that arrive, employ several administrative innovations to disqualify their applications.

The diversification of refugeehood

The second important development in the post-war period concerns the diversification of refugeehood. Starting in the late 1950's, through work of the UNHCR, the original refugee category was supplemented with the introduction of new categories, when its narrowness didn't seem to fit real-world situations. Generally, this concerned people suffering collective danger, rather than individual persecution (Zolberg et al 1989). One of the most pressing issues become the category designated as "internally displaced people": groups stuck in a country from which they wanted to flee, but who didn't fulfil the refugee criterion by virtue of not having crossed an international border. One of the first such groups were Hungarians trying to flee the Soviet incursion of 1956 (Barnett & Finnemore 2004). Throughout the 1960's, more international efforts targeted at specific groups followed. There is a widespread hypothesis that who got be a refugee during the Cold War was influenced by realpolitik considerations: Western countries were more likely to offer protection to the relatively few who could flee the exit controls of the Soviet Union, than they were to offer protection to victims of capitalist dictatorships, such as in Latin America (FitzGerald 2019).

The categories for governing refugeehood expanded and diversified precisely at a time in history when Western policymakers were striving to regulate and govern migration in new ways. The decades following World War II were characterized by large immigration to many Western countries, for the purposes of filling manpower shortages in booming economies. This shifted abruptly with oil crises and recessions of the 1970's, as many Western states started to rapidly restrict migration (Hollifield & Wong 2023). Simultaneously, refugees were increasingly disassociated from World War II and came to be perceived by Western policymakers as a continuous, global phenomena. Human movement was aided by rapid advances in transportation and communications technology (Soguk 1999:ch5).

This perception of an increasingly mercurial migration was enhanced by shifting demographics: Until the 1970's, refugee immigration had been predominantly East-West, made up of people fleeing the Soviet bloc, housed in camps before resettlement to Western states. But now, migration started becoming South-North, comprised of people who travelled directly to Northern countries and sought asylum, made possible by shifts in the Refugee Convention (Betts & Collier 2017:ch3). As people from new parts of the globe arrived at the borders of Western states, refugees started becoming controversial. In Collyer & de Haas' (2012:473) account, the late 1970's marks the point when the category "asylum seeker" became ingrained in public discourse, marking a

> shift from a period when refugees were universally assumed to need protection, and were therefore called refugees from the moment they registered a claim, to the reverse situation in which their claims were presumed to be unfounded by state authorities.

The 1980's is often described as a decade in which refugees were being re-imagined as security threats and their claims were questioned, setting the stage for contemporary discourse (Hammar & Brochmann 1999, Guiraudon 2000). During the 1980's, the regulation of immigration was becoming an increasingly prominent political issue. While more countries were ratifying the Convention, from a legal standpoint, the "problem of divergent positions" started appearing (Goodwin-Gill & McAdam 2007:52). National policymakers and courts started interpreting the Convention differently, carrying different interpretation of what 'refugee' is. But beyond stating that this is the case, there are few comparative studies that go in-depth with how.

The diversification of protection grounds can be interpreted as the introduction of new target populations: an attempt at regulating movement through the imposition of a bureaucratic schema upon those who are moving. What's more, these developments seem to have led to new administrative challenges in processing people. While the connection isn't necessarily made in the literature to the expansion and diversification of protection grounds, it's common to describe asylum as among the most difficult administrative decisions of modern states (Johannesson 2017): "uniquely challenging" due to their high stakes (Hamlin 2014:20), characterized by "radical uncertainty" and thin evidentiary records (Evans Cameron 2018:37). Goodwin-Gill & McAdam (2007:54) discuss how the "decision on the well-foundedness or not of a fear of persecution is essentially an essay in hypothesis, an attempt to prophesy what might happen to the applicant in the future". They go on:

> It is no easy task to determine refugee status; decision-makers must assess credibility and will look the demeanour of the applicant. Information on countries of origin may be lacking or deficient, so that it is tempting to demand impossible degrees of corroboration. The applicant's testimony may seem unduly self-serving, though it could scarcely be otherwise, absent anyone else to speak on his or her behalf. The onus of establishing a well-founded fear of persecution is on the applicant, and some objective evidence is called for; but documentary corroboration is frequently unavailable or too general to be conclusive in the individual case. (Goodwin-Gill & McAdam 2007:58-59)

Since what is deemed evidence is often lacking, the crucial issue generally comes down to an assessment of the applicant's story and credibility. International law places responsibility on the applicant to establish his or her case; but given that the process deals with traumatized people fleeing chaotic

circumstances, many states have imposed some form of corresponding duty on the agency assessing the case to establish necessary facts to make an assessment. (Goodwin-Gill & McAdam 2007:ch1-2, Evans Cameron 2018)

Selection: Deservingness and governability

The aim of this chapter has been to gather studies which show how government categories produce status, rather than just reflect it, as is the common assumption in dominant writings on migration control. Such negligence of classification attests to a naturalization of categories developed for purposes of rule (Bakewell 2021), an acceptance of a state vision in which people moving across borders naturally fall into a government status. To counter this, this chapter can be seen as gathering works on what Crawley & Skleparis (2018:60) calls the politics of bounding: ”the process by which categories are constructed, the purpose that they serve and their consequences”.

As seen in the first part of the chapter, there is a substantial literature devoted to categories as a form of discursive constructs, where the emergence of the refugee and the immigrant is seen as rooted in the nationally oriented insider/outsider distinction of modern states. In studies which are closer to the actual operations of classification as a government activity, at the meso-level, these tend to focus on the international level. They show how refugeehood, essentially, has been bureaucratized: regulated in law, the business of specific departments and professionally trained staff. They show how refugeehood has expanded, diversified, and has been contested from the start.

To a much lesser degree, they give us a structured understanding of how this has development has taken place on the national level, nor how much of the actual interpretation of the Refugee Convention has been influenced in the national context in which it takes place. This is evident when reading single-case studies of Canada (Hawkins 1991, Dirks 1995, Kelley & Trebilcock 2010, Triadafilopoulos 2012, Anderson 2013) and Sweden (Hammar 1999, Abiri 2000, Johansson 2005, Spång 2008), which rarely concern classification. This means we lack of understanding of crucial aspects of the governing of human movement. The international refugee regime can be seen as a setting out a very broad framework within which classificatory issues are handled by states. It is the state level which is, in many ways, the most decisive for deciding and selecting who actually gets to be a refugee. There are frequent suggestions in the literature of such operations being contested, where the figure of the refugee is seen as continuously evolving and under negotiation (Crawley & Skleparis 2018), but less detailed comparative examination on how. There are many individual case studies studying the work and consequence of classification at

single points in time, but many of these are on the micro-level, and pay attention to individual categories, rather than the systems of selection out which these categories emanate (Wettergren & Wiksjö 2014, Erdal & Oeppen 2017, Robertson 2019, Wernesjö 2020). It is well established that national interpretations differ (Neumayer 2005), but less research on how.

In exploring the national systems of selection, there are two issues of central importance for developing an understanding of how it potentially varies. First is that of *deservingness* (Sales 2002, Anderson 2013). Much of the research points out the centrality of perceptions of deservingness in drawing of boundaries for the purposes of securing protection for those deemed deserving (Holmes & Castañeda 2016, Lawlor & Paquet 2022). This harks back to Goffman's (1963/2022) assertion that notions of normality and deviance are culturally contingent. The second issue is that of how migrants are made *governable* through policy tools which stabilize administrative identities for purposes of directing aid to the deserving. While often not regarded as policy instruments, much writing focuses on the importance of techniques for regulating migration, such as passports (Torpey 2000, Caplan & Torpey 2001), which are seen as embodiments of ideas in regulating movement. This gets at the ability of the state, in a contested policy field, to reproduce its vision of the world, by utilizing a range of policy instruments.

In a discussion on refugees in work *Spheres of Justice,* political philosopher Michael Walzer bring these two issues together. Walzer asserts that

> The principle of asylum was designed for the sake of individuals, considered one by one, where their numbers are so small that they cannot have any significant impact upon the character of the political community. What happens when the numbers are not so small? (Walzer 1983:50-51)

This speaks to how refugees are made governable by states through regulatory frameworks. At a loss to define a suitable level for offering protection in the abstract, Walzer says that "admissions policies are rooted in a particularly community's understanding of itself" (Walzer 1983:51). This concerns how the elaboration of deservingness takes place in specific contexts.

Such vital issues are often left out of accounts on migration control. The dominant theories on migration control see it is a conflict between organized interests, and categories of people are assumed to reflect real groups of people in the world. In the next chapter, by contrast, this study will instead develop an institutionalist framework, where the classifying migrants is seen as rooted in a specific context and has developed over time into enduring rule structures. This seeks to develop concepts to explore how the systems of selection have come about, when they originated, and explain how they became so pervasive.

3
Classification Systems as Institutions

As set out in the introduction chapter, this study will utilize an institutional framework for studying government classification systems, conceptualizing developments in the migration field as expressions of larger phenomena in policy and administration. The institutional literature is used make sense of government classifications systems as a form of enduring rule systems. Here, historical institutional literature gives a rich set of concepts for exploring how rule systems are rooted in time, change over time, and vary across contexts. However, while the administrative simplification of human beings can be argued to be a critical aspect of a state's capacity to render large and complex societies governable, such classification systems are rarely studied in the institutional literature. As Roger Zetter writes, using the term label[8] instead of category, bureaucracies rely on classifying people to implement and manage policies:

> In the minds of policy makers and immigration officials it is necessary to fragment and make clear cut labels and categories of the often complex mix of reasons why people migrate and migrate between labels (Zetter 2007:178)

To capture this crucial governing capacity, a range of works are discussed on the subject of how people are classified for purposes of governing over them. Over the course of the chapter, this is intertwined with institutional literature and crafted into a theoretical model to guide the analysis of empirical material.

Variations of institutional theory

Institutional theory is a huge field and the study of institutions has given birth to several schools and many definitions. Institutions have been defined as

[8] Labelling is a concept with its own history (Becker 1974). Here, the terms classification and categories are used instead.

single organizations, individual rules or taken-for-granted perceptions (Thelen 1999, Scott 2014, Peters 2019). Along similar lines, the institutional literature is often categorized along disciplinary distinctions: a neoinstitutional or sociological version, a historical institutionalist (HI) version, and a rational choice version (Hall & Taylor 1996, Thelen 1999). The nature of institutions, their sources, and the mechanisms which uphold them are all issues of extensive theoretical debate (DiMaggio & Powell 1991, Greenwood et al 2008, Scott 2014). The literatures do have general themes in common, however. Key theorists such as W. Richard Scott (2014) and Kathleen Thelen (1999) have written of institutions as sources of durability and stability in human life, both on macro, meso and micro levels. In various ways, institutions are often described as molding or shaping human behavior (Meyer & Rowan 1977, March & Olsen 1989, Thelen 1999). Streeck & Thelen (2005:9), for example, define institutions as "building blocks of social order".

Rather than provide an exhaustive overview, the focus here is to explore how we can study classification systems. As a starting point, a government classification system is seen here as containing three central components: imbued with *ideas*, involving a set of *actors,* and consisting of a multitude of policy *tools*. This study mainly utilizes a historical institutionalist approach, following the advice of Scott (2008) to adopt the institutional analysis to the nature of the object of analysis. This means that institutions are viewed, as Thelen (1999:382) puts it, as the "legacy of concrete historical processes".

In the political study of institutions, it's common to see institutions as rules that influence, but don't determine, the behavior of actors in political life (Steinmo 2008). Largely an American tradition, its origins lie in a repudiation of post-War methodological individualism. Institutionalists turned against a view of collective features of society as no more than functional aggregates of individual-level preferences and interests (March & Olsen 1989, Thelen & Steinmo 1992). In this view, the sum was never greater than its parts: states, governments and organized interests were seen as reflections of their individual members, such as voters. On the foundations of methodological individualism, social scientists attempted to understand society by generalizing laws from the behavior of individuals (Parsons 2007).

By contrast, a central insight of institutional thinking was, as Clemens & Cook (1999:442) put it, that "the patterning of social life is not produced solely by the aggregation of individual and organizational behavior but also by institutions that structure action". In the face of behaviorist attempts at uncovering general laws to explain human behavior, (historical) institutionalists essentially asked: Why, if there are general laws of human behavior, are societies so

different?[9] (Steinmo & Thelen 1992, Thelen 1999) Often focusing on nation-state comparisons, they explored why seemingly similar countries display difference in their political institutions, policy choices and economic models. Explanations were often found in the ways in which the political systems structure conflict and action, such as the designs of electoral systems or labor-business relations (Pierson 1993, Parsons 2007:ch3). An essential part of this was historical analysis, where the institutions that mold human behavior are seen as rooted in time, arising out of contingent historical contexts, and with these origins substantially affecting their latter development (Stinchcombe 1965, Thelen 1999). How institutional arrangements diverge at some point in time and then continue to move along separate historical tracks thus became a common answer to why societies differ.

An important implication of these writings is that institutional arrangements can be seen as a form of local order, rooted in a specific time and place. Essential to the development of institutional analysis was the re-conceptualization of the state and the bureaucracy as actors, rather than just neutral arenas reflecting the preferences of organized interests and citizens, with calls to "bring the state back in" (Evans et al 1985).

Classification in institutional literature

Due to its vastness, institutional theory is hard to overview, but within the historical institutional strand, the issue of classifying people for the purposes of governing over them has largely been overlooked. It doesn't form part of major overviews (Fioretos et al 2016, Peters 2019), nor does it figure in important theoretical works (Thelen & Steinmo 1992, Thelen 1999, Mahoney & Thelen 2010, Thelen & Mahoney 2015). Systems of governing which classify people for purposes of ruling over them, which in other works are theorized as absolutely central to the modern state's governing capacity (Hacking 1990, Scott 1998, Torpey 2000, Brambor et al 2020), are thus something of a blind spot. An exception is Mary Douglas (1986), whose writing on institutions is often on the margins of the works cited here.

Douglas singles out two key functions of institutions that are of central importance to their ability to produce status: that they confer identity and perform classificatory functions. To Douglas (1986:55), "similarity is an institution"

[9] This stands in contrast with the neoinstitutional school. Instead of explaining enduring differences across nations, the origin of neoinstitutional theory was explaining similarity in formal organizations (Meyer & Rowan 1977). This proceeded from questioning the assumption that organizations are local orders by asking "Why are organizations so similar?" As discussed by DiMaggio & Powell (1991:ch1), institutions were subsequently defined by their taken-for-granted nature in this school.

and "institutions bestow sameness" to classes of things (Douglas 1986:63). She provides general guidance to how systems of classification, such as those delineating who is a refugee and who isn't, create similarity by establishing boundaries of difference. In her writing, systems of classification are depicted as flowing out of and being stabilized through institutional arrangements. These classificatory systems are what allow disparate things, such as people moving across international borders, to be recognized as members of the same class (Douglas 1986:58). Vitally, Douglas says that while such classification systems may appear objective and neutral, they are in effect local and reflect the social context from which they spring, loading the classes they create "with moral and political content." (Douglas 1986:63)

Regulative and normative institutions

The nature and features of institutions are, due to the lively and developing nature of the field, under constant debate (DiMaggio & Powell 1991, Thelen 1999, Peters 2019). For purposes of drawing the outlines of how to study classification systems, the discussion will first cover the nature of institutions and then the role of agency in them.

Scott (2014) has famously defined three pillars of institutions, mirroring three different ways in which the core of institutions can be imagined: regulative, normative, and cultural-cognitive. In the neoinstitutional school, institutions are generally seen in the cultural-cognitive perspective: norms or perceptions defined by taken-for-grantedness (DiMaggio & Powell 1991), such as the convention of shaking hands. From a historical institutionalist point of view, cultural-cognitive phenomena are often seen as informal, i.e., institutions which are not formalized in law or regulation. Analysis in the historical tradition instead tends to be interested in the opposite, defined by Streeck & Thelen (2005:10) as "formalized rules that may be enforced by calling upon a third party". In the terminology of Scott's pillars, the focus can be seen as a mix of regulative and normative factors (Parsons 2007:ch3, Scott 2014). The regulative side emphasizes issues such as coerciveness and formalized rules, laws, and sanctions, while the normative focuses on binding expectations, social obligations, and appropriateness (Scott 2014). This is illustrated by a famous study by Thelen (2004) which focuses both on the regulatory arrangements of labor market policy in Germany, the U.S. and Japan, but also the ideas and values which underpin these arrangements.

The normative and regulative aspects of institutional arrangements link back to the two central features of refugee classification identified at the end of chapter two. The normative aspects of institutions can be linked to the

centrality of deservingness in migration regulation: values and ideas concerning what makes a person deserving of protection or not. The historical regulation of refugees shows importance of morals and obligations and the definition of which traits in immigrants are seen as making them deserve help (Anderson 2013, Crawley & Skleparis 2018). Conversely, the regulative aspect of institutions is expressed in the intricate set of rules and laws that make refugees governable, often coercive nature, expressed in instruments such as passports, permits and visas (FitzGerald 2019). A major feature of asylum processing concerns monitoring and sanctioning activities, such as granting or denying permits or ordering deportations. This amounts to series of policy instruments which express a view of social control and build on theorization of the relationship between the governing and governed (Lascoumes & Le Gales 2007).

Scott's pillars relate to the issue actors' agency – a major issue in institutional theory, which is often criticized for being too structuralist (Greenwood et al 2008). In historical institutional analysis, institutional arrangements are broadly held to affect actors' agency through two key functions: constraining action and molding preferences (Steinmo & Thelen 1992, Clemens & Cook 1999, Parsons 2007:ch3). Again, these can be seen as mirroring Scott's regulative and normative components. Agency is seen here as formed by institutional arrangements, both through negative hinders on actors from doing certain things (regulative), but also in the more productive sense of shaping preferences (normative). In an important distinction, Thelen (1999) has discussed how historical institutionalist analysis is characterized by seeing preferences as endogenous to the political landscape. This means that normative ideas which mold preferences are grounded in a specific time and place. In this study, the cases of Canada and Sweden can be seen as two environments in which endogenous preferences form. This is different from the rational choice school of institutionalism, which assume that preferences are exogenous, seeing actors are utility-maximizing across time and space, largely resembling the dominant theories of migration control.

Historical institutionalist analysis is sometimes critiqued for lacking explanatory power by blurring the boundaries between the regulative and normative sides of institutions (Hall & Taylor 1996, Parsons 2007:ch3). Instead, this is seen here as an acknowledgment of policymaking as underdetermined, where actors are assumed to be able to affect the rule systems in which they find themselves (Mahoney & Thelen 2010). One reason for this is the highly complex nature of political systems, where contradictory rules open space for agency (March & Olsen 1989, Greenwood et al 2008).

Institutions as regimes

These descriptions of what an institution is and their sources get us closer to how we can study a classification system for governing migrants. Importantly, it points to a multiplicity: consisting of many, perhaps conflicting, rules and laws, several actors, and perhaps also conflicting normative conceptions. It is thus not an institution in the sense of a single thing, but rather a framework made up of components. This multiplicity sits close the definition of institutions as *regulatory frameworks*, where the analysis focuses on government agencies and policies, rather than cognitive schema in the neoinstitutionalist school (Greenwood et al 2008:11). It leads toward the adoption of a rather open definition of a what an institution is, which is common in historical institutionalism, where analysis is focused on a processual understanding of how institutions develop and change over time (Steinmo 2008, Peters 2019).

In collecting the threads, one final component in studying a classificatory framework is highly important: those it classifies. There is a general tendency in the historical institutionalist literature to focus on decision-makers and organized interests, leaving aside those subjected to policies. Streeck & Thelen (2005) offer an exception to this by proposing a model that centers on rule-makers and rule-takers. Building on a view of institutions as consisting of multiple components, they discuss them as *regimes*:

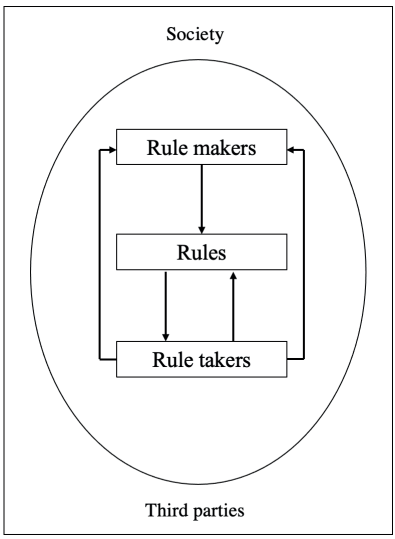
> the closest general concept for the kind of institution in whose dynamics we are interested in is that of a social regime. By regime we mean a set of rules stipulating expected behavior and 'ruling out' behavior deemed to be undesirable. A regime is legitimate in the sense and to the extent that the expectations it represents are enforced by the society in which is embedded. Regimes involve rule makers and rule takers, the former setting and modifying, often in conflict and competition, the rules with which the latter are expected to comply. (Streeck & Thelen 2005:11-12)

By singling out the centrality of desirable and undesirable behavior, this makes a connection to the normative aspects of institutions, getting us closer to a basis for studying classification systems. In such regimes we might find what Howard Becker (1974:196) singles out as a central issue in classification systems: "the imposition of definitions – of situations, acts, and people – by those powerful enough or sufficiently legitimated to be able to do so." The regime concept, in addition, has been used in recent studies on migration control due to its usefulness in illuminating the multitude of actors and tools involved. (Eule et al 2018) Streeck & Thelen ascribe decisive importance to the dynamics between rule makers and rule takers:

> What all this amounts to is that those who control social institutions, whoever they may be in a concrete case, are likely to have less than perfect control over the way in which their creations work in reality. What an institution is is defined by continuous interpretation between rule makers and rule takers during which ever new interpretations of the rule will be discovered, invented, suggested, rejected, or for the time being, adopted. The real meaning of an institution, that is to say, is inevitably and because of the very nature of social order subject to evolution driven, if by nothing else, by its necessarily imperfect enactment on the ground, in directions that are often unpredictable. Indeed the more sophisticated the makers of a regime are, the more they recognize that a good part of institutional and political life consists of unanticipated consequences of their 'institutional design' decisions, requiring that these are continuously adjusted and revised if they are to be made to stick. (Streeck & Thelen 2005:16)

This gives a structured vocabulary to the ongoing nature of classifying people that was outlined in the previous chapter, with the relation between classified and classifier seen as an interaction, a persistent challenge in governing. Streeck & Thelen (2005:13) propose the following model for institutions as regimes (Figure 1):

Figure 1: Institutions as regimes



By pointing to the multiplicity of institutions and setting out the importance of the rule maker-rule taker relationship, this model offers a good basis for developing a model for this study. However, it requires adaptation. In the last

chapter, two aspects were identified as central to (refugee) classification systems: deservingness and governability. Adapting this to the institutional literature by building on Scott's (2014) pillars, rules are here seen as having both normative (deservingness) and regulative (governability) components. What Streeck & Thelen (2005) define as rules, in this analysis, both encompass ideas such as desirable traits in immigrants or the role of immigration in society, but also instruments of governing such as permits which are intended to draw boundaries around administrative categories. These can be seen as the basic building blocks of a government classification system for people. The next section concerns developing an understanding for how these building blocks vary over time and across states: how institutional regimes are rooted in specific contexts and change or stabilize over time.

Institutions in time

Historical institutionalism builds on the assertion that social phenomena can be understood by exploring their origins – that institutional frameworks which mold human behavior have origins which substantially affect their later development (Stinchcombe 1965). This is often expressed in the importance of sequencing of events for policy outcomes. In many historical institutionalist accounts, history matters in the sense that where institutional arrangements originate, and the order in which they develop during crucial periods, affect how they develop. A common form of this is path dependency (Mahoney 2000, Pierson 2004). At its foundation, this adheres to an imagery of social explanation were coincidence and chance play key roles. Institutional arrangements, such as a government classification system, aren't seen as arising in either totally random or pre-determined ways but develop through a series of gradual steps with key contingencies along the way (Becker 1998:ch1). This mirrors Douglas' (1986) assertion that classification systems are local, rooted in a specific time and place.

This means to see political life as complex and unpredictable, ridden with unforeseen consequences. It harks back to a notion that temporal ordering, rather than human rationality, contributes to structuring political processes (March & Olsen 1989). In this imagery, rules are seen as indeterminate: they are applied in shifting contexts and don't have self-evident meanings – they might mean one thing when they are decided, but something entirely different when the actors involved in their interpretation shift, or the world around them changes (Mahoney & Thelen 2010), such as in the case with Refugee Convention. In addition, rule makers have limitations in terms of information processing and planning ability, contributing to producing unanticipated results

(Streeck & Thelen 2005). This means that to properly understand institutional arrangements, a long-term perspective is required.

Within this historical interest, a key focus is how early choices create patterns which feed back, setting constraints and molding the preferences of actors within institutional regimes. At any given point in time, past choices interact with the environment to form context of future choices (Clemens & Cook 1999, Parsons 2007:ch3). This is a repudiation of the rational choice school in institutionalism, where institutions are instead seen as reflections of stakeholder preferences. The latter is expressed in the dominant theories of migration control recounted in earlier chapters, where the institutional arrangements that amount to migration control are seen as reflecting a balance between organized interests (e.g., Freeman 1995, Joppke 1998, Hollifield et al 2022). In this line of thinking, when the preferences of stakeholders shift, institutional arrangements change – if the balance of power is disrupted between courts and interior agencies, for example, this is assumed lead to changes in the institutional arrangements of migration control.

The historical institutionalist position is different. Instead, Thelen (1999) claims, institutional arrangements emerge from and are sustained by features in the broader political and social context. In the last chapter, for example, we saw how the immediate post-war circumstances were indissolubly connected to the drafting of the Refugee Convention. As Parsons (2007:14) puts it, this amounts to a "…particularistic argument that the course of history was open until people embedded themselves in distinct new causal dynamics through their own actions". Once formed, institutional arrangements are often change-resistant – they don't simply change when the balance of power does (Thelen 1999, Pierson 2000, Hacker et al 2015). Instead, they mold expectations and actors, setting the stage for interactions between actors. Using Stinchcombe's (1965) terms, historical institutionalist theory looks for historical instead of constant explanations. Outside of the institutional literature, work on government classification systems have observed similar characteristics, when such systems have been described as local in nature, rooted in time and space (Douglas 1986): as Bowker & Star (1999:61) put it, classifications "grow out of and are maintained by social institutions."

Institutions over time

Apart from being rooted in time, institutional arrangements are also sustained over time. The issue of change is key in all strands of institutional theory (Greenwood et al 2008, Mahoney & Thelen 2010, Scott 2014). It arises from a seeming paradox – if institutions provide stability, how do they change? Many different mechanisms or forms of change have been proposed, with a

common denominator being that institutional change is often portrayed as caused by some type of friction within institutional arrangements (Thelen 1999, Streeck & Thelen 2005, Scott 2008). Historically, historical institutionalist analyses have often focused on institutions as stable properties, rather than institutionalization as a process. The focus in explaining change was exogenous sources: when external events caused friction. Encapsulated by the 'punctuated equilibrium' model, the pre-eminent example are international crises. Events such as wars or financial crises are said to open critical junctures where strategic political actors get to meaningfully impact the structure in which they act, rather than adapting to rules set at other times (Capoccia 2016, Peters 2019). When such contingent moments in history happen to take place, some set of actors, ideas and interests are present, and their decisions set the stage for the path-dependent processes which follow: self-reinforcing chains of events, or reactive sequences, trigger a dynamic whereby an equilibrium structure gets harder to dislodge as time passes (Mahoney 2000, Pierson 2004). Institutional arrangements, then, become self-reinforcing, ultimately requiring another type of external shock to be displaced. Path dependency is a well-established variant of the more general phenomenon of policy feedback:

> The abstract logic is that early contingent choices create a pattern of relationships that feed back unintentionally to alter constraints and incentives for later decisions. This is how I use the term 'path dependence': once someone takes a step down one path, he engenders commitments, expectations, and 'sunk costs' that encourage further steps in similar direction. (Parsons 2007:72)

Path dependency been criticized as a metaphor for implying stasis, with analysis overly focused on institutional formation in critical junctures and leaving aside how institutional arrangements are sustained thereafter (Thelen 1999). Instead, many have argued that the crucial issue is precisely to pick apart how that which seems stable is continually sustained and reproduced – or, as Clemens & Cook (1999:441) put it, "decomposing institutional durability into processes of reproduction and disruption". According to Thelen (1999:400), reproduction should be the central focus of institutional analysis:

> the key to understanding institutional evolution and change lies in specifying more precisely the reproduction and feedback mechanisms of which particular institutions rest.

Instead of looking for exogenous and discrete sources of changes, the dominant approaches of the last decades have emphasized endogenous and gradual approaches (Mahoney & Thelen 2010, Hacker et al 2015). Here, mechanisms of reproduction are seen as dynamic, continually interpreted, where "coherence

does not so emerge as it is constructed, as institutions inherited from the past get adapted to changes in the political, market, and social context" (Thelen 2004:291). The empirical focus has consequently shifted, from macro political phenomena such as wars and revolution (e.g., Skocpol 1979), to hidden forms of policy development such as gradual shifts in tax policy and labor relations (Thelen 2004, Hacker & Pierson 2010). This generation of research tends to focus on internal rather than external tensions in institutional arrangements, such as contradictions which unfold over time (Pierson 2004), akin to latent tensions which become manifest at certain points. Several feedback mechanisms have been introduced to describe different types of institutional change, the most prominent of which are drift, conversion, layering and displacement (Streeck & Thelen 2005, Mahoney & Thelen 2010). In these types of change, institutional arrangements are depicted as arising through incremental processes rather than critical junctures, which is in part due to the institutional density and slow-moving nature of contemporary Western political systems.[10] (Streeck & Thelen 2005, Capoccia 2016) This type of gradual change in dense, multi-layered political environments is applicable to the shifts charted to the Refugee Convention in the previous chapter, which is undergoing continuous negotiation and interpretation.

Defining feedback

Feedback needs to be specified: exactly what is feeding back? It's common to single out incentive structures and distribution of material resources as creating feedback (Pierson 1993, Thelen 1999); this is an explanation for why it's hard to reform pension systems, for example, since they can be argued to have an in-built constituency (Pierson 2004). In this analysis, institutional arrangements create rules of the game to which utility-maximizing actors adapt, and over time, such arrangements become harder to dislodge.

In terms of the classification of people, however, a more relevant form of feedback can be argued to be that which Pierson (1993) has called interpretive. This is where policy arrangements function as sources of information and meaning. Since political actors must deal with "overwhelming complexity and uncertainty", Pierson (1993:611) writes, this means they "use a wide range of cognitive shortcuts in order to make sense of the social world". In institutionally dense environments,

[10] Recurring claims of the change-resistant nature of contemporary politics is partly testament to the American origin of much of the literature, carrying assumptions from the fractured American political system.

> learning is very difficult and cannot be assumed to occur. Instead, understandings of the political world should themselves be seen as susceptible to path dependence… actors who operate in a social context of high complexity and opacity are heavily biased in the way they filter information into existing 'mental maps'. (Pierson 2000:260)

For the purposes of this study, classification systems for governing people will be perceived as such mental maps. They serve to stabilize the perception of political actors, reducing ambiguity in the wilderness of the social world and thus help to render it governable: stabilizing complexity around issues such as the reason why people migrate and what a refugee is.

However, while people-production is central to public administration (Schneider & Ingram 1997, Jenkins 2008:ch15), it's seldomly studied in historical institutionalism. There are studies which focus on how "cultural categories" are institutionalized, such as ethnic groups in censuses, and which show that their degree of institutionalization have effects on the distribution of public goods (Lieberman & Singh 2012, Capoccia 2016). These cultural categories tend to be more abstract than actual target populations, however.

Yet, governmental systems for classifying people in public services – be they immigrants, unemployed, patients or inmates – requires reliable reproduction in the sense described in institutionalist studies. This means a continuous sorting of people into official categories for the purposes of maintaining the state's capacity to order the word (Brambor et al 2020). This is a core activity of the state which this study is focused on, and one which can be understood using the conceptual frameworks of historical institutionalist theory. In this vein, Deborah Stone (2012) says that policymaking is centrally about boundary-drawing and requires the creation of categories through which to include or exclude. A neglect of such aspects leads to a neglect of central issues in politics, which classically have been said to be about the authoritative allocation of values in society. If a central part of governing is distribution, such as the granting of a permit to live in a new country, then as Schneider & Ingram (1997) point out, this requires the definition of subjects to distribute to. Just like in the literature on migrants, however, the administrative identities required for this are often treated as "something that simply is" (Jenkins 2008:17) or "purely technical" (Bowker & Star 1999:196). While Streeck & Thelen (2005) highlight the importance of rule makers and rule takers, the classification of people is a more specific issue. The groups are not rule takers within the public sector, but outside of it - i.e., not officials such as street-level bureaucrats, but sets of people made governable.

Approaching classification

In concretizing the concept of institutions as regimes to the study the issue of (refugee) classification systems, Lascoumes & Le Gales' (2007) work on policy instruments serves here as a bridge. A government classification system will here be seen as a policy instrument in the sense they advocate, building on two key arguments:

> (1) public policy instrumentation is a major issue in public policy, since it reveals a (fairly explicit) theorization of the relationship between the governing and the governed: every instrument constitutes a condensed form of knowledge about social control and ways of exercising it, and (2) instruments at work are not neutral devices: they produce specific effects, independently of the objective pursued (the aims ascribed to them), which structure public policy according to their own logic. (Lascoumes & Le Gales 2007:3)

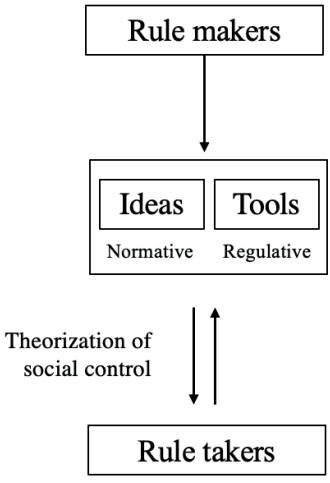
The notion of instruments as a theorization of the relationship between the governing and the governed is a highly fruitful way of approaching rule makers' attempts at drawing of boundaries within classification systems, capturing how categories produce rather than reflect status (Hein 1993). Lascoumes & Le Gales (2007:4) say that policy instruments are

> a particular type of institution, a technical device with the generic purpose of carrying a concrete concept of the politics/society relationship and sustained by a concept of regulation… they are bearers of value, fueled by one interpretation of the social and by precise notions of the mode of regulation envisaged.

Building on this, we can see government classification systems as expressing theorizations of social control, imbued with normative ideas, and manifested in regulatory tools. In addition, Lascoumes & Le Gales (2007) highlight how similar aspects as the historical institutionalist literature in terms of change over time: how instruments partly can influence how rule makers behave, constraining and creating possibilities, creating inertia effects and binding actors together establishing certain representations of a problem. This means that instruments can have effects of their own, sometimes novel and unexpected.

With this, we can refine the analytical model (Figure 2):

Figure 2: Refined analytical model for studying classification systems as institutions



Institutional analysis offers highly valuable tools for analysing the *form* of a classification system: it's origins, components, and development over time. Seeing a classification system as a policy instrument in Lascoumes & Le Gales' (2007) sense further concretizes how they can be explored. What remains is the *substance*: the classification of people for purposes of status production – or, in Hacking's (1986, 2007), how states make up people. For this, we now turn to literature outside of the institutional field.

Counting and classifying people

Advanced capacities for classification and counting of people are often portrayed as integral to the historical process whereby the state became modern. Even before modern population registries and censuses, the enumeration and classification people seems to have been inextricably bound up with the expansion of the state as a project of social control. There is evidence of populations counts for fiscal and military purposes dating as far back as Sumerian civilization in 3 800 B.C. (Brambor et al 2020). Writing systems are often described as invented in response to a perceived need to count, survey, prescribe and control the activity of others across both time and space (Giddens 1987). The ascension of the modern state as a dominant entity in social life is intimately tied to the counting and registering people for purposes such as taxation, conscription and preventing rebellion (Scott 1998:ch1). In these developments, detailed information about people became a key resource, one which

often was made manifest in instruments developed to regulate human movement (Hobsbawm 1992:ch3, Caplan & Torpey 2001).

In the field of science and technology studies, Geoffrey Bowker & Susan Star (1999:10) define a categorization system as a "segmentation of the world", a "set of boxes (metaphorical or literal) into which things can be put to then do some kind of work – bureaucratic or knowledge production." In adjacent sociological writings, classifying the world around us is often depicted as an inseparable part of being human, foundational to human perception and knowledge (Jenkins 2000, 2008). In this sense, classification can be seen as form of mental map to reduce to the complexity of the world, making it predictable by sorting into bounded entities – necessary for both individual cognition, as well as for large-scale organizations (Douglas 1986, Jones 2009). Classification systems, Bowker & Star (1999:ch2) assert, are ubiquitous in modern societies and they abound in bureaucracies. Fundamentally, their function can be seen as replacing ambiguity with precision, drawing boundaries between entities to make the world controllable (Douglas 1986:ch5). Sociologist Richard Jenkins describes the role of classifying people in making the world governable:

> Categorisation is a routine and necessary contribution to how we make sense of, and impute predictability to, a complex human world of which our knowledge is always limited, and in which our knowledge of other humans is often particularly limited. Our ability to identify unfamiliar individuals as members of known categories allows us at least the illusion that we know what to expect of them. (Jenkins 2008:105)

Naturally, then, classification has also been described as central to policymaking. Deborah Stone (2012) says that policymaking is "centrally about classification and differentiation, about how we do and should categorize in a world where categories are not given", because this is a perquisite for being able to direct policies and distribute benefits and burdens. She continues:

> it means deciding whether to include or exclude. We categorize by selecting important characteristics and asking whether the object to be classified is substantially like the other objects in the category. Categorization thus involves establishing boundaries in the form of rules or criteria that tell whether something belongs or not… to categorize in counting or to analogize in metaphors is to select one feature or something, assert a likeness on the basis of that feature, and ignore all other features (Stone 2012:185)

While classification may be unavoidable, it is also inherently political. Modern refugees, as we saw in the last chapter, have been defined by a specific understanding of political reasons for movement. Things, in this sense, become real

by acquiring officially sanctioned names – the categorization of the world, Jones (2009) says, is the ordering of life.

Making people legible

Erving Goffman (1963/2022) makes a distinction between social and personal identity. Social identity, Goffman says, concerns the preconceptions and expectations that people have of others in everyday interaction. Personal identity, on the other hand, concerns the control of information associated with large-scale organizations such as the modern nation state. Personal identity is manifested in artifacts such as bureaucratic registries and ID cards, and it concerns what might be called the administrative standardization of identity from above (c.f. Caplan & Torpey 2001). In other words, personal identity can be seen as that administrative simplification of human beings which originates in the need for modern nation states to rule over large and complex societies, where control is depersonalized and works over distances.

The classification of personal identity, as an exercise in power and information control, is central to modern governing. For the modern state, knowing the world has in many ways been inseparable from controlling it (Clemens & Cook 1999). In *Seeing Like a State,* James C. Scott (1998) offers a compelling conceptualization of how states make the world governable, developing a vocabulary of metaphors which speak to the classification of refugees. The modern state, Scott says, strives to establish ways of reading the social and natural world, of making it legible. The premodern state was partially blind – by modern standards, it knew little about its subjects or its land. Exact birth records, for example, had to be painstakingly collected and centralized (Caplan & Torpey 2001, Brambor et al 2020). Tax collection was hampered by officials' lack of ability to specifically identify people and poor knowledge about their income or wealth. Inherent to the development of modern states was that governments and officials started to simplify the world in new ways: ”Much of early modern European statecraft was devoted to rationalizing and standardizing what was a social hieroglyph into a legible and administratively more convenient format” (Scott 1998:3). Such simplifications, Scott says, are in their most realized forms synoptic, affording an overview of the whole from the center of a government department.

Scott's metaphors shed light on how refugees have been made governable historically. The distinction of economic and political reasons for movement (Bakewell 2008), using Scott's approach, should not be seen as an attempt at an accurate depiction of human destinies, but rather of creating types of people that allow for governing. Human communities and individuals, in their complexities, Scott (1998:22) says, are administratively ”indigestible” and can

only be represented through great schematization and abstraction. By becoming observable in documents and records, the slice of society of interest to the officials is made surveyable. This abstracting has a utilitarian logic: by narrowing the vision, it's intended to make objects governable and useful. Simplification, then, is necessary for governing, by bringing into "sharp focus limited aspects of a complex and unwieldy reality." (Scott 1998:11). This, according to Scott, is associated with a form of productive power, one in which the state makes and fashions aspects of society, rather than just depict it:

> Where the premodern state was content with a level of intelligence sufficient to allow it to keep order, extract taxes, and raise armies, the modern state increasingly aspired to 'take in charge' the physical and human resources of the nation and make them more productive. These more positive ends of statecraft required a much greater knowledge of the society. (Scott 1998:51)

The goal of simplification is manipulation: to transform the world in line with the synoptic view of interest to the observer – or to "impose the logic on the very reality that was observed" (Scott 1998:13-14).

The growth of the modern state in the 18th and 19th centuries was associated with a vast expansion of state bureaucracies occupied with establishing legibility over populations. Classifying and administratively making up people started to become a great preoccupation for public administration in the 19th century, with growing bureaucracies and official statistics creating "new slots in which to fit and enumerate people" (Hacking 1986:161). Ian Hacking (1990, 2007) outlines this as a central feature of the modern bureaucracy. He makes the point that 19th century developments are the crucible for our understanding of what it means to be a normal person, which depend on a juxtaposition to the deviant. The new classificatory lexicons of the state often focused on deviancy: the sick, the poor, the criminals (Hacking 1990) – and immigrants. In a similar line of thought, Sayad (2004:282ff) argues that it is such targeting of various forms of delinquency which most effectively reinforces the new view of normality that came about with the modern state. The new bureaucracies of classification were grounded in ambitions of governing the world, founded on the "notion that one can improve – control – a deviant subpopulation by enumeration and classification." (Hacking 1990:3).

In the process of making the world and its people legible, the inherent multiplicity of things and people came to be perceived as a form of wildness to be tamed (Bowker & Star 1999:307). As David Graeber (2015:46) has argued, this drive for simplification matches the essence of bureaucratic knowledge:

> Bureaucratic knowledge is all about schematization. In practice, bureaucratic procedure invariably means ignoring all the subtleties of real social existence and reducing everything to preconceived mechanical or statistical formulae. Whether it's a matter of forms, rules, statistics, or questionnaires, it's always a matter of simplification.

When human beings were imagined in the abstract as objects of government control, this meant the basic information properties of a "person" to be identified and stabilized. Early European reforms toward modern migration regulation can be seen as a symptom of this: they centered on standardizing "identity" in new passports. (Torpey 2000, Caplan & Torpey 2001). It is perhaps because the classification of people is about stabilizing the nation state, that its officials have always seemed to be "the enemy of people move around", as Scott (1998:1) writes. Here we see how a classification system expresses a theorization of the relationship between governing and governed in Lascoumes & Le Gales' (2007) sense: the new statistical charts, registries and ledgers of rapidly expanding bureaucracies were all imbued with a specific view of normality, one of being a citizen in a nation state.

Administrative standardization of identity

The categorization of refugees can be understood as a specific instance of legibility, simplification and manipulation – the forging and maintenance of authoritative identities for the purpose of social analysis, power and knowledge (Starr 1992). Building on the writings gathered so far, we can now start approaching the policy literature and set out more precise points about the classification of subjects that is at the heart of migration. First, how classes are externally imposed onto people, and second, how such 'target populations' are rooted in notions of deservingness.

First, Douglas (1986) clarifies that institutional arrangements confer identity onto people. Imposed from above by the governing, the category can be contrasted against the group, which is characterized by collective identification from below. The difference is elucidated well by Brubaker & Cooper, who outline a distinction between "self-identification and the categorisation of oneself by others". They point to

> one key type of external identification that has no counterpart in the domain of self-identification: the formalised, codified, objectified systems of categorisation developed by powerful, authoritative institutions. The modern state has been the most important agent of identification and categorisation in the latter sense… The state is thus a powerful "identifier", not because it can create "identities" in the strong sense – in general, it cannot – but because it has the material and symbolic resources to impose the categories, classificatory

> schemes and modes of social counting and accounting which bureaucrats, judges, teachers, and doctors must work and to which nonstate actors must refer (Brubaker & Cooper 2004:42-43)

Building on similar arguments, Jenkins (2008:5) argues that "identity is a process – identification – not a 'thing'. It is not something that one can have, or not; it is something that one does." In other words, for purposes of making people governable, states need to continuously reproduce categorical schema, and thereby uphold a state vision. These attempts of rule makers to create and enforce administrative identities from above is what this study concerns. Brubaker & Cooper (2004:ch2) and Jenkins (2008) both argue that such issues have often gone unnoticed.

Within this vision, some government categories are more significant for the categorisers than for the categorized (Jenkins 2008:ch9). Those subject to government classification are generally not aware of every minute distinction used to make sense of them. But some externally imposed categories are socially real, meaning that where you are placed has tangible consequences. Refugeehood, with potential life and death consequences, is one of them. In a similar vein as Scott (1998), Zetter (1991:41) argues that that "the bureaucratic interests and procedures are themselves crucial determinants in the definition of labels like refugees". The drawing of boundaries between individuals through administrative means is done, Zetter (2007) argues, in the interest of controlling and managing migration. Refugeehood is essentially about the "forming and transforming of a bureaucratic identity". The answer to the question "Who is a refugee?" is thus: "one who conforms to institutional requirements" (Zetter 1991:51). In other words, these categories can be seen as arising out of specific institutional arrangements, ones which concern how to govern migration.

With the purpose of studying such administrative identities, Anne Schneider and Helen Ingram (1991, 1993, 1997) have coined the concept target populations. These are the sets of people classified by and through policymaking, those whose behavior is intended to be changed for political purposes. Schneider & Ingram start from the assumption that policymaking is centrally about the distribution of benefits and burdens, and this allocation of values requires an administrative separation of kinds of people (Schneider & Ingram 1997:ch4-5). They argue that

> Target populations are the persons, groups, or firms selected for behavioral change by public policy initiatives such as statues, agency guidelines, or operational programs… Because public policy almost always works through people to achieve results, policies are not likely to have the desired effects unless target groups make decisions and take actions consistent with the production of policy purposes (Ingram & Schneider 1991:334)

And similarly, that

> Policy sets forth problems to be solved or goals to be achieved and identifies people whose behavior is linked to the achievement of desired ends. Behavioral change is sought by enabling or coercing people to do things they would not have done otherwise. By specifying eligibility criteria, policy creates the boundaries of target populations. (Schneider & Ingram 1993:335)

If we apply this to migrants, various policy tools within classification systems, such as residency permits, can be seen as drawing the boundaries around target populations.

Aside from clarifying the centrality of target populations in policy, Schneider & Ingram also make a point in singling out what they see as the most important component in drawing boundaries around target populations: it is aimed at distributing benefits to those who are deemed *deserving and entitled* (Schneider & Ingram 2005). In highlighting perceptions of deservingness as the crucial criterion for the development of target populations (Schneider & Ingram 1993, 1997:ch5), this establishes a clear link to the normative side of institutional regimes outlined above.

Schneider & Ingram's writing, however, is intimately linked to the U.S., with a specification of deserving and undeserving groups rooted in the American political environment. While these groups are limited interest in this work, they serve to illustrate the broader implication of their theory: that ideas about deservingness are context-bound.[11] They also point out that target populations, due to shifting notions of deservingness, evolve over time:

> Political debates may lead elected officials to make finer and finer distinctions, thereby subdividing a particular group into those who are deserving and those who are not. Immigration policy, for example, distinguishes among illegal aliens, refugees, migrant workers, those seeking asylum, and highly skilled workers who receive waivers. (Schneider & Ingram 1993:336)

In other words, while target populations are crucial to policymaking, their reproduction is not automatic. People don't neatly align with government categories; these designs require work, adjustment, negotiation and interpretation to fit people with categories (Bowker & Star 1999:ch9). Over time, target

[11] The target population concept is couched in a larger theory on policy design, which is also of limited relevance here. Schneider & Ingram's overall theoretical work comes with many assumptions and directions in studying public policy, which ultimately are outside of the framework of this study.

populations can become taken-for-granted pillars of how a state sorts its subjects, such as ethnic categories in censuses (Capoccia 2016, Lara-Millán 2017). As we saw in the last chapter, in terms of the highly consequential category of asylum, they are instead continuously contested. Here, the target populations defined by states can be seen as gateways into the social closure of the nation state. Before finalizing the theoretical model, the penultimate section will set out how the reproduction of target populations can be studied.

State capacity: Reproducing identities

The previous sections have outlined how, in a wide range of writings on classification systems, these are often portrayed as sitting as being at

> the heart of modern, bureaucratically rational strategies of government and control. Administrative identities exist and are acquired, claimed and allocated within power relations. (Jenkins 2008:45)

Informed by institutional theory, we shouldn't see this as automatic, but in need of continuous reproduction – while censuses or population registries might appear objective and neutral, they require continuous work. As Jones (2009) writes, a key function of government classification is to give the perception of fixity and objectivity, but behind this, categories need to be constantly maintained. Crawley & Skleparis (2018:52) assert as much when they point out that refugee classifications are in a process of "constant state of change, renegotiation and redefinition." Stone (2012) describes the ongoing necessity of administering boundaries, saying that the boundaries between categories are "border wars waiting to happen":

> Each mode of social regulation draws lines around what people may and may not do and how they may or may not treat each other. But these boundaries are constantly contested, partly because they are ambiguous and don't settle conflicts, and partly because they allocate benefits and burdens to the people on either side. (Stone 2012:15)

Mahoney & Thelen (2010) ground the more general need for continuous reproduction of institutional arrangements in their distributional qualities. Just like Schneider & Ingram (1997), they see the central issue of policymaking as the allocation of values: and because institutional regimes, such as that of migration control, portion out resources and privilege, they become arenas of contestation. In this view, institutions reflect a tenuous balance which isn't automatically self-reinforcing but dynamic (Mahoney & Thelen 2010). As Scott (1998:49) puts it, the simplifications upon which state categorizations rest

create a view of reality for the purpose of the governing, that is ”far more static and schematic than the actual social phenomena they presume to typify”. The inability to fit the world into the ideal model is what makes processes of legibility ongoing, because of the ”capacity of society to modify, subvert, block, and even overturn the categories imposed upon it.” (Scott 1998:49)

Howard Becker, one of the originators of labelling theory, has written how classification is interactional, since ”people act with an eye to the responses of others involved in that action” (Becker 1974:174). In a more general sense, those categorized always have capacity for resistance (Scott 1990). This is expressed in Hacking’s (2007:293) assertion that humans are *moving targets* who react to the simplifications imposed upon them:

> We think of these kinds of people as given, as definite classes defined by definite properties. As we get to know more about these properties, we will be able to control, to help, to change, or to emulate them better. But it is not quite like that. They are moving targets because our investigations interact with the targets themselves, and change them.

This points to the importance of viewing classification as a dynamic process, in which boundaries aren’t static, but continuously made and unmade (Bowker & Star 1999:ch9). When institutional regimes concern for life and death decisions, such as in asylum, this raises the likelihood that it becomes something over which struggles take place (Jenkins 2008).

Particularly enlightening in this continuous dynamic are *residual cases*: those who fall outside the established order of the center (Bowker & Star 1999:ch1). If the goal of government classification systems is, in Bowker & Star’s (1999:101) words, to ”produce homogenous causal regions”, i.e., to reliably produce difference and similarity, multiplicity or heterogeneity are troublesome exceptions. Classification is inherently about exclusion (Douglas 1986), meaning that each categorization – such as the premiering of certain characteristics in defining a refugee – “valorizes some points of view and silences another” (Bowker & Star 1999:5).

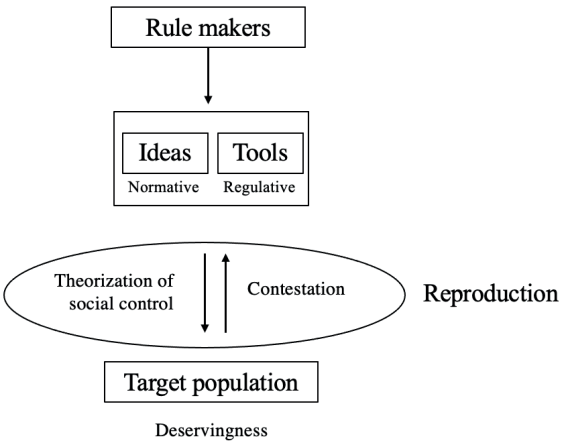
But how do policymakers respond when the people which institutional frameworks aim to fix instead elude description and control? All classification systems can be seen as having borderlands where they fail to reduce ambiguity, and those who fall outside the envisioned order often illuminate its principles. (Bowker & Star 1999:ch10) The contested nature of migration control means analytical focus should highlight processes of bounding, rather than fixed categories (Jones 2009). Studying classification systems over time offers a way of potentially capturing the contestations through which they develop.

There are different ways of approaching this interaction. A growing literature is occupied with the agency of migrants in different ways (Bucken-Knapp et al 2019). This concerns both on an individual levels (Triandafyllidou 2019) and also, such as in the literature on autonomous migration (Mezzadra 2011, Nyers 2015), on migration as an autonomous force from state geography). Rather than the agency of migrants or migration, however, this study is engaged in exploring the state vision – that is, the perception among rule makers of rule takers. This means to study classification as an act of authority and looking at those doing the work of classification. The interactive nature of classificatory procedures is of central importance to contested dynamic of the state vision, but the analysis will focus on the categorizers' end of the relationship: how they attempt to develop schema for trying to govern the world. This means that it is their framing and understanding of external events, such as migration movements, which are in focus, rather than the external events themselves.

A classification system for people

At this point, the analytical model can be finished to present how the classification system of people will be studied. Viewing institutions as regimes, the rule takers can be seen as target populations:

Figure 3: A classification system for making up people



Through processes of identification, statuses are externally imposed by rule makers. This is not a simple, one-way process, but should be viewed as contested and continuous. Here, the primary interest is on attempts to order and

govern the world: the regulatory frameworks by which administrative identities are defined and enforced. This means that the focus is on the *perceptions* of contestation among rule makers, or policymakers. Their attempts at detailing target populations should be seen as rooted in specific political cultures, out of which notions of deservingness arise, and are decisive for the drawing of boundaries around target populations. Both institutions and classification systems can be seen as locally rooted phenomena.

In classification systems, the regulative and normative pillars of migration control regime can be seen as coalescing, in classic historical institutionalist sense. When classification systems are seen as policy instruments that theorize social control, as Lascoumes & Le Gales (2007) write, this means they both contain normative components (ideas about deservingness) but also regulative means for upholding these (policy tools). Part I of this work will focus on how the institutional regime of migration control in Sweden and Canada institutionalized over time, by exploring its dynamics and mechanisms of reproduction. This can thus be seen as a study of how target populations are created and maintained, in turn highlighting how classification systems are reproduced.

4
Archival and Documentary Analysis

> We find it so difficult to imagine history that isn't teleological – that is, to organize history in a way which does not imply that current arrangements were somehow inevitable.
>
> David Graeber & David Wengrow, *The Dawn of Everything*

This chapter builds on the analytical model for studying classification systems in the last chapter. Here, the design of the study and the methodological considerations which went into it are presented. The general approach is interpretivist, which Mark Bevir and R.A.W. Rhodes (2018, 2022) has portrayed as a distinct trend in current studies on public administration. They set interpretivist explanations in contrast with naturalistic approaches, which look for formal and mechanistic explanations. A broad term, interpretivism belong among social constructionist approaches. Bevir & Rhodes (2022) specifically point to the importance of locating actor beliefs in a wider historical and cultural context. As guidelines for interpretivist studies, they say that

> Bureaucratic and political life are contingent constructions by actors with competing beliefs. Such beliefs are rooted in different traditions. They change in response to different dilemmas. It is often claimed that such accounts are idiographic and may increase understanding but cannot explain. Decentered theory explains changing patterns of public administration by focusing on the actors' own interpretations of their actions and by locating these interpretations in historical contexts. (Bevir & Rhodes 2022:153)

In pursuing an interpretivist analysis, this chapter outlines the study's design and historical orientation, the view of Sweden and Canada as cases, the research process, the data gathered and the analysis of it.

CHAPTER 4

A historical approach

The two previous chapters give different accounts of how government classificatory systems can be seen as socially constructed artifacts for purposes of governing over people. A central theme has been that the government processing of people produces rather than reflects status. There are, nevertheless, several ways to approach a study of how such classificatory systems come about, and the path taken here is historical in nature. This builds on the importance of historical exploration identified both in the migration literature as well as the theoretical work in historical institutionalism. This literature points to how contrasting across time is among the most rewarding methods for exploring how concepts, such as definitions of refugees or migrants, shift.

The development of the study's methodology has been guided by Howard Becker's (1998:132) assertion that "all terms describing people are relational – that is, they only have meaning when they are considered as a part of a system of terms." "Refugee" is an example of this. To study such concepts, Becker (1998:138) advises us to look

> at the way that set of relations is now organized and has been organized in other times and in other places. And, finally, see how things came to be organized the way they are here and now, and what connections to other social arrangements sustain that set of relations.

The chief means employed here for such exploration is to extend the study over time and space. Sitting in the tradition of historicized sociology (Clemens & Cook 1999, Lara-Millán et al 2020), the methods have been archival, employing "historical materials to study the emergence of distinctive institutional arrangements, politics, and change" (Ventresca & Mohr 2002:807). In Bowker & Star's (1999:45) terminology, the classification systems studied here have been approached as "buried in the archives".

The research process has been iterative, utilizing an approach which "alternates between (previous) theory and empirical facts whereby both are successively reinterpreted in the light of each other." (Alvesson & Sköldberg 2009:4) The design was initially open-ended and exploratory, which means the study wasn't designed with de-limited data collection phases. The openness of the process is what allowed for the exploration of courts, as the realization of the importance of law and judicialization emerged from the research process.

Interpretivist case studies

Writings in the historical institutionalist tradition can be seen as straddling the naturalist-historicist typology outlined by Bevir & Rhodes (2022). On the one hand, there are studies which search for formal and mechanistic explanations,

often by seeing institutions as stable government organizations and looking for their enduring effects and functions over time. On the other, there are approaches which pay more attention to normative frameworks, searching for an understanding of beliefs and ideas, and look at institutionalization as a process which unfolds over time, which is not mechanistic but dynamic and potentially unstable. (Thelen 1999, Parsons 2007:ch3)

This study belongs in the latter orientation, incorporating a particularistic as opposed to generalistic logic of explanation – or, in Stinchcombe's (1965) terms, a search for historical as opposed to constant understandings (Parsons 2007:ch3). By contrast, generalistic approaches search for law-like generalities, explanations for human behavior that function as 'covering laws' across space and time (Bennett & Elman 2006). Particularistic approaches instead emphasize that sequence and context play decisive roles, tracing the events within a case by which arrangements come about over time (Parsons 2007:ch3). This naturally lends itself to detailed case studies, which is the approach of this study (Becker 1992). Particularistic approaches zoom in rather than out: making historical cases intelligible and reflecting complex empirical realities, as opposed to identifying explanatory variables across large numbers of cases (George & Bennett 2005).

This is a study of two cases where migrants have been made governable: Sweden and Canada. While relying on traditional empirical boundaries of what a nation state is, the view of what Sweden and Canada are cases of has emerged from the research process. Lund (2014:224) discusses a case as

> an edited chunk of empirical reality where certain features are marked out, emphasized and privileged while others recede into the background. As such, a case is not 'natural', but a mental, or analytical, construct aimed at organizing knowledge about reality in a manageable way.

This can be seen as building on a distinction by Ragin (1992) of cases as made rather than existing independently "out there". The editing of these cases, the continuous elaboration of what they are cases of, has been driven by an interest in classification systems. This includes both in a narrow regulatory sense, setting out the emergence of techniques developed for purposes of governing, and in a wide normative sense, of understanding how classificatory systems are imbued by ideas in the contexts of the Swedish and Canadian states.

CHAPTER 4

Sweden and Canada as cases

A general point of comparison is to enhance the resonance of a study's findings (Lund 2014).[12] Canada and Sweden were selected on the basis of theoretically motivated, or purposive, sampling (Ragin 1992). This means they aren't selected as representative cases of how refugees are made governable but based on their theoretically interesting properties (Becker 1998:ch3). The logic of the comparison starts from how Sweden and Canada seem to share similar arrangements for governing migration: similarly extensive histories of refugee reception (Hammar 1999, Spång 2008, Kelley & Trebilcock 2010), similar trajectories of historical policy reforms and similar reputations as leading countries in refugee reception (Hollifield et al 2022). Beyond these similarities, however, there are marked differences in the values which potentially imbue governing arrangements: their immigration histories, their welfare models, and their legal traditions.

Both Canada and Sweden are major destination countries for refugees. Previous research outlines similar reform histories: in the 1960's, paradigmatic post-war changes were made to migration regulation in both countries (Hawkins 1991, Lundh & Olsson 1994, Johansson 2005, Kelley & Trebilcock 2010). Even though it is often outside their main focus, studies also illustrate the emergence of new tools and instruments for regulating migration in the 1970's (Hammar 1999, Spång 2008, FitzGerald 2019). They portray how refugees became more prominent in this period and turned into one of the main issues in immigration policy from the 1980's onward. Moreover, even though both states are frequently accused of hypocrisy in their posturing as humanitarian superpowers (Pratt 2005, Eastmond 2011), they have historically exhibited sufficient respect for human rights to create a conflict with border control imperatives.[13] Official statistics show that since 1980, both Canada and Sweden have accepted roughly one million refugees each. In both countries, about 20% of the population is foreign-born, among the highest in Western countries (SCB 2022, Statistics Canada 2022). In other words, in both countries, the systems of selection have long been massive bureaucratic operations. And in both states, immigration regulation has been the subject of increasing judicialization since the early 1990's, with administrative tribunals and courts established for migrants (Johannesson 2017, Evans Cameron 2018).

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[12] The term resonance is used here instead of generalizability, as the latter is associated with claims to causal explanation, which this study does not aspire to. (George & Bennett 2005)

[13] Major reforms in restrictive direction have been made to Swedish migration policies since the large arrivals in 2015. Some of these are captured in the second part of the study. The reforms accelerated with the election of a new government in 2022. These shifts, which are underway, are not part of the study's material.

For all these similarities in trajectories and arrangements, the countries are different in terms of their immigration histories, welfare models and legal cultures. In migration terms, they represent two ideal types: Canada, like the other former English colonies of the United States and Australia, is classic "country of immigration", whereas Sweden, as other West European countries, is a more recent "immigrant country" (Hollifield et al 2022). This implies different narratives on the role of immigration in national identity and state's political economy. Canada is a relatively young nation, a settler state where immigration is commonly viewed as constitutive to national identity. The great migrations of (primarily) Europeans during the 19th and early 20th centuries is regularly presented as forming a part of the country's founding (Kelley & Trebilcock 2010, Satzewich 2015). Canada is generally seen as a typical Anglo-Saxon liberal market economy (Esping-Andersen 1990), with a relatively thinner social contract in terms of its welfare expenditures and the state's involvement in the economy. Here, immigration has long been perceived as an instrument for economic growth, with the economy open to expansive importation of international labor (Kelley & Trebilcock 2010). Canada is frequently seen as belonging to the common law systems, deriving its legal institutions from a British tradition. With this comes an emphasis on checks and balances in government, and one key function of the administrative courts which deal with immigration matters is commonly seen as guarding individual rights against state infringement (Bogdan 2013, Evans Cameron 2018).

Sweden, on the other hand, as a more recent immigration country, is a nation where immigration despite being numerically extensive often does not play a key role in dominant narratives of national identity (Borevi 2012). Rather than economically instrumental, the regulation of immigration has often been perceived through the institutions of the Social Democratic welfare state (Bucken-Knapp 2009, Brochmann 2014), with a thicker social contract and larger involvement of the state in the economy. Its labor market has been heavily regulated, and for several decades following the early 1970's, Sweden had very little labor immigration. Sweden is often seen as representing a distinct Nordic version of the civil law system (Carlson 2019). Its less legalistic culture and the skepticism of the dominant Social Democratic party to the power of courts has historically implied a closeness between administrative courts and the state, with courts having been portrayed as implementers of policy (Ahlbäck Öberg & Wockelberg 2015).

Contrasting these two nations thus offers an opportunity to see how roughly similar reform trajectories and regulatory arrangements for classification are potentially rooted in different contexts, imbued with different ideas about immigration, welfare, and law. In historical institutionalist terms, history can be

seen as a continual process of ordering and re-ordering, and the cases of Canada and Sweden offer opportunities to find form in the flow of events, where attempts at governing migration transforms from unsettledness into settledness (Lara-Millán et al 2020).

Comparing across cases

When conducting comparative case studies, a standard mode of analysis in the social sciences is Mill's methods (George & Bennett 2005:ch8). Here, the point of a comparison is that it allows for identifying causal explanations. You either compare two similar cases with different outcomes, or two different cases with similar outcomes, and look for the few factors which vary across them as the explanation for the outcome (George & Bennett 2005:ch3-4). The more stringent the ambition to identify causal factors, the greater the burden on the design of the comparison.

As this study is in the interpretive tradition (Bevir & Rhodes 2022), it doesn't aspire to identify causal explanations, but rather to contrast how similar governing arrangements can be imbued by different contexts. For this purpose, however, the comparative structure of Mill's methods has still been useful in editing the comparison. In a sense, Canada and Sweden can be seen as two different cases with similar outcomes. Rather than attempt to explain how they arrived at similar outcomes, however, the aim here is instead to explore how these enduring differences animate seemingly similar governing arrangements – how the states are both different and similar at the same time.

Having adopted a view that cases are analytical constructs, it follows that comparisons are as well – it is essentially about creating comparable constructs, mainly in terms of a similarity-difference structure which is theoretically relevant. (George & Bennett 2005:153-160) The immigration histories, welfare models and legal cultures of Sweden and Canada are seen here as sources which can animate the institutional arrangement of migration regulation – giving rise to normative perceptions about deservingness or regulatory tools for making migrants governable.

The design of a comparative in-depth case study is in line with the purpose of contributing to theoretical development. The design employs two types of comparisons: across cases and over time within them, a combination which has been described as strengthening theory development (George & Bennett 2005:17-19). Within-case development over time is mainly in focus in Part I, with explores the development of classification systems in both Canada and Sweden. The point of comparing across cases is to strengthen findings, allowing more confident abstraction of results, and for the findings to plausibly

resonate to similar contexts (Lund 2014). If there are see similar tendencies in different contexts, for example, this increases confidence in their resonance.

The view of the comparison's design and components presented here have developed over the course of the study, a result of its open-ended design. Ragin (1992:11) discusses how, when cases are viewed as made, this allows for an "interaction between ideas and evidence results in a progressive refinement of the cases conceived as a theoretical construct". In this vein, a continuous reflection about the cases has been an important part of developing the study. Consequently, what Canada and Sweden are seen as "cases of" has evolved throughout the research process, a part of the dialogue between the theoretical framework and the data (Alvesson & Sköldberg 2009:ch1). As Ragin (1992:6) points out: "what it is a case of will coalesce gradually… the final realization of the case's nature may be the most important part of the interaction between ideas and evidence".

Making the cases comparable: The data

One aspect of how cases are made is that they have to be made comparable through data collection. This an archival study based on the examination of a broad range of documents. The study's documentary nature originates in its historical approach. Documents, as a form of historical artifacts, can be seen as offering means of untangling institutional development over time (Ventresca & Mohr 2002, Riles 2006). In the words of Bowker & Star (1999:26), archival studies can reveal "upstream, design-oriented decisions" which structures and inform an order such as a state classification system. There is a long tradition of documentary studies in both institutional theory (Steinmo et al 1992, Thelen 1999, Ventresca & Mohr 2002) and in the literature on the classification of people (Hacking 1990, Torpey 2000).

Due to their different traditions of policymaking, the process of data collection was different in Canada and Sweden, where the migration regimes have left different artifacts behind. Importantly, documents are not a unitary category of data. There are many types, and they say different types of things. In general, documents are viewed here as sedimented social practices which, in a historical perspective, constitute "particular readings of events":

> They tell us about the aspirations and intentions of the periods to which they refer and describe places and social relationships at a time when we may not have been born, or were simply not present. (May 2001:176)

Anthropologist and legal scholar Annelise Riles (2006), in her writings on documentary analysis, say that documents can be seen as constitutive, in that they "produce the very persons and societies that ostensibly use them" (Riles 2006:10). In colonial documents, for example, one can read of how colonists' relationship to their subjects come about, such as attempts to objectify and reify populations under their rule. This perspective is close to Lascoumes & Le Gales' (2007) notion of how policy instruments reveal a theorization about social control. The constitutive aspect which Riles (2006) points to sits closely to how classification systems have been perceived in the historical material, as artefacts left by governing actors engaged in making up people.

The data collection for what became Part I started in the fall of 2017 and ended in early 2021, proceeding through a series of concentrated phases. Part I started with an interest in the origins of institutional arrangements for regulating migration, such as migration laws and asylum processing systems. In searching for suitable material, the aim was to capture how central sets of policymakers and officials in Sweden and Canada went about designing new forms of migration regulation, and the role of classification systems in these. This is in line with Becker's (1974:196) writing on how an understanding of classification system "requires the thorough study of those definitions and the processes by which they develop and attain legitimacy". In institutional terms, the search was aimed at finding historical branching points, or contingencies, of decisive importance (Thelen 1999) – periods where institutional stability and reproduction becomes unsettled, turning into moments of mutual uncertainty where new patterns of governance can emerge (Lara-Millán et al 2020). As covered by the theoretical model in chapter 3, this includes both ideas on migration and migrants, as well as tools for regulating these, and the target populations which emerge from these. It has been central to gather a set of data which allows for uncovering both the broader historical contexts in which ideas emerge (the normative side of institutions) but also the specific tools for governing migration (the regulative side of institutions).

Archives present challenges in that they offer overwhelming amounts of data, a seemingly infinite number of threads to follow, especially in an increasing digitalized world. As with any data collection, there is a need for ordering principles (Rennstam & Wästerfors 2018:ch3). In both countries, a basic point of orientation was sticking close to a state vision, which translated into an interest in what policymakers defined as immigration policy. If seen as a policy field, immigration is not cohesive – on the contrary, migration control is a massive operation made up of a set of loosely coupled of actors working in different spaces (Eule et al 2018). As Abrams (1988:79) writes, "the state is the unified symbol of an actual disunity", and there is a need to localize the key actors

and ideas which are of importance in any area of state activity. As a starting point, data collection focused on the on national/federal levels of policymaking, since immigration and border policies are situated at this level in both countries (Spång 2008, Kelley & Trebilcock 2010).

A key aspect in the data collection was moving beyond specific categories used by states to govern migration, and instead look at how systems of classifications themselves emerged. Exploring how the systems of selection which came to pervade migration control emerged as something historically new implies a vision of historical development that isn't teleological, were history isn't seen as predetermined. For these purposes, the investigation has focused on a set of actors engaged in elite-level re-envisioning of immigration policy in Sweden and Canada, which previous research has depicted as a form of hidden policymaking taking place in an overlap between politicians and immigration agencies (Hawkins 1991, Dirks 1995, Spång 2008). The key actors are immigration Ministers, MPs tasked with immigration issues, senior officials from immigration agencies, and government-appointed experts. The study's data is the documents left behind by this set of actors. Due to the process of policymaking being different in Canada and Sweden, these are not exactly the same actors, nor the same type of documents. The next sections detail the data gathered in the cases.

Archival data in Sweden

Much of the Swedish data was collected in 2017 and 2018, with supplemental collection in late 2020 and early 2021.[14] All of the data is accessible online due to extensive government digitalization of historical documents. The initial search was aided by a valuable historical overview of historical policy development (Boguslaw 2012). In Sweden's "rational politics" (Petersson 2016), the policy-making process is largely open: law proposals are preceded by government-commissioned inquiries (SOU:s) produced by a group of people that, in corporativist tradition, often contain representatives of key stakeholders. While this isn't necessarily the case any longer today, in the 1960's through the 1980's, the SOU:s on immigration would frequently contain representation by major political parties, unions, judges, and government agencies. The inquiries regularly run in the hundreds of pages.

This means that the data from the legislative process offers a rich material, mainly composed of prepatory works and bills. The SOU:s differ in format, but in an institutional sense, they generally capture both normative and regulative aspects. They offer overviews that amount to an official frame of

[14] All of quotes presented from the Swedish data presented has been translated as part of this work.

understanding of issues such as the history of immigration to Sweden. They also contain technical inquiries into issues such as the development of new border control practices. Moreover, due to the representation of key interests and the argumentative tone of material, they offer a window into decision-making and something of an official history of ideas concerning a subject. While far removed from the practical work of officials, they also frequently contain implementation investigations. Before leading to a bill, the inquiries go through a process of referral where a range of stakeholders contribute respond to proposals (Petersson 2016). On immigration issues, the immigration agency always comments, for example. The resulting bill either incorporate new proposals or not, but often review the input of agencies. Because of this, the bills are extensively argumentative as well.

Several SOU:s and bills were reviewed which ultimately did not form part of the data. The overall search strategy was to look for data which included both accounts of the shifting nature of immigration regulation as a whole, but also captured the development of specific tools for classifying migrants. This is rooted in an attempt to study the emergence of something new: if the data is too narrowly focused on inquiries concerning refugees, this neglects the context of broader immigration reforms. For example, in both Sweden and Canada, important early shifts to governing arrangements first concerned what later became known as "labor migrants", and components from these reforms then migrated to the governing of those who became defined as "refugees". To capture such developments necessitates moving beyond the categories used by states and looking at the process of classification itself: to understand the systems of selection, it is necessary to move outside of them.

The resulting material, as a whole, offers great continuity over time. Through these documents, policies and laws are proposed, but they also give a sense of the social environments out of which these arise (Streeck & Thelen 2005). This combination is illustrated in the title of the first SOU, called "Immigration: Problematics and administration" – both deliberating on what type of problem immigration is, and what administrative tools are deemed purposeful to deal with it. The SOU:s and bills can be seen as highly polished products, texts which are the cumulative result of the co-operation of a broad range of actors. In Table 1 below, the included SOU:s and bills are presented. The SOU:s are broadly of two types: either a parliamentary committee, made up of representatives of a cross-section of political parties, or an expert inquiry carried out senior agency staff or, as is often case, senior legal personnel, such as judges. Both forms of inquiries enlist a broad range of experts, usually from government agencies, the core executive and stakeholders such as unions.

Table 1: Data for Part I, Sweden

Number	Title	Source
SOU 1967:18	Immigration: Problematics and administration	Parliamentary committee
Prop. 1968:142	Concerning guidelines for foreigner policy	Government (Social Democratic)
SOU 1972:84	Refugeedom	Parliamentary committee
SOU 1972:85	Asylum	Expert inquiry
Prop. 1975/76:18	Changes to immigration law	Government (Social Democratic)
SOU 1977:28	Shorter waiting times in immigration cases	Expert inquiry with parliamentary representative
SOU 1979:64	New immigration law	Expert inquiry with parliamentary representative
Prop. 1978/79:100	Proposal for state budget for the fiscal year 1979/80	Government (Center Party)
Prop. 1979/80:96	A new immigration law	Government (Center Party)
Prop. 1981/82:146	Changes to immigration law	Government (Center Party)
SOU 1982:49	Immigration policy: Background	Parliamentary committee
SOU 1983:29	Immigration policy: Proposals	Parliamentary committee
Prop. 1983/84:124	The reception of refugees and asylum seekers	Government (Social Democratic)
Prop. 1983/84:144	Immigration and refugee policy	Government (Social Democratic)
Prop. 1985/86:98	Immigrant policy	Government (Social Democratic)
Prop. 1985/86:133	Changes to immigration law	Government (Social Democratic)
SOU 1988:1	Oversight of immigration law	Expert inquiry
SOU 1988:2	Shorter waiting	Expert inquiry
Prop. 1988/89:86	Proposal for immigration law	Government (Social Democratic)
Prop. 1990/91:195	An active refugee and immigration policy	Government (Social Democratic)
SOU 1991:1	Refugee and immigration policy	Expert inquiry
SOU 1994:54	Evaluation of praxis in asylum cases	Expert inquiry

Archival data in Canada

In Canada, the federal record on immigration policy is not digitized until roughly the mid-1990s. Essentially all the Canadian material gathered for Part I was collected at government archives in Robarts Library at the University of Toronto in 2019. The Canadian policy process is markedly different from its Swedish counterpart. In Canada's Westminster-style policymaking style, the prepatory stages of policymaking are much more secretive (Savoie 1999). A version of public inquires can be commissioned by the government, but it is not standard procedure in as in Sweden. In the case of immigration, however, several important inquires comparable to SOU:s were commissioned in the 1970's and 1980's, and these form an important part of the material.

But these inquiries were not sufficient to build a continuous material comparable to the Swedish case. Because of this, two supplemental sources were identified in the archives: First, different reports from the immigration department, including its annual immigration plans and extensive background papers

to these. These provide concretization and detail on the regulative aspects of immigration. Second, the minutes of the Standing Parliamentary Committee on Migration offered valuable data. While not the body which ultimately decides government policy, the Standing Committee contains a cross-section of MPs from political parties. It conducts work throughout the year and offers a continuous source of information. There are substantial amounts of data for each year, often running into several volumes. The committee is frequently visited by Ministers and/or high level-department officials. As these are questioned by committee members, the discussion ranges over government proposals and immigration-related events, giving a good overview of the broader context of migration reforms. The focus in this data were statements from government officials and/or Ministers. Through being questioned by MP's questions in the committee, government representatives attempt to clarify and explain government policy, often addressing both its normative and regulative aspects. As a form of naturally occurring talk, this data offered useful triangulation compared to the other sources. The data is summarized in Table 2 below.

Table 2: Data for Part I, Canada

Year	Title	Source
1966	White Paper on Immigration	Government (Liberal Party)
1974	Green Paper on Immigration (two parts)	Immigration department
1975	Special Joint Committee Report on Immigration	Parliamentary committee
1976-1988	Minutes of the Standing Committee on Labour, Manpower and Immigration	Parliamentary committee
1980-1995	Annual plans and background papers on immigration	Immigration department
1980-1989	Manuals for front-life officers, various minor report and press releases	Immigration department
1981	The Refugee Status Determination Process	Expert inquiry
1983	Illegal Migrants in Canada	Expert inquiry
1984	A New Refugee Status Determination Process for Canada	Expert inquiry
1985	Refugee Determination in Canada	Expert inquiry
1991	Immigration in the 1990's	Immigration department
1992	Managing Immigration: A Framework for the 1990's	Immigration department

Together, the Swedish and Canadian data can be seen as narrating sources as described by Alvesson & Sköldberg (2009:ch4): they present interpretations of events, affirmation of ideas, and suggestions for tools by policymakers. The data contains extensive deliberations on what can be seen as normative

elements of immigration policy: the role of immigration in society, the goals of immigration policy, and its relation to welfare and economy. It is full of accounts of the regulative instruments used to achieve these ends: permits, passport, visas, and asylum processing systems. Finally, the target populations of the policies are abundantly present. In sum, as Lara-Millán et al (2020:353) discuss, the material allows a "mapping of the realm of possibility as understood by historical actors of the time".

During data collection, material was gathered extending beyond the time frame of the finished study, well into the late 1990's. But through analysis of material, it became clear that data gathering reached saturation in the early 1990's. By this point, the new regimes of migration control had largely become institutionalized. The decision to shift focus to courts is a result of the open-ended design of the study. In parallel to the institutionalization of the migration control regimes, it became clear that the role of law was more prominent in both countries: both in the sense of a judicialization of asylum procedures, but also in the expansion of the role of courts and court-like organizations. This can be seen as a movement of important parts of the system of selection within the migration regime. As the unit of analysis shifted, the design of the study followed. This also implies a shift from the design of systems at the policy-making level, to the application of these systems within courts, allowing for a data which captures detailed examination of individual cases.

Court decisions as data

The collection of court cases took place in phases from mid-2021 to mid-2023.[15] In moving from design to application, the intention was to find data where the courts deliberate on how to interpret the regulatory systems designed in Part I – or, where the boundaries in the systems of selection are negotiated. As a method for finding such points of contention, the court data is made up of case files which are theorized as dilemmas of classification: how the courts process individuals who don't conform to the expectations of state classification. When they are forced to process such individuals, the courts engage in deliberation on classification, and the cases thus act as a form of interrogation of the system itself. As Bowker & Star (1999:3) put it, ordering principles in government classification systems can become visible to us as they "break down or become objects of contention." For this purpose, the study zooms in on the processing of Afghan nationals, who are often perceived as illegible in modern migration processing (Crawley & Skleparis 2018, Sajjad 2018).

[15] The collection and analysis of court documents require ethics approval in Sweden, which the study has received from the Swedish Ethical Review Authority (reference number 2022-06598-01).

As a method of delimitation, the choice of a specific nationality allows for in-depth investigation, but also has certain drawbacks. Sweden has granted protection to roughly twice as many Afghan nationals as Canada, and Afghan nationals play different roles in the countries' respective migration debates. In Canada, most Afghan nationals arrive through resettlement selection from abroad, and the group is a steady but not dominant presence among arrivals. In Sweden, by contrast, Afghans arrive at the border and seek asylum, and they were one of the single largest nationalities in the years surrounding the large arrivals of 2015. The processing of this nationality has generated intense public debate (Lundstedt 2020). Many of them were adolescents who applied as unaccompanied minors, and the issue of whether they are actually children has been one of the main asylum controversies in Sweden. In Canada, by contrast, unaccompanied minors are rare in the Afghan nationality. Instead, other issues are more prominent, such as establishing the actual residence of those seeking resettlement from abroad. Both these issues – age and home – can be seen as examples of boundaries between categories that make asylum seekers governable in the systems of selection, in turn being of immense importance for the potential granting of protection. While the situation of Afghans in Sweden and Canada isn't exactly comparable, the common focus on one nationality has great advantages: Swedish and Canadians courts deliberate on the same pieces of evidence, weigh the same country conditions, and assess the potential danger posed to the same minorities. They are seen here as making partially different aspects of refugees governable, but there are also similarities in terms of the life histories they assess. The difference in arrival patterns to Sweden and Canada means there was no other potential nationality that offered a better way of contrasting legal cultures through the deliberation of similar life histories.

The court decisions range from 2006 until 2020 and consist of decisions from the Migration Court of Appeal in Sweden and the Federal Court in Canada. These are courts which issue prejudicial decisions, both two tiers of appeal from the original applications process, and they only accept appeals by leave.[16] This means a fraction of cases make it there and only ones which are deemed principally important. The collection of material did not pose the same issues of comparability as that of Period I. The data was gathered through publicly available digital databases (Domstolsverket in Sweden, CanLii in Canada). In both databases, cases concerning Afghans were searched for, and ones deemed irrelevant were sorted out, such as those concerning other nationalities or cases not related to protection. The gathered cases contained references to earlier ones, which were gathered through snowballing. (Ryan & Bernard 2003) In

[16] The appeals process is organized differently in the two countries. This is addressed in detail before Part II.

total, while not originally intending to reach the exact same number of cases in both countries, 30 cases were gathered each for Sweden and Canada. The databases searched includes all the decisions by the courts, and the material includes every decision deemed relevant in the search results. The documents will be described in more details before Part II is introduced.

The analysis of archival material

Archival analysis is similar to much other qualitative work, where the data can be seen as crafted through a process of gathering and reading through large amounts of information in-depth, accompanied by intense notetaking (Ventresca & Mohr 2002, Rennstam & Wästerfors 2018). As is common in interpretivist analysis (Bevir & Rhodes 2022), the analysis of the documentary data here belongs in the tradition of hermeneutic interpretation. This means that analysis alternates between part and whole, as "particulars are endowed with a deeper and richer meaning in light of the overarching pattern of interpretation" (Alvesson & Sköldberg 2009:100). One example is the understanding of legal culture which developed during the study. This became part of the whole, imbuing the systems of selection with a set of normative expectations, and illuminated interpretation of particulars in these systems, such as the regulatory design of asylum processing systems.

The data analysis has progressed through thematic coding (Ryan & Bernard 2003). This means that the data has been explored by looking for analytical themes and recording these through coding (Ryan & Bernard 2003, Alvesson & Sköldberg 2009:ch3). The study builds on Ryan & Bernard's (2003:87) definition of a theme as something which "connote the fundamental concepts we are trying to describe". The themes are essentially what emerge from the analytical process, ones which have been discovered through a dialogue between theory and data. Broadly, the themes have been what Ryan & Bernard (2003:93) call theory-related in nature, concerning issues such as:

> social conflict, cultural contradictions, informal methods of social control, things that people do in managing impersonal social relationships, methods by which people acquire and maintain achieved and ascribed status, and information about how people solve problems

The themes have been crafted out of the data by continuously writing them down in connection with excerpts and quotes from the data. To organize the data, detailed indexes of the material have been kept.

The data analysis has proceeded in phases, ones which have been largely iterative, a form of back-and-forth of writing and analysis. In the initial phase

of the work, the focus was on crafting empirical narratives out of the mass of data gathered, using excerpts and quotes to bring order and get a sense of the basic structure of the development of Swedish and Canadian systems of selection. (Lara-Millán et al 2020) This is an inherently messy and disordered process, characterized by a lot of false starts and what later appear as dead-ends. During data gathering, initially interesting threads developed to other policy areas, such as population registration and demographic planning. These were ultimately abandoned as it would have moved the data gathering outside of migration, making it too broad. Establishing an overview of the cases without drowning in the material was difficult, but the open-ended and exploratory nature of the design ultimately allowed for a back and forth between theory and data which grounded the analysis in the data.

Over time, the crafting of empirical narratives helped in develop the analysis, as it assisted the clarification of a hierarchy of analytical themes. The early stages of exploration were marked by a steady increase in the number of themes. With the writing of successive empirical narratives, the understanding of the research problem progressed, aiding the development of what can be seen as second-order themes, ones extracted from the greater mass of first-order themes (Rennstam & Wästerfors 2018:ch3). Throughout the analytical work, there were repeated returns to the original data to make sure that the themes emerging from the writing was grounded in the data. This aided in utilizing the same frame of analysis for all data; otherwise, problems might occur in that the earlier phase of data analysis proceeded from a different understanding than the one developing later.

Excerpt-commentary units

In the development of the analytical themes, the excerpt-commentary method, as developed by Emerson, was used. Originally from the ethnographic field, it has suited the analysis of large amounts of archival data. Rennstam & Wästerfors (2018:53) write of Emerson's method that

> Analyzing ethnographic material is both inductive and deductive – it is like both creating and solving a puzzle… The analyst begins by coding the material based on terms in the notes, followed by gradually coding in relation to more general categories and concepts found in the literature.

This gradual progression of analysis continues with the writing of the results. Emerson discusses how data can be presented in excerpt-commentary units. These are the basic building blocks in the text, and visualizing the text as consisting of such units assisted in concentrating the results. An excerpt-

commentary unit conveys an analytical theme, which in turn consists of several analytical points. Each analytical point is followed by a short orientation, and then an excerpt from the data, such as a quote, which illustrates the theme. Finally, the section is rounded off with an analytical comment, that expands on the point by using the data presented (Rennstam & Wästerfors 2018:ch2).

This served as a structure for writing of the analysis. For example, in the chapter on Swedish immigration control, in what became the foundation period, there are four excerpt-commentary units which each represent a theme: (1) the regulatory innovation of a labor migrant, (2) the rooting of immigrants in the welfare state, (3) the making legible of refugees, and (4) the separation of different types of refugees. The themes emerged from the analytical process, and each of them is made up of several analytical points. In Table 3, the analytical points which make up two of these themes are illustrated:

Table 3: Example of excerpt-commentary units

Theme	Regulatory innovation of labor migrant	Rooting immigrants in the welfare state
Analytical points	(1) New subjects of control: Separating "labor" and "refugee (2) Incremental regulatory shifts (3) Contested, interactive process	(1) Re-envisioning policy from above, re-formulating target populations (2) Bounded universalism (3) Centralization of authority

Each such analytical point is then grounded in quotations and excerpts from the empirical data. Here, for example, is a quotation from a Deputy Minister for Immigration in the Standing Committee, which was ultimately excluded from the chapter on Canadian immigration control:

> And that is why our legislation reflects, really, three things: it makes provision for convention refugees who are selected abroad and brought to Canada as part of a resettlement program; it makes provision for people who are in Canada and seek protection and are found to be refugees; it also makes provision for the designation of particular groups or classes as being refugees because Canada feels they have an obligation. (Standing Committee 1984-86/21:p22)

This is part of the differentiation period in Canada, which is characterized by "refugees" being differentiated into several different target populations. Within this period, it forms part of the analytical theme "a bureaucracy for conferring identity", concerning issues wherein policymakers tried to organize reliable regulatory frameworks for inscribing official identities onto people. Writing in the structured manner of the excerpt-commentary method allowed for continuous comparing between the cases, further aiding in distilling the

themes and in gradually coming to see the two cases through the same understanding, illuminating their similarities and differences.

Understanding something new

A major methodological challenge in this study has been to understand the emergence of something new. The aim has been to avoid an anachronistic understanding of refugee policy and instead explore how it developed at the time. This is a concrete challenge: you can't only look for the terms "refugee" or "asylum", for example, because actors at the time might as well use terms as "the displaced", or discuss "migrants" as being one broad set of people. Narrowly searching for categories of people, and the regulatory aspects of immigration control, can lead to missing valuable data concerning the broader context of immigration reforms out of which classification systems, in Douglas' (1986) sense, can be seen as growing. In studying the emergence of state classifications, it is essential to step outside of them and focus on the processes of developing classificatory schema. For this reason, the study aims to look for the development of regulatory systems through which classes of people are created, and the ideas that imbue them, rather than the categories themselves.

The past is seen as here as indeterminate and open to different interpretations (Bowker & Star 1999:ch2). The study is guided by an understanding of the systems of selection as an issue in the present and is essentially back-tracking to explore how Sweden and Canada arrived at their current orders of regulating migration, imposing a form of post hoc order (Bowker & Star 1999:ch2). But this doesn't validate imposing a contemporary terminology on actors of the past. Instead, the attempt has been to explore the understanding of policymakers at the time, those designing and using the systems. This is line with what Peter Gatrell (2017) encourages researchers to do, to try and understand how refugees have come to be conceptualized as a certain type of problem. If, as Collyer & de Haas (2012) write, any attempt at categorizing is also an implicit attempt at theorizing, then what is being studied here is the state theorizing of what migrants are.

Historical institutionalist theory often tracks the emergence of such newness, and this requires adhering to what is called an anti-functionalist view of history (Thelen 1999, Parsons 2007:ch3). This means to view institutional arrangements as not arriving in coherent wholes, but rather as arising gradually over time, often replete with contradictions and conflicts. While actors engaged in institutional design can be seen as purposive, an institutional regime of migration control should not be regarded as something which is created at a specific point in time, but rather something that comes about, piece by piece,

over time. A key value of studying historical processes is precisely that it allows for uncovering dynamic processes, of seeing how something emerges over time in unexpected ways (Cook & Clemens 1999). This can be undercut by having too fixed theoretical concepts at the start, since this tends to lock the properties of cases in place (Lara-Millán et al 2020).

This attempt at capturing newness resembles Abrams' (1988) writings on how to approach the study of the state. Abrams' writes that "the state" is a mystifying concept, one which is reified as an existing thing. The same thing can be said of the classification at the center migration control, a mode of governing which is often reified as naturally existing, when instead it is something which has historical roots and has been pieced together over time. As a consequence, Abrams says, the state can become taken for granted, approached as if having objective existence, and we get

> account of political institutions in terms of cohesion, purpose, independence, common interest and morality without necessarily telling us anything about the actual nature, meaning or functions of political institutions. (Abrams 1988:68)

Instead, he proposes that the state should be demystified and seen as an idea as well as a system of organizations. In this view, we should approach how the state comes about, such as through it's "administrative and judicial" agencies, as "part of some quite historically specific process of subjection" (Abrams 1988:76). This is close to studying the emergence of migration control, a new process of subjection of immigrants, which comes about through regulatory innovations and the establishment of new agencies. Rather than seeing borders and official types of people as being natural phenomena, this means to see them, in a social constructivist perspective, as being brought about through their regulation. For this purpose, Abrams proposes historical exploration:

> The only plausible alternative I can see to taking the state for granted is to understand it as historically constructed…. The idea of the state was created and used for specific social purposes in a specific historical setting. (Abrams 1988:80)

This is what we turn to now: the specific historical setting in which contemporary Swedish and Canadian migration control is rooted. After the introduction, literature review and theoretical framework, the methods chapter represents the final part of setting up the study. The next chapter represents the start of Part I: the origins and institutionalization of the systems of selection.

Part I: Roots of the Refugee

That mysterious influence of Naming
which determines so much of mortal choice

George Eliot, *Middlemarch*

The right of masters to confer names goes so far that we might venture to regard the origin of language itself as a manifestation of power on the part of rulers. They say: "This *is* such and such", they seal every thing and every happening with a sound, and by this act take it, as it were, into possession.

Friedrich Nietzsche, *On the Genealogy of Morals*

5
Sweden: Vulnerability in Welfare

> The victims of political or religious persecution, then, make the most forceful claim for admission. If you don't take me in, they say, I shall be killed, persecuted, brutally oppressed by the rulers of my own country. What can we reply?
>
> Michael Walzer, *Spheres of Justice*

This chapter explores how ways of making migrants governable originated, developed, and stabilized into enduring rule systems in Sweden from the 1960's to the early 1990's. This period, it is argued, is one in which new ways of governing migration originated and became institutionalized. The period charted in the chapter has been studied before (Hammar 1999, Johansson 2005, Spång 2008), with a common narrative being one of a movement from a relatively liberal immigration policy to an increasingly restrictive one. However, the focus in these studies has generally not been on classification systems.

Throughout the decades studied in this chapter, Swedish society underwent seismic changes. Much of the modern welfare state was established in the 1950's and 1960's, a period often portrayed as golden years of uninterrupted growth (Lindvall & Rothstein 2006). The Social Democratic party was the dominant political force for decades, even though its iron grip on the ideological environment in Swedish politics is often seen as ruptured by the election of the first centre-right government in post-war history in 1976. In the early 1970's, Sweden was hit by global recessions, leading to industrial crises and structural reforms of the Swedish labor market. Throughout the 1980's, Sweden enacted major economic and administrative reforms in attempts to modernize the workings of state. This included a range of management- and market-oriented reforms which many see as the starting point of a hollowing out of the universal welfare state (Pierre 2016).

As a contrast, this chapter aims to show the institutional continuities in a new system of migration regulation that originated in the mid-1960's and developed over the next three decades. The chapter is separated into three sections. First, the foundation period (mid-1960's to mid-1970's), is one of contingency and paradigmatic shifts, where new ways of governing human movement were articulated, ones which centered on attempts to make immigrants legible in new ways. The second phase, differentiation (mid-1970's to early 1980's) starts with the introduction of new refugee categories into law and outlines an increasingly elaborate order for classifying migrants accompanied by bureaucratic capacity-building to enforce this vision. The final period, enforcement (early 1980's to early 1990's) is characterized by feedback and how the problem of maintaining the categorical vision became the central issue in migration policy, as target populations deviated from expectations.

Period 1: Foundation

In the mid-1960's, shifts are emerging in the Swedish regulation of immigration. Up until this point, the area has been something of a political backwater. This might seem strange, given that since the War, immigration has been historically large and consistently seen as vital by lawmakers, industry and unions for filling manpower shortages in the booming domestic industry (SOU 1967:18). But immigration is perceived by key actors as largely self-regulating. This is exemplified in the words of one inquiry looking back at the postwar decades, saying that

> Both immigration and emigration have shifted in scope from year to year – immigration, however, to a much greater extent than emigration… The variations in total immigration have to a strikingly high degree depended upon economic cycles (SOU 1967:18,p20)

As made clear in this quote and other sources at the time (Prop. 1968:142), the framework through which immigrants are perceived is generally the economy and labor market, and in essence, the movement of people is assumed to naturally follow economic cycles. The administrative machinery for governing migration is small and decentralized, with much border control being the responsibility of regional police offices (Hammar 1964, SOU 1967:18, SOU 1972:84). The enforcement of immigration policy causes little political concern and refugees are a peripheral issue. Sweden had hosted nearly 200 000 refugees at the end of the War, mainly from the Nordic and Baltic countries, but many had returned home. The Refugee Convention was ratified in 1954, but its application has caused few major concerns. A small, temporary state

agency, *Statens utlänningskommission*, is in charge of processing applications (SOU 1967:18,ch5). Inquiries which later explore the agency's work found vague legal standards unevenly applied to the few hundred asylum seekers or so that arrived annually (SOU 1972:85).

Moreover, in the mid-1960's, Swedish officials use only vague boundaries to separate immigrants into different types. As one inquiry points out, there has been no perceived necessity of distinguishing categories:

> no clear difference is maintained between refugees, refugees with asylum in other countries and economic refugees in Sweden. The reason has been the general socioeconomic condition since the Second World War, which has made it possible to accept not only asylum-seeking refugees but also other refugees, and that there has been no reason to separate the categories. (SOU 1972:85, p53)

But in the second half of the 1960's, shifts are taking place in government circles. This is encapsulated in the opening paragraph of a paradigmatic bill which outlines "the future organization of the central administration of immigration matters" (Prop. 1968:142, p1). It advocates for a more active regulation of immigration by the state:

> According to the bill, the state should take on increased responsibility for immigration policy by giving closer guidelines for administrative agencies' permitting processing. (Prop. 1968:142, p1)

The reforms of 1968 represent a new vision of how immigration could and should be regulated. It marks a shift away from the perception that immigration is self-regulating and correspondingly requires little governing. Instead, the perception among policy elites and officials is moving toward an understanding of immigration as requiring active top-down regulation, entailing a centralization of authority over immigration control. These shifts represent early steps toward new institutional arrangements for governing migration – what later became immigration policy was starting to be fashioned, carved out as a separate field of its own. The foundation section is devoted to central aspects of the 1968 reforms and a set of inquiries closely after it: the design of a new labor migrant, the rooting of immigrants in the welfare state, the establishment of a new central government agency, and the separation of refugees from labor migrants. In a pattern that would become typical, large reforms are preceded by shifts in regulatory tools as a reaction to the arrival of immigrants.

Regulatory innovations: The "labor migrant"

The lead-up to the 1968 reforms start when immigration to Sweden is at its post-war peak. In 1966, the influential central labor union (LO) and the labor department take the first steps to regulating non-Nordic immigration in a new way, specifically directed at Yugoslavian immigrants. (SOU 1972:84) LO and the labor department share concerns about wage dumping, the establishment of low-wage sectors and the social effects of an increasing immigration (SOU 1967:18, Lundh & Olsson 1994). In response to this, they engineer a system of permits for the purposes of more effectively governing who should be able to access Sweden. These weren't intended as sweeping changes to Swedish migration regulation, but rather as gradual adjustments due to a mismatch of Swedish labor market demands and immigration patterns. However, over time, the effects were profound. The events are described by a later inquiry:

> The large inflow of foreigners from, above all, Yugoslavia in the mid-1960's led the government to, through changes in the Foreigner Proclamation, from January 1, 1966, extend the demand for labor permit before entry to encompass all non-Nordic citizens. This demand didn't have any practical significance, because a large number of people could still enter and there were no perceived obstacles for a labor market assessment after entry… The demand for a labor permit before entry was thus complemented from March 1, 1967, with the order that such a permit could not be permitted after entry… From March 1, 1967, we can be said to have a regulation of immigration, which in principle required a permit to be granted before arrival. The demand for a labor permit before entry amounted to a principal stand of the greatest importance for our immigration policy. (SOU 1982:49, p45)

The shifts designed by LO and the labor department represent regulatory inventions in an institutional sense, and the rather technical account in the quote point to three principal shifts enacted through regulatory changes. First, it can be seen as moving from a latent to a manifest regulation of immigration: away from a perception of self-regulating immigration, in which immigration patterns automatically adapted to the needs of Sweden, to one requiring active governing. Second, it details that the cornerstone of this control consists of bounding and regulating the subjects of policy through a system of policy tools, or a regulatory framework, in this case the permitting system. Through these permits immigrants were starting to be made legible for purposes of governing in new ways, as regulatory boundaries were drawn around what would become the post-war labor migrant. In requiring permits before arrival, geographical distance became a key in making migrants governable. And thirdly, it points to the importance of the perceived resistance of those subjected to the governing: how, at first, the regulatory inventions didn't function, because those subjected to them could circumvent them. The openness of the

institutional arrangement, the ability for the classified to disturb the plans of classifiers, was thus of crucial importance. As seen through the rather blurry distinctions used by officials at this point, individuals could enter as ”visitors” and then apply to become ”labor immigrants” from within Sweden.

In the late 1960’s, these regulatory changes are accompanied by a wider sense that the movement of peoples over borders is shifting. Swedish policy-makers are starting to perceive migration as definitively disconnected from the aftermath of World War II, and instead composed of more unpredictable, on-going movements – raising questions on how to design systems for controlling arrivals. The inquiry which lays the groundwork for the 1968 bill set out some baseline assumptions about the need for control. This is accompanied by a separation of migrants into different types, but still without any hard categorical boundaries in between:

> At least in one regard there is likely unanimous agreement, namely on the necessity to weigh and control the inflow of foreigners to the country for labor market reasons, that is, in light of the opportunities to furnish immigrants employment… Of course there can, due to humanitarian and other reasons, become relevant to allow immigration of foreigners, even if there is no room for them on the Swedish labor market. In such cases, however, it should be the responsibility of public authorities to, through social assistance or in other ways, care for their support as long as they can’t be afforded employment on the labor market without someone else becoming unemployed. (SOU 1967:18, p172)

This is emblematic of the contingency in this phase of Swedish immigration regulation, where policy elites and officials grapple with how to resolve mutual uncertainty in designing new forms of control. It is clear that the design of target populations is a starting point of reforms. With the new permitting system invented in 1966-1967, a new target population coalesced: the labor migrant. These regulatory innovations lay the groundwork for major reforms to migration control. Control is at this point taking the form of making categories of people legible for purposes of more detailed regulation of movement. The administrative category of labor migrants isn’t new in itself, and in some ways the permitting system is a return to an inter-War model (Hammar 1964, Lundh & Olsson 1994:76-82). In the government inquiry which follows the 1966-67 shifts, historical research is conducted into the development of Swedish migration control. Officials find that in its origins, the move away from formally open borders in 1907 was, similarly, aimed at finding ways for excluding specific categories of people, methods ”by which for the country harmful immigration as far as possible could be stopped”, centering on groups such as ”vagrants, beggars and criminals” (SOU 1967:18, p40).

What is qualitatively different in the late 1960's, however, is the welfare state context within which these renewed boundaries are being drawn, and how this affects the perceived deservingness of immigrants.

Rooting immigrants in the welfare state

The 1966-67 changes mark a shift toward centralized state control, at the center of which is the articulation of immigrant categories through new set of policy tools. These reforms, in which the Swedish state starts to assume a more active role in the governing of immigration, mark the origin of a new classification system for migrants, and the design of a new set of target populations for purposes of realizing policy. In terms of the broader context out of which this classification system grows, the target populations are seen in this study as *rooted* in policymakers' ideas of the welfare state.

Following the modelling of the labor migrant through a new system of permits, in subsequent reforms, the issue for Swedish reformers is abstracted to a general level: how should migration, as such, be governed? In different policy areas, immigrants' rights have successively been incorporated in preceding decades. These developments are seen as making the existing immigration law of 1954 legislation out of date. By the mid-1960's,

> a foreigner, who is a resident of the country, is in principle equal to a Swedish citizen in terms of rights to housing, education, healthcare and several social benefits. The reforms implemented in the field have, among other things, had the purpose of giving the individual foreigner social security and benefit his adaption to Swedish society. (SOU 1967:18, p173)

In the 1940's and 50's, immigration regulation had been conceptualized as consisting of two types: individual and general. The individual level aimed at sifting out the unwanted, such as "criminals and asocials", while the general level focused on "the flow of immigrants to the country from a more general standpoint, such as prevailing labor market and housing conditions" (SOU 1967:18, p85). In this mode, the appropriate level of immigration had been

> above all decided by the access to job opportunities and only to a limited extent with regard to society's possibilities of preparing suitable housing and necessary education for immigrants (SOU 1967:18, p242)

This narrow labor focus is, in the mid-1960's, starting to appear crude. Instead, in sketching the contours of new policy, the inquiry ahead of the paradigmatic 1968 bill makes the argument that

> If it's to be possible to achieve a goal-oriented, after shifting circumstances adjusted immigration policy, Swedish immigration policy must, against the background of what has been said, in principle form an integrated part of society's general economic and social policy… To achieve this, a precondition is the ability to influence the size and orientation of immigration, that is, to through some system of permits weigh and control the influx of foreigners to the country from labour market, economic and social perspectives. (SOU 1967:18, p174-175)

This points to how immigrants are starting to be envisioned, through tools of centralized control, as integrated into the framework of the welfare state. This should be interpreted as a fundamental rooting out of which much the successive classification framework developed. Building on of the regulatory inventions concerning Yugoslavian immigrants in 1966, the aim for policymakers is now how to place a regulatory framework of permitting and control at the centre of migration regulation. What is unfolding, in essence, is a gradual re-imagining of a formerly diffuse group of immigrants into categories of distinct target populations, to make targeting and precision possible. The development represents a new theorization of social control, in Lascoumes & Le Gales' (2007) sense, in that the new regulatory tools manifest ambitions to guard the social closure of the welfare state by integrating immigrants into it.

In this rooting, the idea of the welfare state gives rise to a set of normative expectations among policy elites which provide the vocabulary for defining the deservingness of refugees. Before any detailed boundaries are drawn between categories of immigrants, the foundational decision that policymakers deliberate is how to draw the line around the overall "circle of preferential treatment" (SOU 1972:84), as one inquiry put it. This directly focuses on deservingness: who should be allowed to enter?

> Sometimes it has been proposed that, even if the immigrants could not be afforded a living standard equal to our own, that they would still be better off here than in their home country, and that immigration therefore should be free due to humanitarian reasons. In relation to this, the following must be remarked. It is surely accurate that even a living standard substantially lower than our own would, for many foreigners, imply a substantial improvement compared to the standard in which they live in their home country. It is also a commonly held opinion that our country due to solidarity reasons should assist those in need of help in other countries. It is, however, far from certain that this assistance should take the form that those in need of help should allow to immigrate freely to our country. Such an order would mean that we leave it to immigrants to decide for themselves who should be given help, and restricts our ability to design development assistance so that the assistance is as efficient as possible and will be afforded to those most in need of it. (SOU 1967:18,p174)

In other words, the Swedish state should do the selecting, rather than the other way around. Given that the state should regulate, how then should systems be designed? A subsequent inquiry pointed to a choice:

> With a certain simplification, it can be said that the choice is between giving a strongly privileged position to a smaller number of foreigner and giving a weakly privileged position to a great number. (SOU 1972:84, p138)

The answer to this question, in this inquiry as in many others, is the former alternative: what will here be termed *restriction in the name of inclusion*.[17] The inclusion of immigrants within the "thick" social contract of the welfare state is interpreted by policy elites as necessitating limits on absolute numbers, a regulatory philosophy which has both been called both bounded universalism (Brochmann 2014) and welfare chauvinism (Banting 2010).

In deliberating on such choices, we see the contingency which characterizes the period, as policy elites are making choices concerning foundational aspects on the future direction of immigration policy. In dealing with the uncertainty represented by the newness of the situation, the models they develop represent mental maps for how to simplify the issue of governing migration. The relationship between restriction and inclusion is among the most important such mental maps to make migration governable.

The foundation of a central state agency

Having articulated a new form of control, centering on a more detailed system of classifying subjects, the question for inquiries laying the groundwork for future changes turns to how to organize the realization of these goals. Here, bureaucratic capacity-building quickly becomes central. While contemplating the authorities to be put in charge, investigators conclude that

> there is in the field of foreigner policy, as highlighted by inquiry, specific questions which solely concern immigrants and which are ultimately founded on that they – apart from Swedish citizens – don't have an unconditional right to enter, stay or work in the country. Questions concerning foreigners' entry, stay and employment are thus decisively different from aforementioned questions and thus don't lend themselves as naturally to a specific state authority's responsibility… Because of this, the investigation feels the continued need for a central foreigner agency in the future, or in any case, as long as there is a need of a general foreigner control. (SOU 1967:18, p243-244)

[17] It's common to critique Swedish immigration policy for not living up to its lofty standards (e.g., Eastmond 2011). But the important issue here is that the *idea* had lasting importance in the policymaking of immigration.

For this purpose, in 1969, a new permanent state immigration agency, *Statens invandrarverk* (SIV), is established, replacing the temporary organization which had preceded it. The establishment of SIV represents a clear move away from a decentralized order, in which immigrants were made up as subjects of an array of policy fields. SIV is to become a node in the new, centralized policy field. However, policymakers still wish for the government to retain control over the agency's operations. The perception is that the core of migration control lies in its instruments, in the levers of the permitting system:

> I agree with the inquiry that foreigner policy in essential parts is given content through the manner in which permitting rules are applied. In the Foreigner Proclamation the grounds for which a permit is to be granted are not set out. Because of this it has come to rest with the implementing authorities, in the first instance the central foreigner agency, to decide what shall be required for a permit, and thereby also exert substantial influence over the design of Sweden's foreigner policy. This division of responsibilities between the state and the agencies deviates from the division of other administration areas. In concurrence with the inquiry and a unanimous remittance opinion, I believe that the state as far as practically possible should take direct responsibility for foreigner policy. This should, as the inquiry proposes, be realized through the state issuing guidelines for permitting. (Prop 1968:142, p104).

If the rooting of immigrants in the welfare state represents normative aspects of the emerging institutional arrangement, here we see the development of regulative frameworks which manifest these ideas. Immigrants, increasingly, are being articulated as delimited target populations in a top-down fashion. The importance of classification is evident: the selection of which groups should be allowed enter Sweden is essentially equated with immigration policy itself.

The way in which the government is to maintain control is through a regulatory framework of permits. Implicit in the quote above and in subsequent bills (Prop 1975/76:18) is the value of *flexibility* in the application of this framework. Policy elites want the government to retain direct control over SIV's operations, to be able to direct policy in desirable ways. Rather than defining elaborate rules beforehand, control is defined as adapting rules and their interpretation to shifting situations. The classification system, in other words, should be seen as means to an end.

The target populations of classification, by the late 1960's, are increasingly governed in the framework of a specific field of immigration policy, rather than as subjects of a diverse array of policy fields. Somewhat paradoxically, integration led to separation: it was being acknowledged as subjects of integration into the welfare state which led immigrants to become separate in the state

vision. The move from a decentralized to a centralized state vision represents the establishment of a foundational sameness, in a classificatory sense, out of which the new policy field is fashioned. In Douglas' (1986) sense, we see here how the emerging institutional arrangements draws foundational boundaries of difference.

The boundary we have been engaged with so far, however, is mainly the outer one, of differentiating immigrants as a whole. Different groups of immigrants are still not, to any greater degree, administratively legible as separate categories. But in a domino-like fashion, the regulative steps toward defining a labor migrant led to successive question about other immigrants: what was actually a refugee? In the years following the paradigmatic 1968 bill, this was the subject matter of two inquiries (SOU 1972:84, SOU 1972:85) and a later bill (Prop 1975/76:18).

Making refugees legible

A decisive issue concerning refugees in the early 1970's is that there are few of them in Sweden. They are on the periphery of the new policy field. The whole situation is characterized by newness: refugee policy had been associated with world wars, temporary programs and ad hoc application of international treaties. Now, in contrast, it is about to become a more regular government operation. The 1968 bill outlines a framework for this:

> According to the proposed guidelines, immigration for humanitarian reasons should be allowed generously. Immigration of refugees, which aren't asylum seekers or in other ways are in some form of emergency, should mainly have the form of collective transfer. (Prop 1968:142, p2)

The latter part reveals an underlying assumption: that a main venue of humanitarian protection should be resettlement ("collective transfer"), consisting of individuals selected by Swedish officials from camps abroad. This is echoed by later inquiries (SOU 1972:84). It represents a continuation of practice in the 1950's and early 1960's, when Swedish officials had travelled to camps, often in Austria and Italy, choosing around a thousand people annually. A later historical review outlined the types of people selected:

> Among the refugees which have been collectively transferred from the European continent to Sweden, nine out of ten were able-bodied. But Sweden was also among the first countries to accept tubercular refugees, a contribution of great importance, since other countries were closed to them… In later years, the transfer of tubercular refugees was of very minor extent, but however, handicapped refugees were accepted. By government order, until 1965, in the collective transfer an annual number of handicapped were included. After this, the number

> of sick and handicapped who could be satisfactorily cared for in Sweden was included in the quota. The term handicapped, which particularly in a refugee context is unclear, wasn't defined. (SOU 1982:49, p125)

This illustrates the power of interpreting categories: when selection is firmly within the hands of the state machinery, many of the refugees selected from camps had been picked on economic criteria. But it also points to the fluidity of boundaries, as terms such as "handicapped" isn't administratively defined. These experiences from an earlier era inform reforms in the early 1970's. Not being able to select is seen as undesirable, creating a disordered reception system where officials can't plan access to housing or schools.

By the early 1970's, however, the number of people arriving directly at Swedish borders and seeking asylum are increasing. There are no reliable statistics because these require a categorical vision which is not yet established. In the decade after 1968, however, arrivals reach almost 25 000, more than five times what arrived between 1950-1967. These are often coined "spontaneous immigrants", a term which evokes the situation's newness.

The 1972 inquiries represent early steps toward establishing a more coordinated mode of control. They engage in classificatory work by interpreting international conventions and surveying what, with new ambitions, appear as the haphazard historical application of them. As a contrast, officials and policy elites now attempt to devise clear standards (SOU 1972:85). First, there is broad consensus among those involved in the policymaking process that refugees are to have a "privileged position" (SOU 1972:84, p24). They are exempt from certain requirements that the state can place on other categories of migrants, such as labor permits. People recognized as refugees can't be deported, implying constraints on sovereignty.

The problem in the eyes of those designing the classification systems, however, aren't these principal issues of what a refugee is – but rather the administrative application of them. It's hard to apply rules to cases, and there seem to be many different types of refugees. Many of the grounds for protection in the Convention are the subject of extensive deliberation (SOU 1972:84, p91). The Swedish understanding of how to interpret what is "political" reasons for movement derive from the experiences of Jews in Nazi Germany (SOU 1972:84,ch5, Prop 1975/76:18,ch2). But as an inquiry explains, this standard wasn't sufficient to accept actual Jews trying to escape actual Nazi Germany:

> As long as the German measures against Jews entailed only a strong limitation in economic and personal freedom of movement, they were not in practice considered political refugees singly due to their origin. (SOU 1972:84, p22)

Several pages are expended on detailing different potential interpretations of "persecution", one of the most contested issues:

> To what degree the concept persecution should include other measures than those directed at a person's life and liberty is a contested issue. According to one opinion, it is only measures which constitute an immediate threat to a person's life or liberty which constitute persecution in the Convention's sense. Representatives of this opinion argue that persecution does not refer to measures directed at a person's physical integrity, such as infliction of bodily harm, if they are not life-threatening or constitute long-term internment. According to another, more commonly held opinion, persecution can include every measure which constitutes a serious violation of human rights. Persecution, in this opinion, consists not just of measures which constitute a direct threat to a person's life or liberty, but also violations of physical integrity. More concretely, this opinion implies that persecution is at hand as soon as a person, due to any of the grounds specified in the Convention, is interned, arrested or called to interrogation time after another, is forcibly removed to another location within the country, is subjected to bodily harm or serious health risks. But also measures of an economic nature are interpreted as constituting persecution. As an example, someone who is refused the assistance of labor market services or is in other terms excluded from work and thereby denied the possibility to make a living. (SOU 1972:84, p91)

The issue in the final part of the quote, the separation of political from economic reasons for movement, is as we saw in previous chapters at the heart of modern refugeehood (Bakewell 2008). For Swedish policy elites and officials, the two seem hard to disentangle, because the boundary tends to dissolve in actual cases. So how are different reasons for movement to be separated for purposes of regulation? As a baseline, one inquiry points out that it is simply "out of the question that our country should at all times be ready to, without sorting, welcome all foreigners who for various reasons wish to leave their home countries." (SOU 1972:84, p72) The right of asylum is interpreted as "a state's right to, after its own assessment, grant a refugee asylum, and not a right for the refugee to be granted asylum." (SOU 1972:84, p128) But where, exactly, should the boundaries around the new target populations be drawn? And how should they be enforced?

Here, we can very directly observe the difficulties lawmakers perceived in making migrants governable, of reducing the complexity of human reasons for movement into administrative standards. In the main, Swedish policy elites want to separate refugeehood from economic movement. But in new categorical vision being established, this is challenging. The subsequent bill discusses how to delineate the various forms of people seeking protection:

> Concerning the other categories of foreigners who, according to what I mentioned before, should be offered shelter in our country and be awarded certain protection against deportation, it can initially be established that it's not possible to give an exhaustive description of them. They all have in common that they, due to current political conditions in their home country, don't want to return there. This, however, should be the case concerning a rather large group of foreigners. If all the foreigners I now mentioned were to be given an expanded right in relation to other foreigners to enter and reside in our country, this would lead to unacceptable consequences from an immigration policy standpoint. A limitation must be set. (Prop. 1975/76:18, p108)

In line with the value of flexibility, the government doesn't want to specify in regulation exactly where the limit of deservingness should be drawn, but broadly outlines that "serious persecution" is required. There is a clear belief in the need for more precise classifications in the service of this sorting:

> a cleavage into categories can't and shouldn't be avoided. It relates to real differences which motivate different rules… The rules don't make the differences, they only mirror them. (SOU 1972:84, p133)

In all these extensive deliberations on what refugees actually are, we see ample indication of how classification and status production is at the heart of migration governing. The lack of neutrality in the refugee category is apparent in the amount of work dedicated to interpreting what it can mean and attempts to design tools to efficiently implement these beliefs. The foundational stages in the classification systems are characterized by an extensive production of administrative boundaries, drawn around the emerging target population in the newly centralized, coordinated Swedish migration regulation. This is perceived by policymakers as the very heart of migration governing, and deciding which categories should be granted protection is, on numerous occasions, equated with immigration policy itself. By the early 1970's, the government's new-found control capabilities are guided by an idea of control as flexibility and an expanding classificatory schema within SIV as a main tool. This in a very concrete sense gave it the government the authority to make up people, such as when American deserters from the Vietnam War were declared as refugees by government order in 1967 (SOU 1972:84, ch7). This should be seen as an assertion of state capacity, a state vision in Scott's (1998) sense, which integrally depended upon making different categories of people legible.

The assessment of specific groups

As a challenge to the state vision, throughout the foundation period, the problems of fitting people into categories – of rendering them as cases – is apparent.

Through the regulatory framework developed with labor permits, LO was able to essentially shut down access to the administrative identity of labor migrant in 1972, over economic and employment concerns (Hammar 1999). The labor door to Sweden would, for several decades, be very narrow.

This, however, contributes to applicants switching categories: many immigrants from Greece and Yugoslavia, which previously applied for labor permits, began applying for asylum instead (SOU 1972:85,ch2, Abiri 2000). This is yet another example of how the simplifications of state categories don't easily map onto actual lives. Were people coming from the dictatorships of Poland or Yugoslavia, who were seeking better economic prospects, primarily "labor migrants", were they "refugees" – or both?

Swedish officials develop a strategy for dealing with such challenges: to *collectivize* decisions. Refugee assessments, along the Convention's rules, are supposed to be individualized. But in practice, the Swedish interpretation is often collectivized: "founded on general assessments of the political system and its exercise of power in the foreigner's home country." (SOU 1972:84, p88). This is an administrative shorthand: general assessments represent simplifications in the service of rendering refugees governable, reducing the complexity of individual assessment by judging nations instead of individuals.

This is illustrated by the interpretation of travel bans in origin countries. At this point, most states within the Soviet bloc didn't allow their citizens to exit the country. Since people seeking protection had by definition broken the law by leaving their country, the existence of a travel ban created a "presumption of refugeehood" in the minds of Swedish officials. For example, Polish citizens were "seemingly without exception allowed to stay in Sweden" (SOU 1972:84, p24). By the same logic, Yugoslavian citizens, which weren't subject to a travel ban, had their cases judged much harsher. But travel bans were an imperfect indicator of protection need: many Poles were deemed by later inquiries to be "economic refugees… who have left their home country of general dissatisfaction with the economic conditions" (SOU 1982:49, p47). Whereas many Yugoslavian citizens seem to have fled for more narrowly political reasons which line up with Convention. The inconsequence didn't stop there:

> Czech citizens, who have arrived in Sweden after the Russian occupation of 1968, are generally not regarded as refugees, despite risking being punished for spending time abroad without permission from Czech authorities. This applied even if they could prove that they had been sentenced to imprisonment in their absence (SOU 1972:85, p43)

This lack of consequence illustrates important points associated with enforcing classification. First, how boundaries between groups could be re-drawn or reinterpreted for purposes of being able to flexibly allocate protection. Second,

how the reality of immigrant lives didn't map onto the top-down administrative standardization of identity inherent in the new Swedish migration policy. Using institutional terms, the behaviors of the rule takers clearly deviated from the expectations of the rule makers (Streeck & Thelen 2005). That the arrival of immigrants – both in terms of Yugoslavian migrants in 1966 and the increasing arrival of asylum seekers in the early 1970's – helped push reform forwards can be seen as an example of Streeck & Thelen's (2005) assertion that institutional regimes develop in the relationship between rule makers and rule takers. The reforms were interactive in the sense that they emerged from an institutional arrangement consisting of a continuous relationship between governing and governed.

Summary: Foundation

By the mid-1970's, several pieces are in place which suffice to mark an end to the contingent period. In terms of political organization, a new policy field has been fashioned. The lack of clear target populations in early post-war policy has been proposed as a consequence of the belief that migration was largely self-regulating. This meant migration patterns were essentially self-selecting in correlation with the needs of the Swedish economy. At the center of the shift toward a centralized immigration policy is the idea that the state actively must regulate movement for purposes of matching the opportunities of migration to the needs and interests of Swedish society. In this more active governing, the core of reforms concerns the regulation of what an immigrant was and the development of tools for assessing them.

In terms of the analytical model, the *theorization* of the new categories is manifested in instruments such as permits. It is a vision of social control as centralized under the guise of a new government agency, characterized by the value of flexibility in the state's ability make immigrants legible. Control is equated with securing outcomes, and the emerging classification system is a means to the end of the ensuring the state's ability to order and select.

Normatively, the new categories of immigrants are rooted in the welfare state. Restriction in the name of inclusion is an idea which encapsulates the integration of immigrants into the logic of welfare state. These ideas amount to the roots out of the which the classification system, in Douglas' sense (1986), grows. The arrangement also provides the vocabulary by which the deservingness of refugees is defined. The ideas have, in an institutional sense, an enduring influence in molding policymakers' preferences (Scott 2014), setting expectations and defining the realm of desirability.

Regulatively, the foundation period is characterized by innovations. A central feature of the establishment of new immigration policy is the production

of boundaries between categories. In the emerging regime of migration control, it is in levers of these instruments, such as permits, that much actual classification work is done. This amounts to a clear example of making up people through classification (Hacking 2007), and rather than peripheral or neutral, it should be seen as an exercise of power that was at the heart of foundational migration reforms. The new-found desirability in the state's ability to select and plan was an animating force in many of these developments. Just like the normative features of the classification systems, these regulatory instruments – such as the requirement of a residency permit before arrival – are in an institutional sense about to become enduring features of political life (Thelen 1999, Streeck & Thelen 2005). While the initial steps have fundamental importance for later paradigmatic changes, at the time, they consist of gradual adjustments, and aren't intended as sweeping changes.

The *target populations*, at this point, are most clearly seem in terms of labor migrants. Refugees are successively chiseled out but still characterized by blurry boundaries. The newness of the period, the mutual uncertainty characterizing contingent phases, is evident in the various terms employed: spontaneous immigrants, "foreigners" instead of immigrants, humanitarian immigration, and so on. Most of these have not been administratively or legally fixed, as the processing of making them legible is located on a more abstract level.

Finally, in terms of *contestation*, many reform patterns have shown a similar form: as a reaction to arrivals of immigrant, piecemeal regulatory shifts are initiated, which then lead to larger reforms, in which the piecemeal shifts become enduring. However, rather than being static, policy elites and officials see the enforcement of these regulations as continuously challenged. Many central features of Swedish migration policy which later became enduring – permits, separation between categories – have their origins in the rule maker-rule taker relationship, as set out by Streeck & Thelen (2005).

In sum, the events of the foundation period amount to the origins of a new classification systems for refugees in Sweden. They show that classification is at the center of a new form of governing, and how the institutional arrangements developed to realize this represent legacies of concrete historical processes (Thelen 1999). The outer frame of the policy field has been set: the next step is building bureaucratic capacity to realize the classificatory vision.

Period 2: Differentiation

The next phase in the development of Swedish migration control is characterized by a more precise differentiation of categories. After the efficient closing of the labor migrant door in 1972, by the mid-1970's, the regulation of refugees

is rising in prominence. The mid-1970's marks the start of an increasingly intense production of boundaries, whereby the 'refugee' status undergoes processes of differentiation, sub-divided into finer distinctions. This is driven by policy elites' attempts to govern migration, which now starts becoming concerned with bureaucratic capacity-building. We will see here how a major feature of the ambition to classify is that it gives rise to bureaucratic growth. Just like the definition of target populations was at the center in the foundation period, the realization of them is at the center in the differentiation phase.

For purposes of regulating movement in a more fine-tuned manner, several policy tools are established by officials at SIV and policy elites within the government to confer administrative identities. The most important of these is the new asylum process. The differentiation period is characterized by a wealth of regulatory innovations and detailed institutional design, as well as the implementation of shifts made in the foundation period. The period covers the legalization of refugeehood, the creation of discretion through classification, the new asylum process, the problem of institutionally reproducing categories, and the new deserving refugee of the late 1970's.

Legalization: From one refugee to many

In the mid-1970's, a significant step toward the Swedish government's more precise top-down differentiation of refugees is the codification of refugee categories into law. Building on the inquiries of the early 1970's, a 1975 bill introduces four main refugee categories into Swedish law. Similar to earlier developments, these categories started as regulatory inventions. The group who qualified in the original sense, defined by the Refugee Convention, now become the category of "Convention refugees". Once all refugees, they are now part of a larger phenomenon. Other groups seemingly deserving of protection in the Convention's spirit, are now seen as falling outside its narrow definition:

> The most severe refugee problems nowadays exist outside of Europe's borders. In Africa and Asia, revolutionary political events have forced hundreds of thousands of people to leave their home countries and seek protection in other countries. The majority of these refugees can't be considered politically persecuted in any of the Convention's given grounds. (SOU 1972:84, p157)

These "other" refugees are a clear instance of the classificatory problem of *residuals* (Bowker & Star 1999) – cases that fall outside of established boundaries, and by doing so also evoke reflections on the system itself. By falling outside of the categories, they present a puzzle for Sweden's aims of generous

protection. In elaborating who to protect among the residuals, the most deserving are seen as those who are in a similar situation to Convention refugees:

> From a migration policy perspective, it doesn't seem possible to give preferential treatment to every foreigner who doesn't want to return to his home country due to the political conditions there. In the choice of giving a strong preferential treatment to a smaller number of foreigners and a weak preferential treatment to a greater number, the inquiry has decided on the former option. The preferential treatment should thus be strong and only given to such foreigner which find themselves in a severe situation, similar to that of Convention refugees. (SOU 1972:84, p153)

Here, we see the notion that those deserving help are the *pure victims*, whose suffering is sufficiently severe. The residuals of "humanitarian migration" are differentiated into three target populations, introduced into law in 1976: politico-humanitarian, deserters and conscientious objectors (Prop. 1975/76:18, p123). An overt exercise in making target populations legible for the purposes of targeting aid, the author of the bill outlines the intentions for "special protection for certain other groups than political refugees":

> I want to remind that a particular form of humanitarian motivated migration has developed in our country in connection to rules concerning political asylum. It concerns people who, without being political refugees, have left their country due to dissatisfaction with the political conditions there, as well as citizens in warring nations who admittedly don't risk persecution in their home country but risk punishment for crimes for which foreigners can't be deported from Sweden, primarily military crimes. Sweden has long, for general humanitarian reasons, provided foreigners who belong to these categories safe haven… in connection to the rules of asylum in the foreigner law, there should be regulations introduced to legalize the praxis which has existed since several years back. (Prop 1975/76:18, p107)

These subsidiary classes, as they become called, represent the solution to how to distribute protection to those seeming to deserve protection in the Convention's spirit but not it's letter. While subsidiary categories are now spread across the world, as Zolberg et al (1989) note, they first appear in Scandinavia. The subsidiary classes represent an administrative innovation that makes selective oversight and targeting of aid possible. As such, the new categories are examples of the legibility at the heart of migration control. The more precise elaboration of new target populations is clearly animated by the rooting of classification in the welfare state, through which deservingness is articulated.

The subsidiary categories also represent the extension of protection to new groups, but crucially, this took place in a period when relatively few arrived. Swedish policymakers' intention is to focus refugee reception on resettlement,

rather than large groups of arrivals at the border. Differentiating refugees into many target population is seen as an effective simplification: allowing efficient processing and a parsimonious overview of immigration. The most challenging of the new classes to firmly bound, and thus the hardest target population to reliably reproduce, is the politico-humanitarian category. This represents a main ”other” category in a world where most immigrants fall outside state classifications. In the words of the 1975 bill:

> it is not possible to provide an exhaustive description of them. Common for all of them, however, is that they due to the current political conditions in their home country can't return there, even if they wouldn't risk harsh, direct persecution. This, however, would seem to be the case in terms of a relatively large group of foreigners. If all the foreigners which I've mentioned would be granted a more expansive right than other foreigners to enter and reside in our country, this could have unacceptable consequences from an immigration policy standpoint. A limitation must therefore be set. As the inquiry suggested, this limitation should be accomplished by requiring that the foreigner has valid and relevant reasons for his unwillingness to return to the home country… For example, of the kind that political refugees can claim, but which aren't strong enough to qualify for refugeehood. In later years, a significant number of citizens of various countries have been allowed to stay here for such reasons…. A complete account of what could qualify as sufficient reasons isn't possible to provide. It must be considered in every individual case if the claimed circumstances are sufficiently valid and relevant. (Prop. 1975/76:18, p108-109)

The final points of this paragraph illustrate the continued emphasis on flexibility: avoiding detailed regulation in law and giving SIV discretion. This discretion can ultimately be controlled by the government's ability to issue prejudicial decisions in individual cases – the regulatory model through which the Swedish government maintains flexibility. It is in the regulatory framework of permits and asylum processing that the precise interpretation of who belongs to what categories is worked out, and the boundaries around administrative identities are reproduced. Soon known as ”B-refugees” (SOU 1977:28, ch3), different version of the main ”other” group has existed ever since in Sweden. What started as a form of residual category has in become a main entrance. It's been, by vast majority, the most common category in which people have been granted protection. It hasn't been static, however: how to interpret and place people into this category quickly became a subject of contestation.

Creating discretion through classification

As the institutional arrangements for classifying people is becoming elaborated, the state's capacity to reliably reproduce its vision by enforcing the categories onto people increasingly came into question. In the mid-1970's, policy

elites in the Swedish government are conceptualizing the new categories as a sorting system which allows them to *ration* protection. In the 1975 bill which introduces the new classes, emergency regulations are added to be able to deny access to subsidiary groups when the number of arrivals is considered extraordinary, and migration has to be regulated in ”the national interest”. (Prop. 1975/76:18, SOU 1977:28, p46) This is grounded in an understanding that Convention refugees have a near-unconditional right to remain in Sweden. But these constraints don’t apply to the new target populations: ”as concerns other groups than Convention refugees, Sweden has full discretion whether they should be allowed to enter and stay or not” (SOU 1972:84, p137).

These emergency regulations reveal an important aspect of making refugees governable through classification: the introduction of target populations enables discretion. This is because it gives officials the ability to apply different rule books. It’s common in the migration literature to point out the constraints on national sovereignty set out by the Refugee Convention (i.e. Betts & Collier 2017). But as seen in Swedish mid-1970’s developments, an underacknowledged aspect of state-level interpretations of the Convention is how the classification systems allow officials to sort people into categories which aren’t covered by international legal frameworks. And indeed, the introduction of subsidiary classes in Sweden seems to have had the effect of displacing applicants from Convention standards to subsidiary classes, as two different inquiries pointed out:

> The unwillingness to, in connection with a foreigner seeking asylum declare, that this person is a political refugee, is flagrant. There appears to be a deliberate endeavor to want to leave this issue open, and the reason appears to be, that it makes it easier to deport the foreigner/refugee, if he later becomes undesirable in the realm. (SOU 1972:85, p54)

> There are reasons to suspect that the introduction of a new protection group could have led to a more restrictive praxis in terms of categorizing people as political refugees (SOU 1979:64, p122)

We see here how regulatory developments in the classification of refugees allows the creation of discretion: it offers officials different potential classes to render people into, giving them some choice over which rulebook to apply.

In an illustration of how institutional arrangements develop in the relationship between rule makers and rule takers (Streeck & Thelen 2005), it took less than a year for the emergency regulations to be utilized. In the summer of 1975, Assyrians and Syrians from Turkey start arriving in Sweden and claiming asylum from religious persecution as a Christian minority. Quite quickly, the Social Democratic government decide that the number of arrivals is large enough

to be considered extraordinary and needs to be regulated in "the national interest" (SOU 1982:49). Akin to earlier episodes, the regulatory inventions of this episode acts as models for later restrictions. A later inquiry summarizes the chain of events:

> In the fall of 1975, the inflow of Assyrians and Syrians from Turkey increased dramatically. Each week at least 50 arrived by flight directly from Istanbul, while a large but unknown number arrived by train or car from or through West Germany. In December 1975, SIV handed the government decisions concerning 18 individual Assyrians and Syrians from Turkey. The intention was to receive guidance as to how a large number of cases with SIV were to be decided… In its decision on 26th of February 1976 the government granted permits for all. The government simultaneously declared that it found Assyrians and Syrians in Turkey were living under such harsh conditions that they should be allowed to stay here, that in terms of their reception they should be equaled to refugees, and finally that the government's decision should be guide SIV's handling of all the others in the group who had arrived before February 26, 1976. (SOU 1982:49, p129)

Here, we see the flexible model of control at work: the government steers by issuing decisions that function as guidance for SIV. This allows the government to make up people: through a discretionary decision, a group is declared as belonging to the politico-humanitarian category. We also get a sense of Swedish policymakers' perception that unplanned migration brings with it a perception of chaos, an inability to plan integration programs, as well as a lack of available housing and social services.

The Assyrian episode illustrates several important themes. First, it is an early example of the centrality of a bureaucratic capacity to not just define but also enforce classes. Second, it illustrates how, under the ideal of flexibility, lawmakers maintain an instrumental attitude to using categories as tools, adapting them to desired ends. This is illuminated when seen through the lens of a later review of asylum decision-making, which singles out the government's separation between Convention refugees and politico-humanitarian refugees ("de facto refugees") in the mid-1970's as lacking legal stringency:

> In this area, it is inescapable to address the assessment of de facto refugees, since Swedish praxis ever since their introduction in 1976 has been characterized by an increasingly fluid boundary between these two categories… It would appear that decisionmakers have considered it most important that applicants have been given residency permit, while it has been considered less important on what grounds this has been given (SOU 1994:54, p95)

In the judicialized perspective of the early 1990's, a flexible application of categories is undesirable – but in the late 1970's, this flexibility is seen by as

allowing efficient targeting. In the case of Assyrians, it means that those already in Sweden, around 2 000 people, are granted a permit.

Third, the Assyrian episode also manifests the idea of restriction for inclusion. Arrivals are deemed to threaten reception capacity and, accompanied by acknowledgment of those already in Sweden as refugees, the Swedish government wants imposes a visa demand to prevent future arrivals. This is principally important, as it represents the reversal of a historical trend where visa demands had been disappearing in Sweden and marks their return as a staple in migration governing. A few years later, an inquiry singles out the role of visas in regulating what is seen as increasingly mercurial migration patterns:

> The number of refugees and other people in the world who wish to leave their country of origin of residence is… extraordinarily large. There are tens of thousands of people for whom Sweden appears a concrete option… Visa requirements are one instrument for regulating immigration. Visa requirements have successively been re-introduced in Northwest European countries to counter the immigration pressure from countries were many want to emigrate. (SOU 1983:29, p42)

The introduction of visa demands point to a recurring temporal dynamic: instruments are introduced as regulatory inventions in response to single movements, and then, over time, become entrenched. The instruments often representing attempts to enforce the state's capacity to classify in the relationship between governing and governed.

The arrival of more asylum seekers in the latter half of the 1970's represents a shift in the institutional development of the Swedish migration classification system, as policy elites and officials become increasingly preoccupied with enforcing classifications. In the mid-1970's, the perception that immigrants elude state control ambitions is a key driver for regulatory inventions. The arrival of immigrants, here, is seen as a challenge to the capacity of the state to enforce its vision of the world. The dynamic takes a particular form: perceived challenges often accelerate the classificatory development already underway, leading to attempts at more precise definitions separating the deserving from the undeserving. In the mid-1970's, this separation concerns how the new classificatory arrangements can be used to ration access to immigrants.

However, due to problems of implementation, often located in the governing-governed relationship, the results are often as lacking. An arena in which many of the dynamics outlined above manifest themselves is the design and implementation of what is perhaps the most important instrument in the new institutional arrangements: the asylum processing system.

The asylum process: A bureaucracy for conferring identity

As the regulatory framework of migration control expands in line with policy-makers' ambitions to sort more precisely between people, the boundaries between different categories of refugees are becoming more important. As a consequence, officials start running into fundamental problems which have characterized asylum policy ever since: how do you set up administrative procedures which reliably render people as cases?

In the 1970's, a new form of asylum processing system is essentially created. This represents a truly novel development – in essence, the system in place by the early 1980's would have been hard to conceptualize using existing terminology a decade earlier. At the start of the 1970's, as one inquiry put it

> there exists, in Sweden, no specific procedure for assessing questions concerning refugeehood. Such questions are generally only assessed in decisions concerning the execution of removal decisions (political refugee), cases concerning travel documents (Convention refugee) and in cases concerning care and support for refugees (SOU 1972:84, p134-135)

Along the same lines, a later bill added:

> the Refugee Convention lacks regulations concerning when and how to determine refugeehood. The same is true of the immigration law. (Prop 1975/76:18, p110)

Instead of assessing cases upon arrival, the procedure at this point can be described as *passive* and back-ended. Asylum investigations are mainly conducted if someone is ordered deported. This is in line with the decentralized, old order, where different government agencies have been responsible for assessing refugeehood in relation to specific issues, such as whether immigrants should be granted social assistance (SOU 1972:84, ch6). In the new era of centralized ambitions and aims for legible target populations, this is seen as dissatisfactory by a government inquiry, which emphasized the right of applicants to have their status declared:

> In several countries in Western Europe questions concerning refugeehood are assessed and determined as soon as the foreigner seeks asylum or in other ways claims to be a political refugee. (SOU 1972:84, p130)

Moreover, the inquiry is dissatisfied with the quality of Police asylum investigations, which are seen as having "serious deficiencies" (SOU 1972:84, p126). The potential life-and-death-consequences of refugee cases requires a "complete and factual investigation" (SOU 1972:84, ch6). For this reason, it is proposed that

> The central immigration agency should be ordered to assess and determine the issue of refugeehood as soon as the foreigner residing here produces a request. (SOU 1972:84, p98)

This should be seen as a suggestion that operations of classification move from a *decentralized, passive* order to a *centralized, active* one. The Police and SIV object to such a shift and the procedural rights associated with it. These, they argue, are costly and commit the state unnecessarily on behalf on asylum claimants (Prop 1975/76:18, ch4). The government agrees, rejecting an active system, which is seen as too administratively burdensome:

> There are examples where the issue of refugee declaration is preceded by drawn-out processing, which only after perhaps several years of negotiations lead to final decisions and that, if the refugee application is not accepted, leads to the foreigner being forced to leave the country… The feeling of safety and security, which refugees in our country should feel today given current legislation, can, in my meaning, be better satisfied through sufficient information about applicable legislation. Without wavering in terms of safety, you thereby also avoid an administratively complicated system, which would likely lead to major costs. (Prop. 1975/76:18, p112)

Instead, SIV, the Police and the government want to maintain flexibility in migration processing, advocating for a continuation of what can be seen as a functionally opaque classification system, in which asylum seekers can be blurred with other types of immigrants.

At the same time, SIV is increasingly commanded by the government to take control over the assessing of asylum cases, which means that the role of the Police successively diminishes (Prop 1975/76:18, ch8). The expansion of SIV's activities is associated with regulatory developments in the form of new tools for the purpose of rendering applicants as cases. These tools, including the visas used in the Assyrian episode, can all be seen as representing a theorization of social control in Lascoumes & Le Gales' (2007) sense, as they manifest an increasingly exacting relationship between target populations and the Swedish state in its regulation of migration.

The asylum processing system should be seen as the central node in this growing regulatory framework. It is understood here as the building of bureaucratic capacity to allow SIV and the Police to render people as cases in the increasingly complex terrain of rapidly expanding legal categories. In the sense discussed by Douglas (1986), the asylum processing system represents an institutional arrangement that allows for conferring identity onto the governed. As such, it represents a mental map (Pierson 1993) by which officials and policy elites deal with the perceived uncertainty of immigration and tries to reduce

the ambiguity of immigrants. The asylum processing system is thus a central sorting device designed to allow officials to separate the deserving from the undeserving. Increasingly, policy elites and officials become reliant on the rules and procedures by which people are made visible to them.

There is, at this point, a continuous pull in the direction toward an active system, which comes from different actors in the policy-making sphere. Here, we see the outlines of a tension in the institutional regime, as it became increasingly imbued with ideas from Sweden's legal-administrative tradition. Inquiries start pointing to tensions between maintaining a decentralized, passive system and the general standards of case processing in Sweden's public administration. An important component is the incorporation of the *ex officio* principle in migration cases, requiring a case to be "thoroughly investigated":

> In administrative processing an agency is required to guarantee a complete basis for a decision and, if necessary, conduct an investigation in the case. This is an important difference to the so-called negotiation principle, which largely applies to courts and which means that the court in principle only considers what any of the parties claimed. The so-called ex officio principle is of particular importance in immigration cases, which are largely characterized by what the party/applicant claimed isn't sufficient as a basis for decision and where the agency commonly must conduct a thorough investigation of its own about, for example, conditions in other countries. (SOU 1982:49, p190)

In the same vein, in 1976, what is deemed "full appeal rights" is established for immigrants. This signifies a legal overhaul of an appeal structure in force since 1937, which is now seen as "designed in a way which seems to lack equivalent in other areas of administrative law." (Prop 1975/76:18, p115):

> The investigation points to the foundational principle within the Swedish legal order, that a government agency's or court's decision in principle should be appealable. The limitations which prevail in terms of the possibilities to appeal SIV's decisions in immigration cases constitute, according to the investigation, a significant departure from this general principle (Prop. 1975/76:18, p55-56)

The reform of appeal rights is a part of a larger phenomenon whereby the growing classification system for migrants, as it becomes a larger government operation, is becoming rooted in what appears to investigators to be general standards of Swedish public administration. Importantly, this represents a latent tension with the ideal of flexibility, as procedural reforms generally had the effect of making the processing more rigorous and detailed.

As immigration of asylum seekers keeps increasing, an inquiry laying the groundwork for the new 1980 immigration law declares an increasing "need

for better oversight and control of the immigration taking place at the side of regulated labor immigration" (SOU 1979:64, p107). To enforce a more controlled, selective order, the inquiry argues that

> The design of the rules of permitting system are of decisive importance for the possibilities to conduct the immigration policy which has been decided. The rules must be designed to actually receive the persons which, according to the decided policy, are wanted. Persons which shouldn't be accepted should be prevented from residing in the country. (SOU 1979:64, p106)

By this point, the bureaucratic capacity to enforce classification is becoming the central issue in migration policy: how to control the increasingly mercurial and unpredictable nature of migration movements (Prop. 1979/80:96,ch2). The active system rejected a few years earlier now start to become reality, piece by piece. This is partly because of pressure from the UNHCR, which argues for "the importance of a specific procedure for determining refugee status through a binding administrative decision." (SOU 1979:64, p119). But it is also due to the mounting tensions within the institutional arrangements, between flexibility and Swedish legal-administrative ideals. Finally, an inquiry proposes that

> Even though there are no procedural rules for asylum applications in the Convention, its structure is such that its closest at hand to determine the status of the refugee when he seeks protection in the country (SOU 1979:64, p120)

The establishment of an active system has the effect of creating a more rigorous and complicated order, with different formalized procedures in place for different categories.

Institutional reproduction of categories

The increasingly detailed classificatory state vision being established does not mean that actual people always aligned with the vision. On the contrary, there are repeated calls to better enforce classification. Using institutional terms, this should be seen as ambitions to reliably reproduce categories of people through means of the bureaucratic capacity.

While the intention is to maintain a parsimonious classificatory order, the results are often different. Issues keep appearing when trying to separate refugees from other immigrants:

> Many foreigners who arrive in Sweden with the intention of settling here don't state their intention at entry. They make sure to fulfill formal and material requirements to enter as

> visitors (tourists) and then wait a time to apply for a permit with the Police at the locality in which they reside. (SOU 1982:49, p181)

The asylum processing system at this point is at the center of a system of both outer and inner controls for realizing policy goals (SOU 1982:49, ch11).[18] Run by an expanding staff at SIV and encompassing a set of procedural rights, the growth of the active asylum process accelerated processes of differentiating refugees. Inquiries keep returning to the need for clearer boundaries:

> Current regulations easily give rise to a mixing of refugees and other groups. The foreigner with politico-humanitarian reasons is perceived as a refugee despite not being so. (SOU 1979:64, p120)

Like before, when arrivals are perceived as challenging the envisioned order, the response is generally a reinforcement and acceleration of the path set upon – affirming the necessity to, in more detail, distinguish groups. Politico-humanitarian groups, such as the Turkish Assyrians,

> are not political refugees and are thus not protected as such. It is, instead, the question of humanitarian immigration. It is because they are not refugees that it's possible to weigh their reasons for settling in Sweden against Sweden's ability to accept them the perspective of labor and housing conditions. (SOU 1979:64, p123)

In the late 1970's, a pattern starts appearing: every three to five years, new inquiries aim to set out principles of how to define the truly deserving (a form of ideal type refugee) by separating them from the underserving (often actual people arriving). The reforms generally include regulatory inventions to make targeting more efficient. This dynamic should be seen as a symptom of the problem of reliably bounding residual cases.

As an example, in 1979, an inquiry proposes a liberalized application of the Convention, drawing an outer circle around the truly deserving, a category which would subsume much of the categories of "humanitarian migration" within "Convention status". This relies on setting out a difference to the undeserving, and establishing ways to effectively exclude those who don't deserve protection. This includes people who could qualify for politico-humanitarian reasons but have passed other countries on their way to Sweden:

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[18] The outer part regulated the border: passports, permits and visas. The purpose of inner control was to restrict access to welfare services to those ineligible for them, for which Sweden's extensive population registry was a key resource (SOU 1982:49, ch11). There was an extensive web of operations which had the united purpose of making people subject to the authoritative conferral of identity of the permit/asylum process.

> The committee, however, does not feel that those who arrive from another country than their country of origin should, in a systemic fashion, be protected against returning there. In terms of refugees, the first country of asylum principle is applied. In other words, the country to which the refugee arrives first should determine his status and, when appropriate, grant him asylum. The refugee has no right to choose their country of asylum. This means that Sweden will return a refugee to the country from which he came, if this is another country than his country of origin and he in this country has protection against, directly or through another country, being returned to his country of origin. (SOU 1979:64, p124).

The suggestions of this particular inquiry are ultimately rejected by the later bill (Prop 1979/80:96, ch2), for illustrative reasons: because similar issues are the subject matter of another, on-going inquiry. As a sign of the increasing pace of reforms, this illustrates a general phenomenon starting to characterize Swedish migration policy as 1970's turned into the 1980's – an accelerating tempo of new ways of trying to answer the same question of how to efficiently bound the target population of the deserving.

Deservingness: The vulnerable refugee

By the end of the 1970's, the continued challenges of enforcing a classificatory vision include the increasing numbers of people arriving at the border, as well as those who are able to stay despite being denied asylum, since removals are hard to carry out for several reasons (SOU 1972:85). Processing times are increasingly drawn out, as the activity of rendering people as cases is becoming costlier and burdensome (SOU 1977:28, Prop 1979/80:96). In inquiries, these difficulties are ascribed to the changing nature of migration:

> The uneven economic development of countries, improving international communications and increasing knowledge about possibilities in other countries have resulted in a growing migration pressure. It isn't only derived from the so-called economically motivated people movements, but also from the never-ending stream of people fleeing political persecution. It's often impossible to distinguish the economic and political push factors… There is reason to believe that we must count on a refugee immigration which, at least at times, will be equivalent to or even larger that now. Increased knowledge in the world of Sweden as a refugee destination means that Sweden must be regarded as an attractive destination country. (SOU 1979:64, p105)

Ahead of the 1980 immigration law, an inquiry sets out to "clarifying the praxis and discuss the limits" (SOU 1979:64, p106) of humanitarian immigration. As an attempt at bounding the residual classes, this contributes to the Swedish government's new articulation of what constitutes a deserving refugee. These

discussions take place in the domain of resettlement. While asylum seeking at the border is increasing rapidly, resettlement through selection from abroad remains the planned focus of policy:

> the focus of humanitarian migration should be measures of a collective kind. This is because the collective form gives Sweden, among other things, the opportunity to judge which needs for help are most urgent to meet. (Prop. 1979/80:96, p37).

Resettlement is analytically instructive because it allows for the elaboration of an ideal state vision, an environment in which officials and policy elites can engineer immigration. The selection of people from camps makes it possible to, with great precision, set out specific designs of what a refugee is. While numerically small, resettlement can in other words be seen as filling the function of model immigration. Tellingly, it is an area in which the governed can exercise minimal resistance. Here, everything can seemingly be planned: housing and language training, the characteristics of groups, and the specification of which nationalities to pick. Groups can be granted resettlement in response to specific events, such as the thousands of Chileans granted protection from the Pinochet dictatorship in the 1970s (SOU 1977:28, ch3). Sweden picks its immigrants, rather than immigrants picking Sweden.

Because of its role as a model immigration, resettlement is seen by the Swedish government, and in inquiries, as an effective way of ensuring that reception focuses on the truly deserving. (Prop 1983/84:144, ch3) In elaborating on resettlement, the Swedish Government in 1979, through its new guidelines for refugee policy, set out a new ideal refugee. The guidelines details how to focus aid on refugees seen as deserving:

> Swedish engagement in the form of resettlement to Sweden and care should focus on refugees in desperate need of rescue and on people who come here by themselves for political reasons and are in need of help. (Prop. 1978/79:100, p152-153)

In a continuation of the differentiation of the 1970's, refugees are defined as *vulnerable* individuals. This represents a more concrete articulation of the perfect victim ideal: those who suffer the most and are the least responsible for it are to be prioritized for protection. (Prop 1979/80:96, ch2, SOU 1982:49, ch1) The focus on desperate people represents a continuation of the social welfare rooting established in the late 1960's, away from the ideal of "able-bodied" ideal which had reigned in the 1950's (SOU 1972:84). It is a firm fixing of refugees within the area of social policy and relies on a clear boundary to labor market considerations. In the top-down vision of the state, the vulnerability-oriented focus represents a form of centrifugal differentiation, whereby the

”truly deserving” are to be given increased rights, whereas the others should face increasing restrictions.

Summary: Differentiation

As previous works have pointed out (Hammar 1999, Johansson 2005, Spång 2008, Borevi 2012), immigration is rarely the subject of party-political conflicts in the 1970’s. But despite the lack of conflict between organized interests, which in the dominant migration control literature is seen as a key source of policy change, there are major changes to way in which migration was conceptualized and regulated. By the end of the period of differentiation, in the early 1980’s, Swedish policy elites and officials have developed an elaborate system of classification by which migrants are separated into different administrative categories. The period is characterized by a major production of boundaries and statuses. While defining classes had been central in the foundation period, the maintaining of them now takes center stage, as the regulation of refugees is becoming crucial in immigration policy as a whole.

In terms of the analytical mode, the *theorization* of social control is manifested in the increasingly rigorous and detailed classificatory framework. As the processing of refugee applicants becomes a stable government operation in the late 1970’s, this leads to increased calls for couching procedures in standards of Sweden’s legal-administrative tradition – requiring cases to be thoroughly investigated, have avenues of appeal, and so forth. This is seen here as an increasingly judicialized theorization of social control, manifested in the elaborate and rigorous system of classification. It also represents a latent tension to the ideal of flexibility in adjusting classes and procedures in order to achieved desired ends, such as the government did in the Assyrian episode.

In *normative* terms, the continued differentiation of refugees is expressed in more legal terms, but also clearly imbued by normative ideas of the welfare state. In this period, the deserving refugee is firmly defined as a vulnerable individual. The differentiation starts to show a pattern: ideal type deserving refugees are often articulated by comparison to actual arrivals, who are seen as undeserving. The *target populations* are becoming precisely formulated in law.

Regulatively, one of the most important parts of this period is of bureaucratic capacity-building for purposes of not only designing but also enforcing classifications. The clearest example of this is the establishment of the modern asylum process, which moves from a decentralized, passive model, to a centralized, active one, despite initial resistance from key actors. It should be seen as a central regulative instrument of migration control, but it wasn’t the only one, as instruments such as visas and different permits are proliferating. By the end of the period, asylum claimants are processed by a growing asylum

bureaucracy where they are given a set of procedural rights. At this point, the classes and the processing system for assigning people into them is roughly reminiscent of how it is today, decades later. But it was qualitatively different than it had been fifteen years prior.

In terms of *contestation*, we have seen clearly how migration came to be perceived by policymakers as a challenge to the state vision. The dynamics of contestation increasingly show a pattern which hints at the nature of institutional development at play. Individual movements, such as in the Assyrian case, lead to regulatory inventions, such as re-interpretations of the politico-humanitarian class and introductions of visas. Such episodes trigger larger reforms, wherein individual regulatory inventions serve as models for future planning. The perceived challenge posed by mercurial migrants accelerates reforms, as the normative components of the institutional regime are reinforced by being challenged. More precise definitions of vulnerability are developed, classification systems become more elaborate, and the operations at SIV grow. While triggered by external events, the interactive nature of classification is the heart of reform patterns – the difficulty of rendering individuals as cases is mirrored in the more abstract difficulty of rendering migrants as categories.

The fundamentals of a new form of Swedish immigration control are now in place: a deservingness rooted in the welfare contract, a differentiation between refugees for purposes of targeting aid, a centralized, coordinated policy field with a government agency, and the asylum process as a central sorting device. These fundamentals are starting to represent an institutional durability. The foundational questions and problems of refugee policy are now set in place. But continued reforms follow in the search for answers to these questions, as the world continues to elude the plans of policymakers.

Period 3: Enforcement

In the final period of this chapter, refugees have moved from the periphery to the centre. Through 1980's and into the early 1990's, the control of refugees is the single most important issue in Swedish migration policy. In line with an accelerating reform pace, it is the subject of several major legislative overhauls within a few years (Prop 1983/84:144, Prop 1988/89:186, Prop. 1990/91:195). In the early 1980's, around 5 000 people classified as refugees arrive annually. By the end of the decade, this has increased to 15-20 000. Throughout the decade, the continuously climbing numbers lend a sense of urgency to reforms.

The demographics are shifting, as well: "immigration", investigators argue, "now consists largely of people from far-away countries with other cultures and religions" (Prop 1985/86:98, p14). For classificatory purposes, this

reinforces a perception of immigrants as ambiguous and harder to pin down. The increasing arrivals lead to renewed proposals to retain selective ability. What's different in this period, however, is that the proposals largely represent an entrenchment of the regulatory framework already in place. The aims of refugee policy set in the earlier periods have become institutionally stable, both in terms of its deserving victims and the overall design of the regulatory framework. The development instead concerns capacity: how to bound and enforce the target populations of the classification system onto a world which increasingly seen as to resisting. This period covers attempts to fix the limits of deservingness, the conflicting ideals of flexibility and precision, increasingly illegible targets, and the looping nature of political reforms in immigration.

Fixing the limits of deservingness

As seen in this chapter, contemporary Swedish migration policy can in its origins be understood as the articulation of a regulatory framework for defining and ruling over a set of increasingly differentiated target populations. In major legislative overhauls of the 1980's, the foundational principles of immigration regulation are re-visited. The goals of 1968 are re-affirmed, in that migration policy is to be subordinated to more general societal goals:

> the general goal, like before, should be that immigration policy is regulated in such a fashion that it is coordinated with policy in other areas… Immigration policy must be subordinated to general societal goals such as democracy, economic growth, full employment, economic, social and cultural equality… (SOU 1983:29, p68)

As the focus moves from design to enforcement, the bureaucratic capacity to realize visions comes to the center. This is seen in a government bill in the early 1980's, which portrayed it as a central goal

> to achieve better control of the immigration of foreigners who claim political-humanitarian reasons. A recurring assessment of 'the need for regulation and governing of immigration' should thus, according to the committee, become a normal feature of immigration policy. (Prop 1983/84:144, p37)

Throughout much of the 1980's, control efforts center on the main "other" category, the politico-humanitarians. To fix the limits of this category becomes a critical feature of immigration regulation. Swedish policymakers see it as a major problem that "methods haven't been developed to regulate spontaneous immigration of people who claim refugee status" (Prop 1983/84:144, p15). Reforms are proposed to target the distribution of protection more efficiently:

> In conclusion, the committee wants to clarify that it doesn't propose decreased generosity as concerns the reception of refugees and others who apply for politico-humanitarian reasons. Refugee policy must be characterized by a political will to create increased resources. It must, as now, be generous in an international comparison. Considering the growing immigration pressure, it is, however, according to the committee necessary for the fulfillment of integration policy goals, that the immigration of people claiming refugee-like or other politico-humanitarian reasons continuously be adapted to our resources. (Prop 1983/84:144, p21)

The necessity of regulation is grounded in the, by known, well-established perception of migration as requiring active regulation:

> One of the committee's conclusions is that there is a major latent immigration pressure and that the role of immigration policy, among other things, has become to prevent this from being released. (SOU 1983:29, p21)

As other researchers have pointed out, acceptance rates for asylum seekers at this point were high – around 85-90% of those who manage to arrive are granted protection in the mid-1980's (Hammer 1999). The consequences of the continuous re-calibrations of the regulatory framework are not always immediate in the sense that it represents sharp restrictions. But the developments contribute to making migrants governable in new ways, as policy elites continue to deliberate where the outer boundaries of deservingness should be set. Government proposals lay out the types of groups for which protection could be rationed if the number of applicants are high:

> To these groups belong those who risk severe punishment or persecution due to gender or sexual orientation. In praxis, such groups are allowed to stay for general humanitarian reasons… like until now, people who claim to have been forced to leave their country due to external aggression, occupation or civil war. This is a question of conditions which affect everyone in the country or region, and which has no connection to the asylum seekers' own actions or political beliefs. The committee underlines that Sweden should continue to offer protection to such people… but the immigration pressure in these cases is particularly unpredictable and can in certain situations be very high. (Prop 1983/84:144, p31)

By this point, the need for classifying applicants into precise target populations in order to ration access to protection has become a well-established element of migration governing – the intentions are set, even if they are often not realized. The dynamics whereby deservingness are articulated represent a continuation of the perfect victim subject. Reform proposals center on sifting out "real" refugees and increasing protection for those who truly need protection,

while filtering out those who don't, which are now increasingly described as illegal arrivals (Prop 1983/844:144, ch2). The classification system is essentially envisioned as a hierarchy where the most deserving, Convention refugees, sit at the top, above an adaptative system of governing that is intended to block access to the lower, subsidiary classes if "emergency pressures" are caused by high volumes of claims (SOU 1983:29, p19, Prop 1983/84:144, ch3). In another example of institutional stability, flexibility is envisioned as key in adapting regulations to unpredictable surroundings:

> A foundational thought in the proposal is that the size of immigration considering the politico-humanitarian category must vary from time to time… the strength in the reasons for granting a permit must be allowed to vary, depending on the number of people which seek to enter the country and the opportunities for receiving them. For this to be made possible, it is necessary, according to the committee, with better foresight, preparation and planning than today… A precondition is then that the government is given the opportunity to inform praxis by SIV handing over cases considering new categories of asylum seekers to the government for decision. (Prop 1983/84:144, p30-31)

As a further telling sign of the institutionalization of the classification system, the early 1980's is the point when SIV starts compiling annual statistics, and categories of refugees become legible through statistical representation. This also contributes to shifting the view of the past, as problems arise in trying to fit earlier immigrants into the new tables. A 1982 inquiry asserts that

> According to available data on refugee immigration since the year 1968 the number of spontaneously arrived refugees since 1968 up until 1981 would amount to 36 000. But the word refugee has then not been used in its proper meaning. In actuality, only a smaller part have claimed asylum for such reasons which are found in the third chapter of the immigration law. A majority have been people with reasons which are now located in the sixth chapter of the immigration law. It is, however, not possible with available statistics to correctly ascertain how large either group actually is. (SOU 1982:49, p127)

The establishment of a statistical vision represents one of the most reliable signs of a classification system becoming institutionalized. Rather than just a passive indicator, however, it also functions as a way to reproduce official categorizations. We see here how the categories used to make immigrants legible are also becoming more rigorous, representing a tension with the ideal of flexibility, to the point that the application of the 1970's is seen as inaccurate.

Conflicting ideals: Flexibility versus precision

Building on the increased perception among policy elites and officials that applicants are eluding the state vision, the centrality of enforcement in the 1980's is grounded in perceptions of contestation. Rendering people as cases and migrants as categories is perceived as increasingly difficult. In reviewing responses to these difficulties, a striking number of the proposals reflect institutional durability, both in conceptualizing refugees as a specific type of victim and the regulatory arrangement of policy tools for achieving the goals. By the mid-1980's, a significant bureaucratic capacity has been built up to enforce classifications, but this is far from always successful on its own terms.

The general effect of many reforms has been to increase the complexity of the migration classification system. This is underlined by the increasing rigor of administrative and legal standards, such as in the asylum processing system. Much of it is associated with the influence of ideas from Sweden's political-administrative tradition that have grown in influence with the stabilization of migration governing as a regular operation. The increasing complexity of the migration classification system thus highlights conflicting mental maps in the enforcement of target populations: between flexibility, the general ideal since the late 1960's, and a new-found focus on precision.

We see the consequences of an increased focus on precision in some of the unintended effects of migration classification that start appearing in the 1980's. First, the asylum bureaucracy is becoming costly. As more immigrants arrive and the administrative boundaries between categories increase in importance, the bureaucracy for conferring identities grows. By the early 1990's, inquiries lament how Sweden's expenditure on asylum processing vastly outnumbers its aid to refugees abroad (SOU 1991:1). As Johansson (2005:192f) recounts, the annual cost of Sweden's asylum process had become larger than the UNHCR's entire budget. A key reason for this is a problem which has vexed policy elites and officials since the late 1970's: increasing processing times. Despite repeated reform attempts, they are persistently hard to reduce:

> One of the major problems in immigration policy is presently the overlong processing times. The increase in the number of asylum seekers in later years has led to processing times, particularly appeals to the government, becoming longer than what has previously been deemed acceptable in legislative contexts. The strains on the person applying for a residence permit are known, particularly for asylum seekers, forced to for a long time for a decision if he gets to stay in Sweden. Long processing times also means substantial costs for society, which normally provides a living for the applicant during waiting. (Prop 1985/86:133, p9)

> Processing times were, despite the rationalization measures taken in connection with the introduction of the 1989 law, becoming increasingly long. It had a detrimental effect on the work situation both in refugee residencies and among processing staff at SIV and in government offices, on the asylum seeker's mental health and, of course, cost a lot of money. (SOU 1994:54, p54)

As processing times increase, the new phenomenon of "waiting people" is turning into a serious concern. Passing through the asylum process can take months, even years, and starting in the late 1970's, the backlog of cases becomes a chronic administrative problem (SOU 1977:28). This is seen by investigators both as an issue of greater numbers, but also a principal difficulty in effectively rendering people as cases (SOU 1983:29). It flows out of increasingly precise and rigorous demands in the classification system, such as the responsibility of government agencies to conduct a thorough investigation. There is a growing sense in inquiries of the processing system as complex:

> Current processing rules have been the subject of critique in several aspects. They have been considered difficult to understand. The difficulty of getting an oral hearing, the lack of motivation for decisions and complicated removal rules have also been felt to contribute to problems. The processing system originates in a time when the number of spontaneous refugees were considerably fewer than today. They also represented significantly fewer nationalities. (SOU 1988:1, p124-125)

The raising of standards and requirements occurs at the same time as there are more frequent complaints on asylum seekers' lack of documentary evidence, as investigations are becoming more time- and resource-consuming. (SOU 1982:49, ch11) During waiting, people can access welfare services, such as benefits for housing and access to education. The cost of this, by the early 1980's, amounts to tens of millions of SEK annually. (SOU 1982:49, ch13).

The waiting has a range of unintended consequences. One of them is that applicants start to qualify for asylum by virtue of having waited so long. When waiting, people often form connections to Sweden, such as by starting a family, which can itself be grounds for protection. As acknowledged by one bill:

> Quite commonly, in a decision which was originally correct, through new processing and drawn-out time during the removal stages new circumstances arise, which in themselves are not connected to persecution in the home country (Prop 1988/89:86, p113).

This is an example of an inadvertent making up of people. In eyes of policy-makers, it is directly counter to the purpose of the asylum process: it is supposed to assess, not create, grounds for asylum (Prop 1988/89:86). In the late

1980's, 15% of all immigrants granted permits are those whose processing have drawn out (SOU 1994:54, ch2)

These unintended effects are clearly linked to the perception of an increasingly complex rule system for classifying migrants. In the mid-1980's, the processing system is becoming so tangled and difficult to understand, that investigators call for officials' having access to up-to-date databases of documentation concerning rules, praxis and guidance (SOU 1983:29). Much of it is couched in legalistic terms, testament to an increasing judicialization:

> As we have stated earlier, immigration policy is largely given content through the praxis which develops. In the same sense that it is of utmost importance that the government and SIV dedicate systematic concern for praxis development, it is necessary that this praxis is continuously published… We consider it important that SIV is part of those government agencies that, according to the Code of Statutes Order, should publish their own Code of Statutes and that all statutes from SIV, with support from the Aliens Ordinance, should be included in this. Further, information in the form of praxis description, motive declarations, principles and guidelines in bills as well as motives for Aliens Ordinance should be included in the Code of Statuses. This information should, appropriately, be included in the general advice to investigating and deciding agencies (Police agencies and Foreign Affairs agencies). Through this, as well, lawyers and other concerned parties can continuously be afforded a more complete picture of current regulations. (SOU 1983:29, p251)

As has been recounted several times, the original model of Swedish migration control as developed in the late 1960's was oriented toward flexibility: for the government to avoid complicated frameworks of rules and retain discretion by adapting rule systems to the shifting nature of migration. This was oriented toward *securing outcomes*. As seen in the Assyrian episode, this often meant that the interpretation of classes was adjusted in accordance with which groups were deemed deserving. However, with the expansion of the asylum processing system and the increased rooting of classification in the legal-administrative traditions of Sweden, the ideal of precision starts permeating the classification system. This ideal doesn't necessarily entail more rights for immigrants, but should rather be seen as another mental map for reducing uncertainty: one in which precise boundaries and highly elaborate regulatory frameworks are appropriate for making migrants governable.

Often taking the form of legal procedures, precision is associated with a rigorous application of rules, rather than the adaptation of these rules to shifting circumstances. As migration control starts to consist of a more detailed sorting of people, procedures became more complex, the bureaucracy expands, and increased processing times follow. Precision also entails a different view of boundary management in the classification system: a greater emphasis on

maintaining boundaries for their own sake, rather than flexibly adjusting them to circumstances. As a sign of this persistent tension, successive migration reforms have tended to advocate for either harmonization and integration of rules (flexibility) or differentiation and clarity (precision).

Illegible targets

It is perhaps no coincidence that with heightened attention to legibility, perceptions of illegibility followed. In the mid-1980's, a bill states, it is "increasingly common that foreigners come to Sweden without a passport and state that they have lost it" (Prop. 1985/86:133, p9). Within the more detailed classificatory order, SIV and the Police are increasingly unsure of who people are. Unknown, or illegible, migrants are seen as representing a fundamental challenge to the sorting of people into categories upon which migration control rests: "a secure identification is of foundational importance for the control of which foreigners are allowed to enter Sweden." (Prop. 1985/86:133, p17) By the mid-1980's, illegibility is a growing problem:

> the problems with passports almost exclusively concern asylum seekers. In recent years, more and more people have departed their home countries and sought residence in another country. In many cases these are people who have suffered political or other persecution of a similar nature. In other cases, however, the main reason to their departure is a wish to live under better economic and social circumstances. Even in these situations, however, political reasons are claimed in order to stay in the new country. (Prop 1985/86:133, p9)

> Many proposals aim to come to terms with a problem which has been increasing in recent years, that foreigners who arrive in Sweden claim to lack both identification documents and travel tickets. (Prop 1988/89:86, p2).

This illegibility is consistently presented by lawmakers, SIV and the Police as undermining border control, risking the presence of illegal arrivals and hollowing out the concept of refugeehood, thereby undermining public support for refugee reception (Prop. 1985/86:133, ch2). As the foundations of processing are challenged, this draws out illustrative accounts of the importance of classificatory practices for migration control:

> The need for labor migration is very low and for those who wish to move to live and work in another country, in most cases no options remain but to seek asylum. These migrations often take place in organized form and the so-called asylum organizers often encourage asylum seekers to destroy their passports. The motive is twofold, the asylum seekers' travel route and any sojourn can't be traced, and the person can claim that he or she hasn't received any passport by his origin country, meaning they can't be considered to have

> protection from their state…. The receiving country will have a hard time making a correct decision. Agencies can't secure a person's identity and consequently, don't know who is let into the country… The ultimate consequence is that processing takes very long time and that decision is made on loose grounds (SOU 1994:54, p49-50)

The problem of illegible applicants hadn't characterized asylum policy to the same degree a couple of decades earlier. The government responds by issuing a guiding decision, declaring in 1991 that lacking a passport is to be interpreted as "an attempt at withholding circumstances of importance from the assessment of the applicant's right to access protection in Sweden, thereby reducing confidence in the information he provided." (SOU 1994:54, p15). This has a direct and decisive effect on SIV's processing:

> The decision has since had a major impact in asylum processing. It is our opinion that the lack of a passport has come to be judged in a highly generalized and unnuanced way. The decisions are often of a stereotyped nature. The same wording which is found in the Government's decision recurs in case after case. (SOU 1994:54, p19)

This is another example of how individual regulatory tools (passports) allow for collectivizing decisions, a form of governing through classification.

Feedback: Looping reforms

In the early 1980's, the basic contours of contemporary migration control had shown elements of institutional durability. A decade later, the pattern of reforms is becoming stable as well. By this point, we can say that migration control has institutionalized into a specific form: as *a pattern of continuous reform around the same issues.* Cutting processing times, fixing the limits of deservingness, bounding residual classes, enhancing the ability to select – all these issues, and others, are about to turn into virtual evergreens of reform.

The analytical model allows us to locate this dynamic in the contested relationship between rule makers and rule takers: the engine of institutional reproduction (Thelen 1999, Clemens & Cook 1999) in the development of Swedish migration control is, to a large degree, *the arrival of immigrants* and Swedish authorities' *attempts to enforce a categorical vision* upon them. Again, just like the formulation of target populations was essential for the establishment of migration policy as well bureaucratic capacity-building within it, the analysis here shows how the attempts to enforce these populations are central to the institutional development of migration control. Rather than caused only by conflicts among organized interests, as in the perspectives of dominant theories of migration control (Hollifield et al 2022), we see here how the

relationship between governing and governed is central to policy development, revolving around the state's capacity to enforce its vision on the world.

As the 1980's gave way to the 1990's, restrictive shifts take place. In 1989, when almost 20 000 people claim asylum, primarily of the Turkish minority in Bulgaria, the Swedish government decides that emergency levels have been reached and issue the so-called "Lucia" decision. Often described as a watershed, this utilizes the governability made possible by the classification system. It restricts access to protection to the "minimum standards", i.e., blocking access to humanitarian classes and declaring that only Convention refugees qualify. This well-chronicled episode (Lundh & Olsson 1994, Hammar 1999, Johansson 2005) is modelled on the 1975 restriction on Assyrians (SOU 1994:54, ch2). A few years later, in the early 1990's, the brutal civil war in Yugoslavia leads to the highest number of asylum seekers in Sweden since World War II. This causes a range of reactions and ultimately the imposition of visa demands to stop arrivals. Given these developments, which inquiries describe as straining the Swedish reception of refugees "to its limits" (SOU 1994:54, p53) it might seem an unlikely point to end the chapter. But these dramatic events only underscore how the institutional regime developed in an earlier time had now become fixed. The restrictions take place in a policy field which has largely stabilized around continuous reforms of the same problems. Essentially, they all amount to some version of aiming at

> creating a system of regulation of the immigration to Sweden, which in a better way than the current one gives the right to stay in our country to those who best need it. (Prop 1990/91:195, p3)

Or, as further deliberate in the same bill:

> What we need is, as the refugee and immigration inquiry asserts – in different words – a system of rules and regulations which give us increased "precision", which as far as possible assures those who best need it a right to stay in Sweden. In terms of this goal, there is broad unity. Because of this, change is required. (Prop. 1990/91:195, p40)

The central issue is targeting and selecting, of refining and enforcing target populations of migration policy. In several inquiries and bills throughout the 1980's, reforming the processing system and the regulatory framework is the main issue (Prop. 1983/84:144, Prop. 1985/86:133, Prop. 1988/89:86, Prop. 1990/91:195). Following the Yugoslavian conflict, major reforms to migration law follow in 1995, 1997, 2004, and throughout the 2000's, continuing to revolve around the same issues. Policy elites and officials are continuously searching for quicker ways of separating the "easy" cases from the "hard" ones,

putting in place a ”lean, quick and efficient” organization which asserts ”strengthened administrative control of case processing” (1988/89:86, p48). Bills outline a need for ”presumptive migrants to, so to say, get in the right line”, giving agencies better preconditions for planning and predicting immigration (Prop 1990/91:195, p51). Problems are associated with a by now familiar description of migration as unpredictable and of its target population as hard to fit into state categories:

> The majority of the world's refugees are poor. They flee from one country to another in the third world. The reasons are often a combination of economic factors and social or political turbulence… The majority of the asylum seekers in Europe and North America are people without strong protection needs, seeking a better existence. (SOU 1991:1, p9-10)

> As has been made clear above, the number of asylum seekers has increased very sharply during later years and the composition of the group of asylum seekers has shifted. This, as well as shifts in political and economic aspects in different parts of the world, clearly makes an assessment of the development of praxis difficult. It's not entirely easy to compare praxis in the assessment of the claimed reasons as concerns asylum seekers with completely different backgrounds and that arrive from very diverse countries. (SOU 1994:54, p122)

Continuous reforms revolve around how to exactly design and apply the regulatory framework for purposes of selection. A range of new instruments, utilizing new technology but serving old purposes, are added to the palette – like before, often in response to individual movements. To combat illegibility, the Police is given authority to keep photographic and fingerprint registries of foreigners who can't prove their identity on arrival (Prop 1988/89:86, ch2). They are also granted authority to search vehicles, baggage and people (Prop. 1985/86:133, ch2). Carrier sanctions are expanded to prevent asylum seekers from boarding airplanes (Prop 1988/89:86, ch2).

But the contestation remains. The boundaries around who to award protection are continuously re-drawn for purposes of efficiently targeting aid:

> Immigration policy should be designed from a humanitarian perspective and from the point of departure that movement across borders is, at its foundation, positive. A clearer distinction should be made between those who have an unconditional right to stay in Sweden (refugees, other people with a need of international protection, members of the core family) and other immigrants (Prop 1990/91:195, p4)

At the end of this era, we see how the boundaries between classes are getting increasingly detailed, reminiscent of the “categorical fetishism” (Crawley & Skleparis 2018) observed in contemporary migration policy. This includes

question such as if ”refugee-like” reasons include people persecuted for being homosexual and how severe a mental illness must be for someone to be granted humanitarian protection (Prop. 1988/89:86, p75, SOU 1994:54, ch1).

On its own terms, the envisioned utopia of precision often fails. But its goals are stable. It’s instructive to compare with resettlement, the ideal setting of refugee policy which remained envisioned as the main entry to Sweden. Because there was close to no contestation surrounding this selection process, it was hardly the subject of any reforms. The processing of asylum cases, because arrivals keep coming, is always being reformed.

Summary: Enforcement

At the start of this chapter, the momentous shifts of Swedish society from the 1960’s to the early 1990’s were discussed – from the record years of the 1960’s welfare state to the market and management reforms of the 1980’s. These societal changes only underscore the strength of institutionalization in migration regulation. By the early 1990’s, many of the central issues in Swedish asylum politics had been set in a form which wasn’t in place 20 years earlier, but still are 30 years later. Asylum has kept being the subject of continuous reform, and the same issues (processing times, enforcing deportations, unknown people, drawing the boundaries of protection) have continued to be at the heart of its loop. The new asylum law of 2005, for example, centered on reforming the asylum process and policy tools which center on effectively establishing asylum seekers’ identity (Prop. 2003/04:50, Prop. 2004/05:170).

The regulatory framework for conferring identity – set down in law and regulations, executed SIV and the Police – can be seen as form of mental map with which to stabilize and order the world. As a means for making migrants visible to the migration regime, this regulatory framework has become entrenched as an enduring rule system which molds expectations about the governing of migration (Thelen 1999, Streeck & Thelen 2005). The perceptions that increasing arrivals are resisting and eluding order didn’t shake this belief, but on the contrary rather strengthened it. The top-down separation of refugees into a set of administrative categories was increasingly becoming a taken-for-granted feature at the centre of migration control.

In terms of the analytical model, in the *theorization* of the classified, we have seen the increasingly conflicting visions of two different ideals in governing migration: flexibility and precision. As ideal types, neither can be said to be wholly dominant, but the shift over time is clearly in the direction of more precision at the cost of flexibility – seen in the presence of more rigorous, detailed and legally oriented rules. Flexibility and precision should be seen as representing different mental maps, or modes of governing, whereby refugees

are made legible to policymakers. The *target populations*, increasingly, are expressed in precise terms. The ascension of precision-oriented thinking is connected to migration processing becoming more a regular government operation, increasingly couched in Swedish legal-administrative standards. This represents a judicialization of asylum procedures.

Normatively and *regulatively*, classification increasingly developed from a means toward an end, such as in the flexible mode, toward an end in itself, in the precise mode. In other words, in an institutional sense, what had once been a regulative aspect increasingly became a normative one. As opposed to the flexible application in the 1970's, maintaining boundaries and precisely sorting people into them became a goal in itself. This isn't totally dominant, as the flexible adjusting of categories is also, for example, what allowed the Swedish Government to restrict access for asylum seekers from Yugoslavia. But the entire enterprise of classifying migrants was increasingly permeated by an ideal of exacting precision and detailed regulation. The deservingness of refugees, and the obsessions with fixing its outer limits, remained couched in a welfare state logic, focused on vulnerable victims. But the way these were assessed shifted.

In terms of *contestation*, the model has allowed us to uncover the dynamics of the institutional development, in patterns of how classification is becoming entrenched in responses to perceived challenges to it. This is seen here as the engine of institutional reproduction (Thelen 1999, Streeck & Thelen 2005) being the arrival of refugees, which represent a continuous challenge to the state vision. We see how the attempts to separate true from false, or deserving from undeserving, represent a continuous differentiation, or production of boundaries, which demands a growing bureaucracy. This is observable both on the level of rendering individuals as cases, but also of rendering groups of migrants as categories – and it is located in the governing-governed relationship, wherein the perception of governing is that a system of classification is required to enforce the state vision.

Throughout the periods of foundation, differentiation and enforcement, the issue of classification has been at the center of Swedish migration policy. We now turn to the Canadian case to see how similar processes have been underway there, and to what extent the national context imbues them differently.

6
Canada: Rational Compassion

> To think is to forget differences, generalize, and make abstractions.
>
> Jorge Luis Borges, *Funes the Memorious*

> 'Order', let me explain, means monotony, regularity, repetitiveness and predictability; we call a setting 'orderly' if and only if some events are considerably more likely to happen in it than their alternatives, while some other events are highly unlikely to occur or are altogether out of the question.
>
> Zygmunt Bauman, *Liquid Modernity*

This chapter explores how systems of classification for making migrants governable originated, developed and stabilized into enduring rule systems in Canada. Canada is often described as an "exceptional country" in terms of the scope of its immigration, the relative openness in public opinion to immigrants, and its multicultural policies (Banting & Kymlicka 2010). The developments traced here take place along a similar trajectory as the previous chapter, starting in the mid-1960's and ending in the early 1990's. Canadian immigration policy in this paradigmatic period has been studied before (Hawkins 1991, Dirks 1995, Kelley & Trebilcock 2010:ch8-10, Triadafilopoulos 2012). These studies point to a wealth of reforms, an increasing restriction of asylum, but also the establishment of non-discrimination in a country where policy historically aimed for maintaining a demography of "white Canada". Just like in Sweden, the focus in previous research is generally not on classification.

Over the decades charted here, major shifts took place in Canadian society. Canada formally became an independent nation and ratified a new constitution in 1982. People in the historically French province of Quebec repeatedly sought independence and struggles around the country's political identity merged with issues of constitutional design and federal-provincial relations (Russell 2017). After the post-war years of growth and prosperity, periodically rising unemployment and recessions hit the country in the 1970's. The Liberal

party maintained control of government from 1963 until 1984, with a brief shift in 1979, whereas the Progressive Conservative party ruled from 1984 into the 1990's. (Kelley & Trebilcock 2010) Just like in Sweden, major reforms were initiated in the 1980's to make the public sector operate in a more market- and management-oriented fashion (Pollitt & Bouckaert 2017).

But throughout all these major shifts, there are continuities in the way in which immigration was regulated. This chapter is organized into similar periods as its Swedish counterpart: the first period, foundation (mid-1960's to mid-1970's), is one of contingency in which Canadian policymakers re-envisioned migration policy. The second phase, differentiation (mid-1970's to the early 1980's), centers on the introduction and early implementation of the 1976 Immigration Act, when refugees were for the first time acknowledged in Canadian law. The final period, enforcement (early 1980's to early 1990's) focuses on attempts to build bureaucratic capacity and enforce a state vision in the face of increasing controversy surrounding asylum, leading up to the establishment of the Immigration and Refugee Board in 1989.

Period 1: Foundation

In the mid-1960's, Canada has experienced record levels of immigration. Since the War, more than two million people have arrived (Kelley & Trebilcock 2010:ch8) – in 1965, these immigrants amount to roughly one in ten of all Canadians. For both Liberal and Conservative governments, immigration has been vital in filling manpower needs in the domestic industry. This massive immigration, astonishingly, has taken place without legislative reforms or major political debates on migration. The movements include more than 200 000 "displaced" people from Europe (Manpower and Immigration 1974b). But none of these have been legally categorized as "refugees", and none could, because "refugee" is not a recognized legal identity in Canada. Looking back in 1986, a senior immigration official sketches the contours of post-war Canadian immigration policy:

> Canada was able to absorb a substantial share of the overall population of displaced persons because we were going through a period of nation building, and in the latter stages of this period, rapid industrialization and economic growth. Throughout this whole period, however, Canadian policy towards refugees was not defined separately from immigration policy… choices were made on the basis of how these people matched our immigration needs and possibilities, rather than vice versa. (Standing Committee 1984-86/21:p5)

At a similar point, a government-appointed task force articulated the role of refugees more bluntly:

> The displaced were accepted as part of a broader national policy to develop Canada's economy in the context of acute manpower shortages of the early fifties. (Employment and Immigration 1984:1)

We see here a similar situation to that in Sweden at the same point: In elite policy circles, immigration is understood as phenomenon which is largely self-regulating according to economic cycles. To the extent that it isn't, a "tap-on, tap-off" philosophy has dominated. (Manpower and Immigration 1974b:84) As portrayed in the immigration department's 1974 Green Paper, the immigration tap is turned off in times of recession, and vice versa. There has been no perceived necessity to specify target populations and the immigration regulation which does exist is centered on economic growth and the labor market.

In the mid-1960's, however, shifts are taking place. The regulatory framework of the 1952 Immigration Act is starting to appear old and outdated. A perception is growing in government circles of the need for a more active, comprehensive governing of migration. As the Cabinet puts it in its 1966 White Paper on Immigration:

> There is a general awareness among Canadians that the present Immigration Act no longer serves national needs adequately, but there is no consensus on the remedy… The Government's view is that it is in Canada's interest to accept, and if need be to encourage, the entry to this country each year of as many immigrants as can be readily absorbed. Subject to this limitation, we should accept or seek out people who have the capability to adapt themselves successfully to Canadian economic and social conditions. (Government of Canada 1966:5)

This is grounded in changing perceptions of the nature of migration as such. In the words of the Special Joint Parliamentary Committee which is to lay the groundwork for the Canada's first major overhaul of immigration in a quarter-century, the 1976 Immigration Act:

> It had been assumed that immigration was essentially self-regulating; that is, that fewer people would want to immigrate to Canada when unemployment was high or the economy… Experience has proven this assumption false. (Special Joint Committee 1975:11)

The preparation of the Act consists of regulatory developments involving the Cabinet and the immigration department, the department's 1974 Green Paper and the 1975 Special Joint Parliamentary Committee. Similar to the 1968-1972 legislative shifts in Sweden, this is a period of contingency, encompassing an elite-level re-imagining of migration and migrants as such. While not often acknowledged in other research, much of this work focuses on making

migrants legible in new ways. The foundation period covers the new points system for selecting migrants, the contestation presented by arrivals, the idea of planned growth, and how refugees are initially made legible.

Numerical non-discrimination: The points system

In contrast to Sweden, Canada's long immigration tradition entails a different starting point for the contingent period. Operations of immigration control are, in the mid-1960's, already centralized at the federal level. Detailed classification and selection of immigrants has long been the architecture of immigration control in Canada. Made possible by the country's geographic isolation, the government has maintained control over immigration by drawing boundaries around classes of admissible immigrants and setting quotas for specific countries. As previous research has shown, since the turn of the century, these classes were racist in nature, barring entry to most except white Americans and citizens of Northwestern, and increasingly Southern, Europe. (FitzGerald & Cook-Martín 2014:ch4) They have also targeted the poor: there has been a long tradition of barring entry to those seen as an economic burden on society by requiring welfare (Manpower and Immigration 1974b:143ff).

By the mid-1960's, this classificatory structure is becoming troublesome. Its overt racism clashes with the government's foreign policy ambitions of Canada as a middle power on the world stage, where human rights struggles are central. (Triadafilopoulos 2012) This tension is an important initiator for reforms, leading to a re-envisioning of central values in Canadian immigration. Similar to Sweden, immigration reforms are focused on labor and the economy, as reflected in the Canadian immigration department's new name: Manpower and Immigration. And both countries share a central focus of articulating and elaborating new types of immigrants.

Through a series of Cabinet decisions and department inventions, starting in the late 1950's, immigrants are gradually re-imagined in the regulatory terminology of policy instruments. By 1962, all applicants are to be assessed according to the same criteria, no matter their origin (Kelley & Trebilcock 2010:ch8). The introduction of formal non-discrimination represents a major shift in ideas regarding how migrants are made legible, opening the door to whole new groups of immigrants. However, it also accentuates the need for new forms of regulation. As put in an inquiry by the immigration department

> once the open door was closed at all, it became necessary to detect those people who were not to be allowed to come through – to prevent their entry, or expel them if they did manage to slip through. These notions remain valid today. (Manpower and Immigration 1974b:143)

Department investigators lament the old legal framework as having a ”gatekeeper stance” that is ”more about immigration than about immigrants” (Manpower and Immigration 1974b:68). Instead, they are searching for more refined tools to classify people. (ibid:ch1) Looking for a new instrument which suits non-discrimination, officials in the immigration department design the *points system*, put into operation in 1967 (see Table 4).

Table 4: A vision of immigration control: The Canadian points system

SUMMARY OF SELECTION FACTORS Independent applicants	
Long-Term Factors	*Range of units of assessment that may be awarded*
Education & Training	0 – 20
Personal Qualities	0 – 15
Occupational Demand	0 – 15
Occupational Skill	1 – 10
Age	0 – 10
Short-Term Factors	
Arranged employment/designated occupation	0 or 10
Knowledge of English and/or French	0 – 10
Relative in Canada	0 or 3 or 5
Area of destination	0 – 5
Potential maximum	100

Reproduction of original model (Manpower and Immigration 1974)

The points system, still in place today, represents a model by which all immigrants are graded according to similar criteria. A major invention of Canadian immigration policy, it is subsequently lauded in the department’s Green Paper as introducing objective criteria for measuring immigrant’s adaptability, “rationalizing” selection factors in a systematic fashion and measuring the suitability of immigrants (Manpower and Immigration 1974:37-51). It is seen as allowing for a suitable

> process of examining people who want to come to Canada to live, and their acceptance if they are found to be suitable future residents of this country. (Manpower and Immigration 1974b:39)

The points system represents an overt exercise in abstracting migrants by numbers to make them legible as objects of control. It is a formally universal method by which to express the utility of prospective immigrants along a similar scale. It explicitly sets out characteristics deemed desirable in order to make migration manipulable: a clear example of a synoptic, top-down vision

of immigration control, in the sense described by Scott (1998). As a policy instrument, the point systems draw boundaries around a new target population of immigrants: independents, i.e. labor migrants. It represents a move away from regulating the totality of immigration toward more precisely defining categories of immigrants – rather than vague wholes to keep out, also setting up detailed criteria for who to let in.

As an administrative re-imagining of immigrants, the points system should also be seen as a specific theorization of social control (Lascoumes & Le Gales 2007). It outlines what is seen here as a formally *meritocratic* immigration system, in which traditional discrimination is swept aside and deservingness re-imagined in terms of the characteristics that immigrants can offer Canada.[19] It also contributes to instilling a lasting belief among policy elites in the ability to control immigration by the drawing of precise administrative boundaries around types of people. As one senior official put it some years later, selection criteria function as a "sieve":

> the major mechanism for ensuring that a particular volume target is adhered to will be essentially, if one thinks of the selection criteria as a sieve, what gets through the sieve. It would be our purpose to adjust the selection criteria to produce, according to our forecasts, as close as we can to the target figure. (Standing Committee 1978/15:17)

Just like in Sweden, the initial phase of the contingent period centers on a gradual defining of labor migrants. The points system, in an institutional sense, will come to represent an enduring feature of Canadian immigration policy and a node in the regime of migration control, an infrastructure through which millions of people have immigrated to Canada. Its formally non-discriminatory nature contributed to radically re-shaping the demographics of Canadian immigrants, with European immigrants successively replaced by East Asian and Caribbean immigrants (Kelley & Trebilcock 2010). However, in contrast to Sweden, no closing of the labor door took place in Canada. Here, refugee policy always took place in the context of expansive labor migration, even if it was comparatively low in the 1970's and early 1980's.

Contestations on the border: Troublesome legal subjects

As a negative mirror image to the points system, the other central regulatory development in the mid-1960's concerns the establishment of appeals for

[19] There is a long, enduring critique of how racism and discrimination persist despite formal universality. It has often focused on the placement of overseas posts where people can apply to immigrate to Canada, noting that these are disproportionately placed in wealthy countries of the Global North.

applicants arriving directly at the Canadian border. Through an unintended combination of regulatory changes in the mid-1960's, visitors become allowed to apply for permanent residency from within Canada, while appeal rights also expand with the establishment of the new Immigration Appeal Board (IAB) in 1967. As a clear example of how state regulations can shape migration patterns, tens of thousands of people arrive. This ultimately creates a large backlog, in turn making it possible to stay for years during process (Manpower and Immigration 1974b). As a response, the Cabinet ultimately curtails appeal rights and revokes the ability to apply within Canada, since the combination is seen as "being exploited in a quite intolerable scale" (Manpower and Immigration 1974:61). Ultimately, a form of amnesty is issued and almost 40 000 people are granted permits.

This episode is important because it leaves a lingering impression among policy elites of the need to restrict direct access to Canada to uphold selective control. In the reforms of the early 1970's, department officials see it as a cautionary tale, a "loss of control of immigration policy and the immigration program" (Manpower and Immigration 1974:36). The situation is described as "the great fear" by a later task force (Employment and Immigration 1984:40).

Specifically, the issue of appeal rights raises important principal issues around how to conceptualize immigration policy: whether is a question of law or policy. The IAB is a quasi-judicial body by which immigrants are granted basic due process protections, and it is established as a response to early calls to incorporate standards conceptions of justice in Canadian immigration processing (Manpower and Immigration 1974b). In its Green Paper, however, the immigration department discusses the IAB as diluting government control:

> the exceptionally progressive appeal philosophy introduced in 1967, in conjunction with a very liberal selection policy, proved to be unmanageable in practice. (Manpower and Immigration 1974b:182)

> The main purpose of the Immigration Appeal Board is not, of course, to interpret and implement government policy respecting immigration generally, but rather to judge the applicability of existing immigration law to individuals ordered deported.… the main effect of the legislative changes will be to reduce or eliminate the Board's inadvertent involvement in the selection side of immigration, and to restore its intended role of ensuring the just and equitable operation of the enforcement provisions of the law. (Manpower and Immigration 1974b:182-183)

Migration control, the department and government argue, should be the domain of policy. Judicial entities like the IAB should not be allowed to restrict

government discretion through legal procedures. The Special Joint Committee, laying the groundwork for 1976 Immigration Act, agrees:

> courts and legal procedures in general are designed to protect rights, not to grant privileges. Immigration per se is, in this sense, a privilege… The judiciary, or other independent bodies, should not, as far as possible, become involved in the selection of immigrants (Special Joint Committee 1975:43)

The appeals episode leaves an enduring perception among policy elites that procedural rights, such as appeals, represent pull factors for utility-maximizing immigrants, who are looking to systematically cheat the system by exploiting loopholes (Manpower and Immigration 1974b). And in contrast to the meritorious selection of people from afar, people arriving at the border are portrayed as undeserving queue jumpers. As one of several later inquiries put it, ”the selectivity of the process disappeared and landing was granted almost ‘on demand’” (Employment and Immigration 1981:88).

Here we see a form of policy development similar to Sweden: initial steps of reform concern individual regulative instruments, which precede large reforms. In the case of appeals (but not the points system), they also represent reactions to the arrival of immigrants. Just like in Sweden, increased arrivals to Canada lead to the imposition of a requirement to acquire a permit before arrival (Employment and Immigration 1981). In difference to Sweden, however, deliberations on the relationship between law and policy are more prevalent in Canada, with policy elites portraying the role of law and influence of courts as potentially infringing on state discretion.

Planned growth: Immigrants as economically useful

The points system and appeals reform serve as important precursors for the 1976 Immigration Act – two instruments which form templates in the design of more overarching frameworks of control. By the early 1970’s, Canada’s long immigration tradition clearly animates the accelerating reform work. Both the Cabinet and the department adhere to a description of immigration as essential to Canada’s identity and interests. There is virtually no major inquiry which fails to point this out. Here are just two examples:

> Immigration has made a major contribution to the national objectives of maintaining a high rate of population and economic growth and thus of strengthening our position of independence and our ability to follow a course of friendly co-operation with like-minded countries of the world. Without a substantial continuing flow of immigrants, it is doubtful that we could sustain the high rate of economic growth and the associated cultural development

> which are essential to the maintenance and development of our national identity (Government of Canada 1966:7)

> All Canadians, unless they belong to the tiny minority descended from the country's original inhabitants, are immigrants or descendants of immigrants. (Manpower and Immigration 1974:13)

The conceptualization of immigration as an issue of economic growth and utility is only accentuated by its now formally non-discriminatory nature. As expressed in an oft-referenced speech by Prime Minister Mackenzie King in 1947, ”the policy of Canada's government is to foster the growth of the population of Canada by the encouragement of immigration.” This is predicated on the government ensuring ”careful selection” of people to benefit Canada's economy, where entry is a ”privilege, not a right” (Kelley & Trebilcock 2010:317). Ahead of the 1976 Act, how to design such careful selection is set out in more detail. It is described by the department as a ”fundamental principle” of governing migration (Manpower and Immigration 1974:59):

> Canada began life with a completely open-door approach to immigration. The country needed population; anyone who wanted to come here to live was welcome. Legislators were not long in realizing, however, that there had to be limitations. Some kinds of people were seen to be unsuitable residents of Canada because they endangered the interests of Canadians or Canada itself (Manpower and Immigration 1974b:143)

In preparing the Act, policymakers and officials formulate a choice about the future of immigration in Canadian society. The 1974 Green Paper and the 1975 Special Joint Committee offer different positions on this issue. In the Green Paper, the department outlines “traditional” arguments for an expansionist philosophy: population growth, expanding markets, resource accumulation and commerce (Government of Canada 1966, Manpower and Immigration 1974). The task of immigration policy is envisioned as that of population planning:

> There is virtually no national issue of concern to Canadians today that is not bound up in one way or another with the course followed by the development of our population. (Manpower and Immigration 1974:1)

However, the department questions the validity of expansionist arguments and instead portrays rising social tensions and unemployment associated with immigration. Officials contrast a choice between two future Canadas: one with substantial population growth through immigration or one with smaller immigration, arguing that for the latter on account of social cohesion and a

questioning of the assumption that immigration contributes to economic growth (Manpower and Immigration 1974).

The parliamentary Special Joint Committee which follows the Green Paper powerfully pushes back against what it sees as negative depictions of immigration.[20] Instead, the Committee affirms immigration as central to Canadian life, portraying Canada as a "multi-cultural and multi-racial society" (Special Joint Committee 1975:15), and stating in the opening of its report that

> The Committee is of the opinion that Canada should continue to be a country of immigration. (Special Joint Committee 1975:4)

It is common in earlier research to point out the shift from the Green Paper to Committee as drastic (Hawkins 1991, Kelley & Trebilcock 2010). Beyond the framing of immigration, however, one issue is unquestioned by both sides: the vision of selective control. Both the department and the Joint Committee emphasize the need for carefully managing migration. This is tied to changing perceptions of immigration, which – just like in Sweden – is seen as increasingly unpredictable. Department officials argue that Canadian policy

> must be shaped to a world situation where motivations to migrate are bound to rise rapidly, in which the source of migratory pressures will be distributed more and more unevenly, and where powerful forces will work to increase the magnetic attraction a country in Canada's favored position exerts on people in less privileged countries. (Manpower and Immigration 1974:41)

They continue to outline how the "selection system must permit firm management of the immigration flow" (Manpower and Immigration 1974:17), and that

> If Canadians wish immigration policy to function as a mechanism to steer population growth along a charted course, then the immigration program must be adapted so as to permit confident forward planning as to the numbers of immigrants Canada receives over time. (Manpower and Immigration 1974:7-8)

The Special Joint Committee agrees, saying that in an era of "vastly increased mobility",

> Canada could not afford to have an 'open door' policy, and would have to maintain controls over the total number of immigrants coming each year to Canada… immigration must be

[20] The Green Paper also went through a series of public hearings in which many interest groups protested the depiction of immigration as troublesome (Hawkins 1991).

> brought under control and rationally directed to best serve the interests of Canadians. (Special Joint Committee 1975:5)

Based on this, the Committee recommends

> a shift from the present immigration system, which allows for the admission of everyone meeting certain criteria regardless of numbers, to a more managed system capable of regulating the total flow. (Special Joint Committee 1975:12)

Here, we see an emerging consensus on the need for more advanced regulatory tools with which to select people. For this purpose, the Committee proposes a system of "targets and ceilings" (Special Joint Committee 1975:19). In replacing the "open-ended" system of the past, as the department describes it, the proposed tools include the setting of quotas for different regions, the specification of different immigrant classes, and a system of prioritizing within the classes. This seems to require, as the department put it, that the Act develops a new "translation into law of policy respecting who should be admitted to join Canada's permanent population." (Manpower and Immigration 1974b:62)

Here we see that, similarly to Sweden, issues of classification and target populations, rather than some neutral or peripheral activity, are at the heart of migration reforms. The reform work in the first half of the 1970's, in an institutional sense, represents a re-articulation of normative components undergirding the regulatory framework (Scott 2014). As the debate between the department and the Special Joint Committee illustrate, the Canadian heritage of immigration can be interpreted to mean different things when developing frameworks for the future. What we see in the mid-1970's is the emerging elite-level consensus of expansive immigration as economically sound, but also, importantly, a firm belief among all parties of the importance of careful regulation and selection to realize the benefits of immigration. This ideal of more active, comprehensive governing represent something new in Canadian migration policy, a reframed normative framework in which migrants are made administratively legible in new top-down visions of social control. And just like in Sweden, this model of governing is characterized by *flexibility* as an ideal, where the Cabinet and department should retain discretionary control of a range of instruments that can be adapted to shifting circumstances.

While the form of the institutional development has similarities to Sweden – it begins with individual tools which draw administrative boundaries around new categories of migrants, often formed as reactions to movements – the emerging regulatory frameworks are infused with different values. Policy elites in both countries want to retain flexible control, but they aim for it to do different things: where ideas of the welfare state lay at the heart of Swedish

migration control, it's Canadian counterpart is seen as here as animated by the idea of *planned growth*, an expansionist philosophy of meritocratic selection, which represents a re-articulated vision of the historical continuity of using immigration as an instrument for economic growth. It is in this vision of immigration policy that refugees are successively rooted in the 1970's.

The wanted: Making refugees legible through resettlement

Just like in Sweden, Canadian migration reforms begin by focusing on labor migrants – but once one category is successively outlined, others soon follow. In the early 1970's, there is a consensus among Canadian policy elites that the country should continue to provide support for humanitarian migration. But there is no legal identity of a "refugee", nor any major administrative machinery for assessing them. As a later inquiry puts it, refugees are the subjects of "general immigration policy":

> There was therefore no real need for a specific refugee determination process because to a large extent refugees were accommodated under the then existing procedures which were flexible and generous. (Employment and Immigration 1985:54)

In other words, refugees are part of a broad, vague whole of immigrants. But despite the lack of clear target populations, there is also a strong assumption that humanitarian immigration is premised upon controlling access. As seen in several inquiries and statements by Immigration Ministers, there is a strong consensus that "refugees" mean individuals resettled from abroad:

> Canadian refugee policy is founded on the assumption that Canada can best contribute by offering resettlement opportunities, and that it is more useful to concentrate on helping large numbers of people requiring relatively little assistance rather than much smaller numbers of people requiring a great deal of assistance. (Manpower and Immigration 1974b:116)

> We have concentrated very much on the offshore resettlement programs because we felt that was an area where we could make our most effective contribution and, in particular, be able to target our programs and our assistance. (Immigration Minister Cullen, Standing Committee 1980-83/39:17)

> In Canada, we have opted for a basic policy of resettlement rather than of first asylum and that policy is supported by geography which provides a buffer from mass inflows of refugees. (Employment and Immigration 1984:x)

An ideal of control emerges from these quotes: the ability to efficiently target policies is linked to an ability to select people, preferably carried out abroad.

For similar reasons of discretion, the Canadian government doesn't ratify the Refugee Convention until 1969, more than 15 years after its signing. Despite playing an important part in drafting it, the Cabinet is reluctant as it may restrict the ability to deport individuals:

> Canada's original reluctance to accede to the UN Convention on refugees stemmed essentially from the worry that parts of the Convention protecting refugees against expulsion might be incompatible with the deportation provisions of the Immigration Act, and thus that the Convention could not be fully honored. (Manpower and Immigration 1974b:115)

The value of selection is further underscored by how refugees, in the 1970's, are perceived as increasingly mercurial. The department outlines refugees as being able to "crop up everywhere in the world" (Manpower and Immigration 1974b:99), to "reach staggering proportions", and that "no single country can begin to cope with a problem of these dimensions" (ibid:117).

How do policymakers in the Cabinet and department try to stabilize the uncertainty that refugeehood is seen as representing? Again, the development of individual policy tools precedes large-scale change, and can be seen as crystallizations of new ways of managing migration. One specific instance is illustrative: In 1972, Ugandan dictator Idi Amin orders the entire East Indian minority of Uganda to leave the country within three months. Still in Uganda, they haven't crossed an international border and thus fall outside of the Convention's definition of refugeehood. But since they are singled out for expulsion on ethnic grounds, Canadian policymakers view them as worthy of protection. (Just like Canadians, they are also U.K. citizens, which gives the episode a Commonwealth dimension.) As later explained by a senior department official, this is one of the first non-European refugee projects, part of what became a series of initiatives which are "initiated as short-term programs with numerical targets, usually in response to specific situations or appeals from first-asylum countries and/or UNHCR" (Standing Committee 1984-1986/21:6). All in all, 7 000 people are accepted and selected through on-the-ground operations by Canadian officials in Uganda. The program is viewed as a great success, singled out for its efficient and tailored procedure.

Subsequently, Immigration Minister Cullen links this type of tailored programs to an ability to precisely select categories who deserve protection. Cullen discusses this in the context of how to define what a "refugee" is:

> Canada, I think, has probably got a record unparalleled as far as dealing with refugees is concerned, and where special situations do arise, we have expanded on the formal definition of Convention refugee… What we should have, in my view, is a formal definition that is good for all times but one upon which we can expand when the need arises in particular

> situation… You cannot automatically say that everyone who lives in country X is a refugee because of the oppressive regime there. I think you would have an impossible situation and I think it would work to the determine of legitimate refugees in the final analysis. There has to be some kind of selective process and it strikes me that ours is probably as fair as any. (Immigration Minister Cullen, Standing Committee 1976-77/39:11)

In Cullen's remarks, we see the emerging bounding of refugee categories as policy elites are encountering similar issues as in Sweden: many people deserving of protection, such as the East Indians, seem to fall outside of the Convention's definition. But too broad a circle of protection covers too many. The Ugandan episode represents a template for solving this issue: "special programs" in which specific groups are singled out, a form discretionary vehicle for maintaining migration control when resettling large numbers of refugees.

The unwanted: Making refugees legible at the border

The discretionary selection of people through resettlement amounts to a model of governing migration which allows for a flexible selection of the deserving and represents an ideal of managed migration. The model for selecting wanted immigrants also needs to be understood in contrast to the unwanted. In the early 1970's, after signing the Convention, a small stream of asylum seekers starts arriving in Canada. In a pattern similar to Sweden, these arrivals trigger piecemeal development of regulatory arrangements for dealing with them. Starting in 1972, a small, ad hoc organization of interdepartmental working groups is established, representing the seed of an asylum process, when refugees are recognized as having a right to appeal (Standing Committee 1984-1986/21:5). At this point, the monthly number of claimants is often less than 100 people (Manpower and Immigration 1974b:115ff). Through these procedures, officials quickly find troubles in fitting actual people into abstract legal standards. It isn't unusual, the department says, that individuals or groups make claims on "humanitarian grounds" which fall outside of the Convention. This makes it essential to clarify the categories, and make a

> clear distinction to be drawn between the genuine refugee who is treated with persecution, and the migrant whose motive for seeking entry to Canada springs from economic hardship or general dissatisfaction with conditions in his country of origin. (Manpower and Immigration 1974:50)

Moreover, the recognition of refugees seems to require some bureaucratic process by which claims were assessed:

> In order not to erode the concept of the genuine refugee as a person to whom the international community should extend special assistance, and to preserve the integrity of Canada's selection system, it is vital that the validity of the claims of those seeking admission for humanitarian reasons be adequately demonstrated. (Manpower and Immigration 1974:50-51)

The Special Joint Committee echoes this, saying there is a

> need for firm criteria to reflect contemporary refugee situations in which persons must leave their home countries because they have been stripped of citizenship and denied the right to remain. The definition should also include persons living in their homeland who face persecution or punishment for political reasons, provided their government allow them to leave... In brief, the definition of refugee should not be so broad as to undermine the humanitarian principles to which Canada holds, nor so narrow that government cannot cope within the Act with the new emergencies that require a fast and efficient response. (Special Joint Committee 1975:32)

This issue – how to differentiate refugees into a range of target populations, and the organizational growth which followed in attempts to build bureaucratic capacity to enforce these classifications, is the subject of the next period.

Summary: Foundation

By the early 1970's, several pieces are in which place which mark an end to the contingent period. The groundwork for the 1976 Immigration Act is prepared, concerning the future role of immigration in society. In difference to Sweden, a centralized and elaborate apparatus of migration control already existed in Canada – what happens here is rather a major reform of an existing policy field in order to adapt operations to a new proactive governing of migration. But similarly, in the post-war period, there have been no clear target populations, flowing out of a belief in migration as largely self-regulating. Just like in Sweden, at the center of the shift toward more active governing is the idea of migration as increasingly unpredictable and in need of regulation. Again, we see how systems of classification are at the center at paradigmatic migration reforms – with Canadian policy elites even more engaged in proactively modelling ideal immigrants, moving from an idea of migration control as a "tap" for all immigrants to one as a filter for selecting desirables.

In terms of the analytical model, the *theorization* of new categories is manifested in the instruments of governing. Canadian policy elites had long felt selective control to be central to immigration policy, but the foundation period represents a major re-articulation of this control. It has been argued that Canada's points system represents a *meritocratic* ideal of migration: a move away

from a racist hierarchy to formal non-discrimination, grading all prospective immigrants along criteria to gauge their suitability for the Canadian economy. This inherently rests on precise instruments for being able to select, and immigrants are made legible in more advanced and ideal-type manner earlier than in Sweden. Even more so than in Sweden, there is a strong assumption that Canadian officials will select people from abroad, and that control should be flexible and adaptable to the shifting nature of migration – classification is a means for securing outcomes in the interest of Canadian society.

Normatively, it has been argued that the new migrant classes are rooted in a Canadian immigration tradition associated with growth and economic expansion. After deliberations on the future of immigration in the mid-1970's, a strong consensus emerges on immigration as beneficial to society – but one which hinges on selection and control. The notion of *planned growth* has been singled out as the idea animating much of the emerging regulatory framework. As a contrast to Sweden, there is no closing of the labor door for immigrants and less deliberations on integrating immigrants into the welfare state. This is partly due to federal-provincial relations in Canada, with provinces providing much welfare. But it is also a symptom of different immigration heritages and the "thinner" welfare contract in Canada, generating different elaborations of deservingness. The idea of planned growth will become an institutionally enduring influence in the molding of policymakers' preferences (Scott 2014).

Regulatively, the foundation period is characterized by major inventions: the points system, appeal reforms, and the design of resettlement classes. These manifest how a central feature of immigration policy inherently concerns the making up of people (Hacking 2007), with all the new instruments drawing boundaries around classes. Some of instruments are similar to Sweden, such as the requirement of a permit before arrival, and they all have in common that they are about to become, in an institutional sense, enduring features of political life (Thelen 1999, Streeck & Thelen 2005). The points system can be understood as a mental map (Pierson 1993) for selection: manifesting and setting out expectations and assumptions about migration and migrants. While the points system was and is not explicitly used for refugees, it institutionalized an ideal model of managing migration to Canada, which in turn would influence expectations and ideals surrounding refugeehood.

In terms of *target populations*, just like Sweden, the initial focus is on labor migrants, defined through the points system, in turn leading to a successive chiseling out of refugees. In Canada, it is clear early on that the wanted (resettled from abroad) and the unwanted (asylum seekers at the border) are juxtaposed against one another. Selection from abroad is seen as allowing for rational control and precise targeting of aid. Arrivals subvert this ideal, but the

few that arrive are characterized by newness and still not stabilized into administratively fixed categories.

Finally, in terms of *contestation*, some reform patterns have a similar form as in Sweden: as a reaction to arrivals, where individual regulatory shifts provoke larger reflections on migration regulation and then become stabilized in reforms. This is particularly the case in the reform of appeals, which can be seen as developing in a relationship between rule makers and rule takers (Streeck & Thelen 2005). As such, it also provokes reflections on proper relationship between law and policy in directing migration. But Canada's remote geography presents a difference, with fewer arrivals than in Sweden. Here, many early reforms instead represent the articulation of mental maps on the future ideal of migration: driven by a sense among policy elites of a need for expansive immigration, but one which needs molding in new ways.

In sum, the events of the foundation period represent the origin of a new classification system for refugees in Canada. What we see are a range of similarities to Sweden in terms of the form of institutional development – similar tools, the centrality of classificatory procedures, the tendency for individual instruments to precede reforms, the emphasis on flexibility – but different normative components. In Canada, the elaboration of deservingness is rooted in the idea of planned growth, stemming out of different immigration traditions and welfare ideals. But just like in Sweden, the outer frame of a reformed policy field has now been set, and the next step is bureaucratic capacity-building.

Period 2: Differentiation

The differentiation phase centers on the finalization and implementation of the 1976 Immigration Act. In the mid-1970's and early 1980's, Canada undergoes recessions and rising unemployment, which several Ministers and senior officials highlight as further justification for maintaining selective immigration control (Standing Committee 1978/15, 1978-79/1) The new Act represents a cornerstone in Canada's modern migration control regime, and nowhere is the shift compared to its 1952 predecessor better encapsulated than in the increasingly detailed regulation of the target populations. The new Act is entirely structured around classes of immigrants, and for the first time, "refugee" becomes a legal status in Canadian law. The Act is commonly described as liberal and open compared to its predecessor (i.e., Dirks 1995:ch1, Kelley & Trebilcock 2010), but left out of such accounts is the historical continuity in the assumption that the Canadian government should select and tailor immigration.

By this point, refugees are moving from the periphery to the center of immigration. As one Immigration Minister put in the early 1980's, "the refugee

problem, once periodic, is now chronic and continues to increase in intensity." (Standing Committee 1980-83/22:7) The differentiation period is characterized by a clash of two visions of Canadian refugee policy. The first is the ideal of managed migration, manifested in the elaboration of a highly detailed planning and resettlement system. Canada had long been on the dominant resettlement countries in the world, but the system in the new Act took this to new levels. As contrast, there is also the growth of the initially smaller but much more contested arrival of asylum seekers, and the growth of bureaucratic capacity for conferring administrative identity. The head of the new asylum processing agency encapsulates the newness of these years:

> Refugees are not a new phenomenon, but they are relatively new innovation in terms of the way in which they handled under Canadian immigration policy. Though the country was built by many people who fled persecution and other kinds of situations that would allow them to be called refugees within the sense in which the term is generally used, Canada did not, until relatively recent years, have a specific refugee policy and a specific procedure to deal with people who needed protection as refugees. (Chairman Stern, Standing Committee 1984-1986/11:4)

The planning of protection

Building on the ideals of control elaborated in the foundation phase, much work in the differentiation phase concerns bureaucratic capacity-building: how to elaborate a set of regulative tools and organizational resources to realize the vision of selective control. Similar to Sweden, the first issue concerns how to define target populations. As they aim for increasingly advanced regulation, Canadian policymakers start to perceive that there are many types of refugees. In the words of the chairman of the immigration committee, "we keep using the word refugee as it if had a single meaning, when in fact it does not". (Standing Committee 1984-1986/21:59) The head of the new asylum processing organization describes the emerging understanding:

> The refugee definition itself is precise and relatively narrow in terms of the kinds of conditions that cause people to flee. For example, the refugee definition does not encompass civil war, though it is not difficult to sympathize with people who flee a situation where they feel their lives are in danger. It does not encompass other kinds of social and economic upheaval or terrible economic deprivation or starvation or drought, or any of a number of conditions that literally cause people to seek a new home not just for well-being but for their very survival. So we have to work with definition established in Canadian law and in the convention and allow the government to respond in other ways to the humanitarian needs that go beyond that definition. (Standing Committee 1984-1986/11:13)

This represents the point at which Canadian policymakers, like their Swedish counterparts, encounter the classificatory problem of residuals (Bowker & Star 1999): those who fall outside the envisioned order, and by doing so, illuminate the logic of this order. In encountering all of those "humanitarian needs" who fall outside the Convention's definition, how should a system be designed to facilitate and target protection for the deserving?

Within the parliamentary committee and successive inquiries, the establishment of what refugee are is the subject of lengthy discussions, similar to Sweden (Standing Committee 1976-77/8, 29, 37, 39). There is a widespread feeling that the Convention doesn't fit the changing nature of refugee movements. One alternative is to expand the legal definition of what a refugee is, but Ministers and officials argue against this, seeing it as undermining discretion. As one Deputy Minister details,

> You would sweep within that definition the citizens of a great many countries, all of them. There are many countries of the world which are nasty places to live, whose regimes are deplorable in terms of the human freedoms they accord their citizens. Internationally it is scarcely possible though for us to categorize the entire populations of such countries as refugees. (Deputy Minister Tait, Standing Committee 1976-77/39:10-11)

For purposes of both maintaining discretion but also expanding the classificatory framework, the department suggest a general model of *planning*, which is introduced in the 1976 Act. Nominally at the center of the classificatory system is the now legally recognized class of "Convention refugees". Alongside these, however, the Minister is given discretion to designate specific classes, which are not covered by the same protections as the Convention class. This covers all people resettled from abroad, since Convention obligations only apply to those seeking asylum at the border. In other words, the "humanitarian needs" which Canadian policymakers exercise major discretion over de facto covers nearly all refugees Canadian policymakers intend to offer protection to. Enshrined in Clause 115 of the new Act, this model of supplementary classes gives the Minister and Cabinet the ability to quite literally produce categories of people (Standing Committee 1976-77/39, 48-49).

The model represents a continuation of special programs like the one used for Uganda, illustrating the continuity of regulatory inventions. (Manpower and Immigration 1974b, Standing Committee 1976-77/29, 37, 39) From the synoptic overview of Ottawa, the department surveys the world, prioritizing who should be given protection. As explained by a senior immigration official:

> Part and parcel of the new legislative framework was the concept of immigration levels planning, a scheme of intake management of an annual basis reflecting Canadian labour

> market needs and Canadian commitments to humanitarian social objectives. (Standing Committee 1984-86/21:6)

Immigration planning is designed as an annual exercise in which the immigration department, after consultations with provinces, other departments and different stakeholders, presents figures to Parliament on projected ranges for next year (Employment and Immigration 1979, 1980, 1981b, 1982, 1983b). The exercise is explicitly centered on making people legible: Projections are expressed for all classes, for the purpose of placing the size and composition of immigration under government control and allow for a ”managed system capable of regulating the total flow” (Special Joint Committee 1975:12).

The alternative to planning is seen as simply responding to international movements, which is perceived as causing disastrous annual fluctuations and costly instability (Employment and Immigration 1983c). Planning, by contrast, allows a flexible tailoring of refugee reception to federal budgets (Standing Committee 1984-1986/21). For these purposes, the department develops what officials call a ”components approach” (Employment and Immigration 1982b:14-15), where the aim is that changes to one ”stream” of people in will allow for an ”integrated” response (Employment and Immigration 1981:10). In the annual planning documents and their detailed background papers, officials portray the system as

> facilitated by an econometric model that examines processing flows by class at each foreign post. A global model permits monitoring of cases in process, indicates whether case backlogs are increasing or decreasing, and provides three-year projections, by immigrant category, based on assumptions about future demand and processing capacities. (Employment and Immigration 1983c:14)

This highly rationalist vernacular is indicative of the planning exercise as a whole. It can be understood as an ideal-type example of how states make the world legible (Scott 1998): setting out a range of simplifications to craft governable objects out of immigrants, for the purposes of manipulating flows of immigrants to Canada. Similar to Sweden, but in a different form, we see here how governing through the new classificatory system allows for discretion: creating new classes gives officials the ability to choose rules by which to process people, which – quite intentionally in Canada – is a strategy for not processing people under the rights set out in the Refugee Convention.

The order which develops is layered and highly detailed, entailing the production of precise administrative boundaries around a differentiated set of target populations. In Sweden, resettlement was also a form of ”model immigration”, but it never developed to the Canadian level. Through the eyes of the

Canadian planning system, officials envision immigration as an annual exercise in utilitarian calculation, weighing the cost and benefits of different groups for resettlement. Spoken of in terms of production goals and numerical targets, this presupposes that the Canadian state can reliably confer administrative identities onto people. A senior department official states in the mid-1980's that "by and large we try to manage the flow so that it falls within plus or minus 10% of the level." (Standing Committee 1984-1986/21:11) Table 5 sets out the main classifications developed by the department in the 1980's:

Table 5: Designing people: Partial inventory of refugee target populations in Canada

Target populations
Convention refugees
Humanitarian and compassionate cases
Designated Classes (class-specific conditions): - Indochinese - Eastern European Self-Exiles - Latin American Political Prisoners and Oppressed Persons
Special programs: - Handicapped refugees - Country-specific: Sri Lanka, Iran, El Salvador, Lebanon, China

The boundaries are adjusted continuously, along with the ideal of flexibility. One particularly important episode is the reception of more than 50 000 people from wars in Southeast Asia in the late 1970's, particularly Vietnam and Cambodia (the Indochinese Class). But the same is true of smaller movements. When tensions heighten in Iran in the early 1980's, for example, 2 000 nationals of that group are offered protection, meaning another class of people was adjusted down (Employment and Immigration 1982). On top of these classes, the numbers in the annual planning are based on origin regions. The plan for 1982 is fairly representative (Table 6):

Table 6: Planning asylum

Region	**Quantity**
Indochina	4 000
Eastern Europe	6 000
Latin America and Caribbean	1 000
Africa	500
Middle East	400
Other World Areas	100
Contingency Reserve	2 000
Total	*14 000*

The immigration department's 1982 plan (Employment and Immigration 1981)

Like the points system, the planning system is an instrument which represents a theorization of social control in Lascoumes & Le Gales' (2007). With its heavy emphasis on resettlement, the envisioned Canadian order should be seen as approximating a *philanthropic* model of migration control, which includes a presentation of Canada as a leading humanitarian power. It is a specific order of social control: a vision of a utilitarian and targeted program, where the Canadian state develops a significant informational capacity to make immigrants legible and efficiently distribute protection. The planning process developed in the 1970's took the Canadian heritage of managed migration to new levels of thoroughness and precision. Key to the conferral of precise distinctions and detailed control was governing at a distance.

It is perhaps counter-intuitive that such detailed state planning should become a central tool for governing migration in Canada, a country where immigration is simultaneously envisioned as an instrument for growing the market. But the planning system should be understood as a vital element in how the state creates conditions for a regulated market economy: it can be seen as the shaping of human resources for the Canadian economy.

Ideal refugees: The adaptable individual

As we saw in Swedish chapter, resettlement can be thought of as allowing for the elaboration of the ideal desirable refugees. In Sweden, refugees were rooted in a welfare context in which vulnerability became the central criterion. In Canada, by contrast, within an immigration tradition rooted in economic growth as well as meritocratic and philanthropic ideals, *adaptability* became the crucial characteristic. Already in the Green Paper, the department had pointed out that the main function of the selective immigration process was "the assessment of whether applicants have the potential to become successfully established in Canada" (Manpower and Immigration 1974b:39). In the immediate post-war era, Canadian selection teams had clear priorities:

> the majority who sought asylum in western Europe up to the mid-1950s were basically healthy and many had good qualifications. This meant that most could meet normal immigration standards. (Manpower and Immigration 1974b:104)

> Although the Convention does not impose a direct obligation upon us to admit handicapped or unskilled refugees who are outside of Canada, an indirect obligation does exist… Canada has been criticized in the past for taking the 'cream' of the refugee 'crop'. We have taken our share and more than our share of refugee resettlement movement. However, we have taken a very high number of the young, the healthy and the educated in comparison to the unhealthy and the unskilled. (Employment and Immigration 1981:83)

In other words, Canadian officials had often selected the healthy while leaving "hard core cases" of the sick, old and injured in the camps.[21] While refugees are to stand outside the point system, there is clear continuity in how they are conceptualized in the 1970's, as one department report outlines:

> Canada has tended to be a more of a 'volume' recipient, because provincial governments are constitutionally responsible for providing social services; this limits the federal government's ability to incline refugee programs toward extremely difficult cases… Since Canada does not have camps or other institutions for long-term refugee care, resettling refugees who demonstrate a greater potential for becoming integrated into Canadian communities and for becoming self-sufficient fairly rapidly, limits Canada's response to some degree. (Employment and Immigration 1980:9-10)

Further testament can be seen in Immigration Minister Cullen's discussion of the centrality of adaptive capacity, a 1984 government task force defending Canadian priorities, and testimony of a department official:

> Of course, the effectiveness of our refugee program, and the immigration program as a whole, depends on both the capacity of the newcomer to adapt to Canadian society and the ability of our society to adjust to newcomers. (Immigration Minister Cullen, Standing Committee 1980-83/4:11)

> Some critics have described resettlement as a 'clean hands' approach to humanitarianism that lacks the unconditional commitment typical of first asylum countries… however, resettlement can validly be described as one of the pillars upon which the international refugee system is based. Limited resources dictate a commitment to the basic goal of ensuring protection rather than responding to the preferences of refugees as to where they wish to seek asylum. (Employment and Immigration 1984:25)

> In terms of the selection process, when we interview people abroad, we have to take into account their ability to settle in the country and to become viable… Obviously, if people are unable to work or to fit into the economy, there is a problem and it has to be looked at. (Standing Committee 1984-1986/21:10)

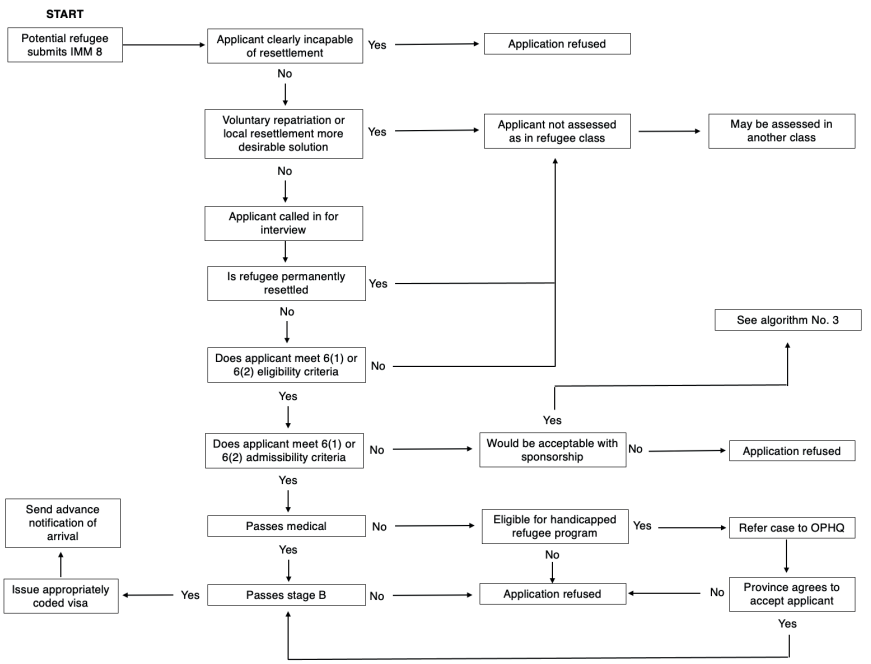
In addition, the department issues manuals for its front-line resettlement officials. In its long section on "selection and control", the manuals detail how officers should examine the applicants, such as by "assessing motivation, adaptability, initiative, and resourcefulness" (Employment and Immigration 1986c:sec3, p13). To certify that someone is admissible, officers must be

[21] Kelley & Trebilcock (2010:344) quote an official likening refugee selection to picking of "good beef cattle".

convinced that ”in the long term, the refugee will have the earning capacity to support his family and will not be dependent on welfare indefinitely” (Employment and Immigration 1986c:sec3, p14). Officers are cautioned that ”many refugees have a tendency to regard themselves as helpless victims, an attitude detrimental to successful resettlement”, and of the need to “impress upon refugees the desirability of achieving full economic independence as soon as possible” (Employment and Immigration 1986c:sec3, p7).

We see the administrative simplification of resettlement clearly in how it requires applicants to pass through a series of compartmentalized steps, which make them legible for the purposes of governing (Scott 1998). This is illustrated by the immigration department’s use of “algorithms”. Fitting into a government-defined protection category makes a person *eligible* for protection. However, they also must be *admissible*. At this stage, desirable traits are defined: A person can be inadmissible due to several factors, but most importantly, if they are deemed incapable of successful establishment. (Figure 4)

Figure 4: An administrative simplification of resettlement



The algorithm for “Selection abroad: Refugees and humanitarian cases” used by front-line officers for resettling refugees in the 1980’s. (Employment and Immigration 1986c)

The Canadian definition of refugee as an adaptable individual, focusing on "easy" cases, represents a diametrically different notion of deservingness than in Sweden. It should be understood as the rooting of target populations in the heritage of immigration as an instrument for economic growth. Even though the classification of refugees underwent similar processes of differentiation as in Sweden, the institutional heritages of immigration imbued this differentiation with different ideals of what a refugee is and should be.

A bureaucracy for conferring identity

In contrast to the ideal of resettlement, asylum seekers arriving at the border represent something genuinely new in Canada. After ratifying the Convention in 1969, the 1976 Act provides the first Canadian organization for asylum processing: the Refugee Status Advisory Committee (RSAC). As the establishment of an asylum process, RSAC is a major innovation: the first permanent organization for conferring identity onto people. It is small and designed to process a few hundred claims annually. (Employment and Immigration 1981, 1984, 1985) Here, there are clear similarities to the development of the Swedish asylum process, as the need to reliably confer administrative identity onto applicants contributes to bureaucratic capacity-building and growth.

Almost from the outset, RSAC is beset by problems. The number of claims, though low, are rising, larger than what RSAC is designed for. Similar problems appear as in Sweden: drawn-out processing times, backlogs, and costly procedures, with appeals lasting for one or two years. The process is seen by almost all policymakers as too cumbersome (Employment and Immigration 1981, 1984, 1985).[22] But at the same time, there is resistance among the department and many Ministers to major reform. This is grounded in a thorough denouncement of the idea that Canada should be "a country of first asylum" to begin with – that is, a country in which people apply for protection at the border. In the words of Immigration Minister Cullen:

> But the fact of the matter is, if we were to fully adopt, if you like, a first asylum policy – I think what the members of this committee have to recognize, is that in itself could become an enormous drain on resources which would, therefore, prevent us from undertaking the overseas resettlement programs in which we really have taken international leadership… we won't have any ability to target, design or tailor our programs. We would simply be a response mechanism. That, I think, would be a great tragedy for us, as well as for the

[22] The recognition rate in Canada, in these early years, was diametrically different to Sweden. In Sweden, the recognition rate usually hovered around 90%, in Canada, it was only around 30%. (1981 Task Force)

> refugee problems around the world. (Immigration Minister Cullen, Standing Committee 1980-83/39:19)

Here, we see how the repudiation of asylum processing is linked to its perceived undermining of the ability to govern migration through selection. The episode of expanding appeals in the 1960's functions as an important backdrop against which asylum processing is understood. A system with expansive procedural rights is equated with a loss of control:

> The problem we face in dealing with refugee claimants is that not all have valid claims and many are using the refugee claim process as a means of prolonging their stay in Canada. I am not prepared to condone this or let the refugee safeguards become a back door, a reincarnation of the chaotic and self-defeating visitor appeal system a few years ago, which came close to paralyzing our immigration processes… I'm really concerned about bona fide or the genuine refugees. If we clog up the system too much, we may work to the detriment of the people who we should be helping, namely the legitimate refugee. If people get fed up with clogging, you turn off the moderates in the country who find that this is a procedure that is being abused. (Immigration Minister Cullen, Standing Committee 1978-79/25:10)

In the same vein, his successor, Minister Axworthy, states that

> As soon as you start saying: Okay, you arrive here and we will take care of you, you are going to start doubling and trebling the numbers… If we, step by step, end up building a form of system of first asylum policy by which we provide settlements and assistance and other forms of it, we will then in fact be providing a continuing magnet to draw people coming in, who think that they can get around the normal immigration procedures by coming in to claim registered status. (Immigration Minister Axworthy, Standing Committee 1980-83/39:26)

There is a continuity in describing asylum seekers as a form of utility-maximisers, responding to the "magnet" of procedural rights. In Sweden, where arrivals start increasing earlier and people arrived during the Second World War, the notion of having an asylum processing system to begin with doesn't encounter nearly the same resistance as in Canada.

But despite the more tenacious resistance to asylum seekers in Canada, there are also similarities in the dynamics of bureaucratic growth. While Canadian policymakers resist calls to expand RSAC, increasing arrivals still need to be dealt with – necessitating assessment, and for this purpose, requiring a bureaucracy. Minister Axworthy outlines this balance by contrasting against the ideal of resettlement:

> We must be careful to distinguish between refugee claimants and refugees, because refugee claimants are those who come to Canada with the intention of making claims of being refugees. That is quite different from our going overseas, where there is a very clear, demonstrable refugee problem, and applying our resources to that problem. What I think is becoming clear is that many people now see this not just as a way of escaping political persecution, but also as a way of escaping other forms of problems. In a way, we find ourselves being forced into a position of being a country of first asylum, which is really the first time that has happened in Canada, because we have never had borders over which people have just simply come across in large numbers. (Immigration Minister Axworthy, Standing Committee 1980-83/39:18-19)

This illustrates clearly how asylum seekers are seen as undesirables. Quite soon, RSAC turns into a dilemma of control. It is recognized by all parties as dysfunctional and not able to process the number of claimants without major delays, but the department and several Ministers are reluctant to reform it. On the one hand, RSAC is necessary to confer administrative identities onto people – but expanding it is also seen as opening access, an access which in itself is perceived as a magnet for arrivals. When discussing his opposition to procedural rights, Minister Cullen link them to increasing arrivals:

> The increase in numbers is due partly because of the substantial increase in incidents of persecution and problems around the world, and also because many people around the world now see this country as having perhaps the most open and genuinely best refugee acceptance system over the past two years. (Immigration Minister Cullen, Standing Committee 1980-83/36:20)

At the same time, the fact that individuals keep applying, even in small numbers, seem to necessitate some way of dealing with them. The process of differentiation can be seen in the expansion of tools focused on "screening" and "filtering" out false cases from the asylum process:

> I think the main concern I have is the backlog that might build up. I would be somewhat apprehensive with the vexatious claims that we might build in a backlog that a board or a tribunal of that nature could not cope with. Then we could get into legal technicalities about how long a person should have to wait before they have a hearing and if they have been deprived of natural justice; how they have to have a decision, they have to have it soon; how they have been kept in the country a year waiting because of the backlog; these are the sorts of things that are of concern to me. I am endeavoring to see if I can find some filtering mechanism so that we filter out those vexatious cases. (Immigration Minister Cullen, Standing Committee 1976-77/37:16)

To a large extent, Canadian policy elites imagine asylum processing in supply and demands terms, but one in which an increase in supply also entails an increase in demand: expanded access to asylum is equated with leading to more asylum seekers, rather than more efficiently dealing with those seeking protection. Therefore, attempts to filter out "vexatious cases" quickly became a standing preoccupation of regulatory innovation in late 1970's and early 1980's, as department officials look for ways of how to declare cases "manifestly unfounded" and therefore not subject to the same legal rigor as "real" asylum claimants.

A matter of policy or law?

Immigration Minister Cullen's concerns about a backlog of cases is linked to asylum seekers becoming increasingly rooted not only in Canada's legal-administrative tradition. As we saw in the foundation period, both the department and the Special Joint Commission envisioned the regulation of migration as a policy issue, denouncing the idea that courts and legal procedures should exercise major influence on migration policy. In the choices over how to design the asylum process of RSAC, however, the continued arrival of asylum seekers make manifest a latent conflict between two different roots which imbue the regulatory framework with normative ideas: one the one hand, the legitimacy of legal processing (law) and on the other, the discretionary heritage of the immigration program (policy). Here, Canada's common law tradition represent an institutional heritage, one in which procedural rights such as appeals and oral hearings play a major role.

This conflict starts in the late 1970's and will be a major part of asylum reforms in the enforcement period of the 1980's. It is manifest in several inquiries produced by government-appointed task forces charged with investigating how the embattled RSAC should be reformed. The first of these is the 1981 Robinson report (Employment and Immigration 1981). It clearly advocates for the expansion of the domain of law and processing of asylum seekers according to Canadian standards of justice. Pointing out that "convenience and justice are not often on speaking terms" (Employment and Immigration 1981:103), the report argues for making the determination of asylum a legal rather than a policy issue:

> A very high standard of fairness is appropriate for the refugee determination process… Fairness in any area of government administration is a moral duty, a political necessity and often a legal requirement. (Employment and Immigration 1981:xv-1)

Contrary to the framers of the Immigration Act, the Robinson report envisions the processing of individual cases as disassociated from policy, and thus largely divorced from concerns of selection and control. It argues that

> Immigration considerations must not be brought to bear on the application of the refugee definition. The possibility that, if one person is given refugee status, many others might also be entitled to claim refugee status, is not relevant to whether the claimant is a refugee. (Employment and Immigration 1981:13)

These considerations, according to the Robinson report, make the priorities of Ministers and the department on avoiding backlogs unfounded. The report outlines a conflict between fairness and efficiency, which mirrors that between law and policy. In this, it says, fairness is to be given priority:

> It may well be reasonable to assume that a substantial number of persons will be prepared to lie in order to gain entry into Canada… but such a general assumption has no place in the assessment of individual claims if the principle of the 'benefit of the doubt' is to be applied. (Employment and Immigration 1981:8)

In other words, the processing of asylum cases is here presented as the application of a legal standard to individual cases, rather than an issue of policy priorities. Only a few of the report's recommendations are followed, in what is the first of many piecemeal reforms of RSAC (Standing Committee 1980-83/22). The government continues to resist large-scale reform since this is equated with the opening of access. But the increasing arrivals indicate a similar reform dynamic as in Sweden: as more people arrive, this starts to push the need for reform, and the classification system for migration control develops as a continuously evolving contestation between rule makers and rule takers. This dynamic, which had not been as present in Canada as in Sweden in the foundation period, is now starting to become clear as asylum seekers start arriving to a greater extent.

Summary: Differentiation

Similar to Sweden, previous research often points to a lack of political conflicts in Canadian immigration policy in the 1970's (Hawkins 1991, Kelley & Trebilcock 2010). Despite this, however, there were major changes to the institutional regime of migration control. By the end of the differentiation period, in the early 1980's, fundamentals of contemporary Canadian immigration control are in place: a highly detailed set of regulative tools, an elaborate resettlement system with the purpose of targeting aid, and a nascent asylum process as a sorting device for those arriving at the border. Enshrined in the 1976 Act, this

is a period characterized by a major production of statuses, which often represent continuation of choices in the foundation period. The direction of refugee policy, however, still largely remains in question: between the desired vision of discretionary selection from abroad and the pressure of unwanted at arrivals at the border, processed in a system where more actors are pushing for legal considerations to be considered.

In terms of the analytical model, the *theorization* of social control is manifested in a highly elaborate vision of migration control as requiring selection and targeting. Even more so than in Sweden, the Canadian planning of migration represents an ideal-type case of synoptic legibility for purposes of manipulation (Scott 1998). It directly concerns the making up of people through the production of government statuses. The 1976 Act is entirely structured around classes of immigrants, and the meritocratic ideal expressed through the points system is now complemented by a *philanthropic* vision of migration, as seen in resettlement system. Both these values are clearly manifested in individual policy tools, as discussed by Lascoumes & Le Gales (2007). However, this is all in the realm of wanted migrants – the arrival of asylum seekers challenges Canadian policy elites' taken-for-granted assumption of how migration control should function. The first signs toward a judicialized view of social control in reforms of RSAC represent a latent conflict toward the view of classification in migration control as flexible and policy oriented.

Normatively, the classification of immigrants is rooted in a different view of deservingness than in Sweden, imbued with the Canadian immigration tradition associated with economic growth. Consequently, refugees become defined as adaptables. Even more than in Sweden, the deserving are those selected from abroad. The select wanted are consistently contrasted by Ministers and department officials against the unwanted arrivals at the border. Through the 1976 Act the authority given the Minister to declare special classes of refugees, a range of detailed *target populations* are now set out in law and regulation – where, importantly, the majority are intentionally processed through discretionary frameworks, as governing by classification allows officials to choose which rulebooks to apply.

Regulatively, there is a major expansion of bureaucratic capacity for processing both the wanted and the unwanted in the differentiation period. In terms of the wanted, the annual planning system for resettlement represents a major regulatory change. Still in place today, it is an example of how individual instruments, once in place, often become institutionally enduring feature of the Canadian migration policy landscape (Thelen 1999). The planning system allows for fine-tuned, utilitarian selection, a system through which Canada takes its place as one of the dominant resettlement countries in the Global

North. In terms of the unwanted, RSAC, as the first permanent asylum processing organization, represents something truly new, as Canadian policy elites grapple with how to deal with the still relatively small number of arrivals.

Finally, in terms of *contestation*, the process of refugee differentiation in Canada is clearly driven by a juxtaposition of the wanted and the unwanted. If the planning system and resettlement represent the wanted, we see its negative mirror image in the reaction to arrivals. The challenge represented by arrivals incites a much stronger reaction in Canada than in Sweden. Arrivals represent a break with historic continuity, challenging taken-for-granted assumptions about migration governing, including the ability to select desirable immigrants. RSAC here comes to represent a control dilemma – seen as unsatisfactory by all, but policymakers resist reforms, since they equate this with opening access and acknowledging Canada as a "country of first asylum". There are similarities to the form of institutional development in Sweden, in that regulatory inventions function as models for reforms. But the Canadian asylum process is, at this point, less developed than its Swedish counterpart. This is understood here as a consequence of arrivals starting later, indicating an absence of the contestation in the rule maker-rule taker relationship (Streeck & Thelen 2005) which is important in driving Swedish reforms. However, the lack of reforms to RSAC should also be seen as inadvertently contributing to building a reform pressure, as the dysfunctions keep accelerating with further arrivals.

As in the foundation period, we see here how there are similarities in the *form* of institutional development, but that the *substance* is imbued with different normative conceptions. Categories of refugees are differentiated at similar points, but they are imbued with different notions of deservingness. Regulatory inventions represent bureaucratic capacity-building for conferring identities, but the development of these arrangements differ since arrivals start later in Canada. While the embedding of asylum processing in terms of legal-administrative traditions seem to offer a challenge to control as flexibility in both nations, this is more of a latent tension in Sweden. In Canada, policymakers are much more directly opposed to a judicialization of asylum procedures.

Period 3: Enforcement

In the 1980's, like Sweden, refugees and asylum are becoming the main concern of Canadian immigration policy. During this period, within the framework developed in earlier periods, the capacity to enforce classifications come to the center. Instead of the marginal operation envisioned, in ten years' time, tens of thousands of asylum applications have been lodged to RSAC. This represents an almost revolutionary development: from a peripheral activity conducted by

informal working groups, asylum became the central issue of Canadian immigration in less than a decade. The numbers are rising year by year, from almost 3 500 in 1981-1982, to 6 100 (1983), 7 100 (1984), 8 400 (1985), 18 000 (1986), and sitting above 20 000 by the end of the decade. The development lends urgency to reforming the asylum processing system, centering on the tension that crystallized in the preceding period: between discretionary immigration control and legal standards in administrative work. Ultimately, the changes were much more drastic than in Sweden, with the Canadian asylum processing ending up in the polar opposite of what policymakers initially aimed for. The enforcement period consists of contestations around conferring identity, visa requirements used to govern at a distance, the bounding of policy and law in asylum reforms, and the emerging loop of asylum policy.

Contestations of conferring identity

As the number of asylum claims are starting to increase in the early 1980's, this represents a challenge to the envisioned order of Canadian migration control, acting as a catalyst for reflections on how such control should function. The head of RSAC elucidates the difference between the two routes to Canada:

> The basis of Canadian immigration policy is that we will select those who we would have come to our country. We will select them on criteria that we, as a sovereign country, establish, including their suitability, their ability to contribute to the growth of the country, perhaps domestic policies such as cultural policies, and of course economic policies. But the essence of the program and the policy that Canada and other countries have is that we, as a sovereign country, have the right to choose who should be allowed to remain on our territory. The Convention asks us to undertake a separate obligation. It says to us that we, on humanitarian grounds, will provide protection to those people who have a well-founded fear of persecution, whether they can make a contribution or not, whether they are rich or poor, or whether they are educated or illiterate. And the fear, quite understandably, was that accepting that obligation might impose upon as unforeseen requirement to protect thousands of people. I do not believe that fear has been entirely dispelled, given the numbers of refugees there are in the world seeking resettlement. (Chairman Stern, Standing Committee 1984-1986/11:5)

The immigration department is blunter in its assessment, describing asylum seekers as a threat to orderly migration:

> Large waves of asylum seekers, and other using this route to gain admission to other countries for reasons of economic betterment, continue to flow to developed countries, inundating humanitarian support mechanisms in both the private and public sectors. (Employment and Immigration 1984b:12)

The response among policy elites within the migration control regime is generally to reaffirm the focus on resettlement, and to increasingly position the two routes as being in conflict:

> Canada is primarily a country of resettlement rather than first asylum. The international framework of protection for refugees is stabilized by such countries as Canada, the United States and Australia, which accept large numbers of refugees whom we select in other countries and bring here for permanent residence. Nevertheless, because of the volume of people seeking to make a refugee claim at our frontiers, we are becoming, in a sense, in a loose description, a de facto country of first asylum. That has not, I think, been the intention of government, nor was it the intention of Parliament. This causes a dilemma because we cannot perform both functions on a large scale. (Immigration Minister Roberts, Standing Committee 1984/5:6)

If the resettled allow a clarity of vision from afar, those at the border are seen as blurring government simplifications. The inability to select arrivals increasingly contribute to asylum seekers being portrayed as illegals, with legislative proposals juxtaposing them against ”genuine refugees” (Employment and Immigration 1987d:4). In 1983, a widely circulated department report approximates the presence of up to 50 000 “illegal” immigrants in Canada (Employment and Immigration 1983). Compared to the large but controlled numbers of resettlement, asylum seekers are seen as ”difficult to control in volume” (Employment and Immigration 1984b:12), described as undeserving queue jumpers (Standing Committee 1980-1983/39, Employment and Immigration 1984). Government press releases on “curbing abuse” echo this description:

> Canada remains committed to genuine refugees in need of our protection. But many of the refugee claims in recent years have been made by economic migrants. They have been abusing the refugee determination system process to avoid immigration selection abroad. (Employment and Immigration 1987d:2)

> Here at home our policy is straightforward – we provide asylum to every genuine refugee who lands in Canada. We will not allow this proud tradition to be undermined by those who would abuse it. If this abuse is not stopped, it threatens to undermine our entire refugee determination system, and leave our borders increasingly vulnerable. (Employment and Immigration 1987e:2f)

More than just numbers, there is a strong principal resistance to arrivals at the border. When around 1 500 people from India apply for asylum in the fall of 1980, Immigration Minister Axworthy describes the asylum system as being

at ”near crisis proportions” and starting to ”break down… under the weight of an unprecedented number of claims” (Standing Committee 1980-1983/10:27):

> the problem continued to the point where we were threatened with not only an enormous backlog, but the precedent that other groups were beginning to use the same system to short-circuit and circumvent our immigration laws. This would be very unfair to all the people around the world who are planning to come to Canada, using the legitimate procedures but saying, hey, I just found a shortcut, you can go there as a visitor and get in as a refugee. If that were the case, we would not have an immigration law, we would have chaos. (Immigration Minister Axworthy, Standing Committee 1980-83/10:27)

Like Sweden, we see here how the emerging contestation around asylum presented by increasing arrivals generates an entrenchment of the envisioned order. As a consequence of arrivals undermining selective control, there is an acceleration in the development of regulatory tools. Senior officials stress the need for an efficient procedure to determine refugeehood:

> The loosest use of terminology that I find is when people talk about people who are applying in Canada, and the mere act of applying for many people seems automatically to make them refugees; of course they are not refugees until they are determined by the Minister or by the immigration people or others to be so. They are refugee claimants, but they are not necessarily refugees until that formal decision is made. (Standing Committee 1984-1986/21:22)

Unintended consequences of identification

Increased arrivals coupled with the government’s unwillingness to thoroughly reform RSAC means that the inability to reliably confer administrative identities is continuously exacerbated. Immigration Minister Roberts outlines the perceived failures of RSAC:

> Part of the problem lies in the fact that the system that was formalized in 1976 to determine refugee claims in Canada is not working as well as it should. It does not identify refugees quickly enough or lead to the removal of those who are not refugees within a reasonable course of time. Because of the extensive delays, many people have been drawn into this system, and we have accumulated something over 12,000 cases at various stages of review and appeal. About half of the number were logged – that is to say entered the system – in the last year… the build-up in cases in the system has continued relentlessly. (Immigration Minister Roberts, Standing Committee 1984/5:6)

This should be understood as a perceived failure of the asylum processing system to reliably confer administrative identity and thus maintain control. By the

mid-1980's, case processing – from application to final review – can take up to three years (Standing Committee 1984/5). The RSAC procedure is described by Ministers as inefficient in "sorting out false claims", "extremely vulnerable to large increases in workload" and suffering from "large scale abuse" (Employment and Immigration 1987d:2). Moreover, minor reforms don't seem to work. As one task force puts it in the mid-1980's, "attempts to compensate for apparent weaknesses have generated additional procedures which further elongate the process" (Employment and Immigration 1984:vi). The central difficulty is the backlog of cases, which becomes a huge issue in the 1980's. Perceived as an immense failure of selective control, the backlog stands at more than 10 000 cases in 1984, growing throughout the decade, ending at well over 100 000 people in the late 1980's (Employment and Immigration 1989b). It causes delays which are seen as essentially opening a backdoor to Canada.

Like Sweden, at this point, the complexity of rendering people as cases starts to generate unintended consequences. Not only does RSAC lack bureaucratic capacity, but it also seems counter-productive. When people wait, they form bonds to Canada, such as by marrying or having children, and these bonds can qualify them for residency permits. On the one hand, a form" amnesty" can remove the problem, clearing the caseload and significantly reducing the administrative burdens. But this is seen, in the words of Minister Axworthy, as rewarding the undeserving:

> The experience gained during the early 1970's with respect to amnesties confirms in my mind the futility of such action in resolving immigration problems. It is a fact that amnesties tend to encourage a further influx of illegals who hope to benefit from the next amnesty, thus exacerbating illegal immigration. Furthermore, amnesties are inherently unfair to those who abide by the rules, apply for immigration at our offices abroad, and accept the outcome of their applications. (Minister Axworthy, Standing Committee 1980-1983/5:35)

Again, we see how earlier episodes are formative. Yet, the rising numbers give a sense of urgency and press forward solutions. Throughout the 1980's, a number of "case-by-case review" programs (Standing Committee 1980-83/47) and, ultimately, a "backlog clearance program" is issued. Special classes of refugees are created by the department, and just like in Sweden, by the late 1980's, those who have waited long enough to be given protection start to become one of the main protection categories in Canada (Dirks 1995:ch6-7).

Precision at a distance: Visa requirements

The contestations at the border are illuminated when contrasted with the regulatory tools used to prevent people from arriving. To enforce selective control, the Canadian government is a prolific innovator in what previous research

terms remote control, attempts whereby states prevent people from arriving (FitzGerald 2019). While governments often try to hide such practices from view, this is not the case in Canada.

Like Sweden, as a consequence of increasing arrivals, Canadian policy-makers in the early 1980's are deploying what they perceive as the most effective control instrument: the visa demand. This requires people to acquire a visa in their home country before travelling to Canada. Given Canada's remote location, this poses a near-impossible barrier for many. As one department report puts it, "the imposition of a visa requirement is the most effective of all control mechanisms" (Employment and Immigration 1983:xxv). In the 1980's, the Canadian government greatly increases the use of visa requirements, and by 1982, almost 100 countries are subject to them. (Kelley & Trebilcock 2010:ch10) As described by Minister Axworthy

> Offshore screening of prospective visitors has a number of advantages over both border and inland controls… a visa requirement also enables us to conduct necessary background checks abroad in doubtful cases, a procedure which is not feasible at ports of entry. In every instance where the visitor visa exemption has been withdrawn, there has been a dramatic reduction in the level of enforcement activity in Canada for nationals of the country concerned. (Minister Axworthy, Standing Committee 1980-83/47:8)

The visa represents a highly developed administrative simplification, deployed over distances: it allows for collective, national categorizations which prevent the contestation of individualized processing at the border. As a device to sort the deserving from the undeserving, Canadian policy elites openly use it to target asylum seekers. For countries subject to visa requirements, department guidelines instruct front-line officers to "be particularly inquisitive as to the likelihood of a refugee claim in Canada" (Employment and Immigration 1986d:sec26, p2). In the words of one government task force:

> a potential refugee claimant, who seeks a tourist visa from a Canadian embassy, will normally be denied the visa if it appears that he wishes to come to Canada in order to claim refugee status... This approach can be criticized as indirectly denying relief to refugees which could not be denied directly. Once a refugee arrives in Canada, he cannot be forced to leave. However, by imposing a visa requirement, he is prevented from arriving in order to make the claim. (Employment and Immigration 1981:90)

> in situations of large-scale abuse, the imposition of a visa requirement is an appropriate approach to the reduction of the flow of non bona fide refugee claims. (ibid:94)

In a similar vein, Minister Roberts explains that ”Canada is not a country of first asylum by decision of Parliament”:

> We have placed visa requirements on the major sources of new claims, not to close off access to refugees but to ensure we admit those in genuine and critical need of our help. (Immigration Minister Roberts, Standing Committee 1984-1986/5:7)

> The visitor visa allows us to focus scarce resources where they can be most effective, rather than respond to uncontrolled demand…. Parliament did not want uncontrolled access to Canada, it wanted controlled access. (Immigration Minister Roberts, ibid:68)

The introduction of visa demands generally follow a similar template. In the early 1980’s, it is used for a number Latin American and Caribbean countries. The program for Guatemala is typical: following increasing violence in the early 1980’s, the immigration department announces that, ”In accordance with Canada’s traditional humanitarian concern for the plight of the persecuted and displaced people” (Employment and Immigration 1984b:22), Guatemalan nationals already in Canada will get easier access to protection. At the same time, a visa requirement is imposed to stop additional arrivals, as explained by the department and Minister Roberts:

> The visa requirement ensures that the government can be open and generous about the intake of persons who need these special measures, and can also exclude those who seek only their economic betterment. (Employment and Immigration 1984b:23)

> in response to the serious situation in Guatemala, that country was also removed from the list. The purpose in this case was to enable us to provide for refugee selection in the country of origin, and to establish a special program to aid Guatemalan refugee claimants. (Immigration Minister Roberts, Standing Committee 1984/5:9)

The visa, much like the planning model in general, is a specific regulative instrument which offers a clear manifestation of a theorization of social control. By governing over distances, it offers utilitarian selection of target populations for the purpose of maintaining a specific vision of controlled migration, where selection is a guarantor for deservingness.

Reforming the asylum system: Bounding policy and law

In the mid-1980’s, despite reluctancy, it seems inevitable to Ministers, department officials and MPs in the immigration committee that RSAC must be reformed. As one report puts it, Canada’s refugee determination system has “outgrown its legislative garment” (Employment and Immigration 1983:109)

Policymakers face a fundamental choice which has been forming under the foundation and differentiation period. It concerns the nature of asylum: is it a matter of policy or law? Ministers and senior officials have thoroughly rejected the notion that asylum determination should diminish the government's discretion over the immigration program. For them, not being allowed to select runs counter to the central idea of Canadian immigration policy. But the discretion this implies, rooted in the Canadian immigration tradition, is increasingly coming into conflict with Canadian standards of justice.

The asylum processing system should be seen as the last major piece in the institutional regime of migration control which, by the mid-1980's, is still in flux. Continued arrivals, most actors in the regime agree, necessitates reform. In the mid-1980's, two government task forces deliver different answers as to how to proceed. The first one frames asylum processing as a matter of policy. It outlines what it sees as the central issue:

> The challenge, then, is to devise a system which will meet our international obligations and achieve acceptable standards of fairness without imposing undue cost burdens upon the taxpayer or other undue burdens upon the enforcement and other components of our immigration system. (Employment and Immigration 1984:22)

In answering this challenge, the task force contrasts two visions of control: First, the "administrative model", characterized by informality. This is a continuation of the existing framework, characterized by *flexibility*. Second, this is contrasted with the "judicial model", which depends on detailed rules and rigorous standards in case processing. This represents a vision of control which instead concerns *precision* and standardized procedures. In other words, two similarly competing articulations of control as those in Sweden appear. The first task force sees the judicial model as costly, with an increasing of legality in asylum process as reducing efficiency:

> The process appears to be straightforward and relatively simple in design. Perhaps with a very small number of claims each year, it could operate effectively. However, the basic statutory requirements have necessitated additional procedural steps and potential 'bottlenecks' which render the process susceptible to delay and abuse. (Employment and Immigration 1984:vi)

> improvements and 'streamlining' of the process are severely hampered by its legislative 'straight-jacket' which rigidly specifies the steps which must be taken in processing claims… In providing a 'fair hearing' or, more basically, 'justice', the effectiveness of procedural standards can be over-rated. (ibid: vii, xi)

Seeing asylum as a policy issue, the task force equates effective control with flexibility, where classification procedures are a means toward the end of selective control. This is grounded in an ability to sort between the deservingness in the target populations:

> A system which is efficient will also be more humanitarian as it will provide bona fide claimants with a rapid determination… It is crucial that our process have an effective 'threshold' mechanism for rejecting claims which have no hope of success. (Employment and Immigration 1984:xii-xiii)

The task force grounds its argument in the British legal tradition of which Canada is part. If characterized as a legal issue, it argues, it is important that decisions are reached in accordance with rules of natural justice, such as procedural standards. However, the task force argues, "administrative" decisions should not subject to such requirements (Employment and Immigration 1984).

By contrast, a year later, the so-called Plaut report outlines a thoroughly different, judicialized vision. Asylum, the report says, is "not a policy decision, but adjudicative in nature". (Employment and Immigration 1985:59) The report outlines the difference between asylum processing and the Canadian heritage of resettlement:

> particularly in the Canadian context, the very existence of a refugee determination system is a recent and revolutionary development (Employment and Immigration 1985:13)

> The moment a person makes a refugee claim in Canada he/she has side-stepped the selection process abroad and is now subject to a different realm of consideration which aim only at establishing whether the claim is justified and not whether the person has certain qualities and qualifications. (Employment and Immigration 1985:18-19)

Rather than a policy issue, according to the Plaut report, refugee processing should be disassociated from policy considerations altogether. Given the serious nature of refugee claims, these should have the highest levels of procedural rights, "to ensure as far as possible that justice is not only done, but is also seen to be done" (Employment and Immigration 1985:53):

> Declaring a claimant to be a refugee is, then, not a privilege we grant, but rather a right we acknowledge… This also means that refugee determination as such is not an immigration matter. Immigration policy must remain irrelevant to the refugee determination process. (Employment and Immigration 1985:17)

> Refugee determination, however, has little to do with policy. It is the investigation of facts and the application of a complex legal standard. It is not a function in which political or other considerations are relevant, but rather, a quasi-judicial process of which the Minister should be relieved. (Employment and Immigration 1985:83)

From this follows a different definition of control; rather than flexible and result-oriented, control is seen as the precise, consistent upholding of legal procedures:

> Efficiency is not synonymous with shortcuts…. Efficiency does mean that the objective of the process and the means employed to achieve it are put in the best of possible relationships with one another. (Employment and Immigration 1985:69)

The two task force reports are important in the ever-increasing urgency of reform, especially the Plaut report, given its timing with rapidly climbing number of claims in 1985. Both reports assume a firm boundary between policy and law, even though their proposed models land on different sides of the boundary. This can be understood in light Canada's common law tradition and its separation between the judicial and executive spheres. While Swedish policymakers also want to maintain political control over asylum, the separation between law and policy plays a much larger role in Canada. In Canada, policymakers see the legalization of asylum as a representing a loss of control.

As the government deliberates on reform proposals, the decisive move instead comes from Canada's Supreme Court, in its 1985 *Singh* decision. The case concerns a key procedural tool: oral hearings. The introduction of oral hearings, as opposed to the entirely paper-based application process in operation, has long been proposed by MPs and government inquiries for the purpose of making RSAC adhere to standard conceptions of justice. This has been resisted by the department as increased access is understood to mean more claims and reduce selective control (Employment and Immigration 1981, 1984). The *Singh* case originated in Canada formally becoming a sovereign nation in 1982 with the ratification of its Charter of Freedom and Rights (Russell 2017). Ironically, achieving nationhood set in a motion a process which undermined what policymakers view as sovereign border control. In the *Singh* decision, the Supreme Court decides that ”everyone” in Canada, not just its citizens, are encompassed by the rights of Charter, meaning that asylum seekers are recognized as legal subjects. The Supreme Court justices explicitly deny that administrative considerations such as processing times have relevance for principal rights, and effectively classify asylum processing as a matter of ”law” rather than ”policy”. (Dirks 1995) This has immediate effect on reforms, as officials

recognize that *Singh* requires a "higher standard of judicial procedure in making these important decisions." (Standing Committee 1984-1986/21:8)

The loop of asylum policy

The *Singh* decision functions as a catalyst for solving the seemingly inevitable need to reform RSAC. It represents a thoroughly judicialized answer, in which asylum is about the application of legal standards, rather than policy priorities. Through Bill C-55, the new Immigration and Refugee Board (IRB) replaces RSAC on January 1st, 1989. The IRB is established as an administrative tribunal, formally independent from the immigration department. The Cabinet and the department maintain, however, that the new organization will uphold selective control, and that judicialized proceedings will streamline operations:

> It is expected that the system will result in better control over Canada's borders, and will allow us to give more attention to the selection of government-assisted refugees from abroad. (Employment and Immigration 1988b:5)

As Hamlin (2014:ch3) has noted, an important aspect of the ambitions to maintain control is that the establishment of IRB is accompanied by other legislation intended to make it harder for asylum seekers to arrive in Canada. However, the IRB still represents a major reversal of the order envisioned in the 1976 Act, where asylum was imagined entirely as a policy issue. Instead, the IRB represents a clear recognition of Canada as a "country of first asylum".[23]

With the IRB's establishment, a new bureaucracy for conferring identity is established, and the last piece in the regime of migration control has come into place. Canadian lawmakers had repeatedly resisted setting up a more expansive asylum processing system out of fears this would function as a "magnet" attracting more immigrants, but that is what they end up with. Even though it is frequently the target of human rights critique, today, a majority of claimants in the IRB have a right to appeal, legal representatives and trained translators play important parts, and the IRB's adjudicators are not formally answerable to governmental control (Evans Cameron 2018). A similarly dramatic shift did not happen in Sweden, and the decisive difference can be linked to role of the Supreme Court in Canadian policymaking. The *Singh* decision clearly aligns with the assumptions of dominant theories of migration control, of state sovereignty as diminished by courts defending the rights of migrants (Joppke 1998, Hollifield et al 2022). Using institutional terminology, the importance of

[23] The IRB, initially, had much higher recognition rates than RSAC: in its first year, 75 % of claimants were recognized as refugees, as compared to RSAC's average of 25 %.

the specific sequencing of events in the 1980's is also important: the new Charter which precipitated the Supreme Court's decision, the alternative offered for reform by the Plaut report as well as the seemingly inevitable need due to rising number of claims. Here, the latent conflict between rooting immigration processing in Canadian legal traditions or immigration tradition became manifest, and the emphasis increasingly shifted to law over policy.

Like Sweden, this chapter ends at a turbulent point in time. As Hamlin (2014:ch3) and FitzGerald (2019) have outlined, the late 1980's and early 1990's were dramatic years in Canadian migration policy. The well-publicized arrivals of asylum seekers by boats caused public uproars in the late 1980's, and the huge backlog of cases, counting over 100 000 people, became the subject of different clearance programs. Just like Sweden, this doesn't mark the end of the contestation surrounding refugees in Canada – rather, it marks the point at which its conflict become *institutionalized into a pattern of reform around the same issues.* Like Sweden, the continued arrival of immigrants functions as an engine of institutional reproduction (Thelen 1999, Clemens & Cook 1999), a continuous challenge to capacity to enforce the system of selection at the heart of migration governing. The reforms leading up to the 2002 Immigration and Refugee Protection Act were focused on similar issues (Citizenship and Immigration 1997, 1998).

The repeating reforms focus on similar issues as in Sweden: cutting processing times, reliably determining identity, cost efficiency, and deterring "manifestly unfounded claims" (Employment and Immigration 1990:10). This should be understood as concerning rule makers' capacity to reliably enforce classifications on rule takers. Along these lines, in the early 1990's, the department releases strategy papers in which they outline the need to "provide for a more efficient, streamlined refugee determination system, ensuring that we can help those who truly need refuge". (Employment and Immigration 1992:i) They outline five main aims, among them being to

> Ensure that we can manage the numbers and categories of immigrants who come to Canada more effectively.
>
> Defend the integrity of the immigration system by providing better enforcement and control, and by protecting Canadians from those who would abuse our laws.
>
> Make the refugee status determination system more efficient and cost-effective, while ensuring that all refugee claimants are treated fairly and humanely. (Employment and Immigration 1992:2)

Moreover, by the mid-1980's, both the Liberal and Conservative parties want to increase economic migration to counteract an aging population, grow the domestic economy, and supply sectors requiring labor (Employment and

Immigration 1984b, 1987c). For this purpose, the systems of selection are more relevant than ever. With the Canadian economy described as increasingly knowledge-based and global competition rising, selecting the right immigrants is seen as central to maintaining flexible work force. The department speaks of a ”need to restore the balance among the three chief immigration stream” (Employment and Immigration 1984b:1), with economic migrants framed as the ”engine that pulls the immigration train” (Employment and Immigration 1991:25). Careful selection systems are seen as critical to legitime substantial immigration, by establishing a perception of control. The idea of immigration as central to Canadian identity and an instrument for growth, re-formulated within new control models in the 1960’s and 70’s, remains stable:

> For more than 125 years immigration have played a part in shaping the shared values that unite us as Canadians, strengthening a fundamental respect for diversity and human rights that has been part of Canada from the beginning. And throughout our history immigration has helped us to build a thriving, competitive economy. (Employment and Immigration 1992:i)

Since the early 1990’s, Canada has had consistently high immigration, averaging 200 to 250 thousand annually. The juxtaposition of the wanted and unwanted migrants has continued: the meritocratic and economically beneficial migrants are continuously contrasted with asylum seekers as an undeserving and troublesome. How to deal with what the department declares as ”the rise in the unplanned, large-scale migration of people seeking to better their economic conditions” (Employment and Immigration 1992:6) continues to be in focus in proposal like Bill C-86 in 1993, which point to a preference to ”intercept illegal migrants overseas before they arrive at our borders” (ibid:18).

> For many of these people, making a claim to refugee status was a way to safety. Many others made claims as a way to circumvent the immigration controls of a sovereign state… The danger is that refugee determination systems, which countries set up to provide protection for those in genuine need, may by default turn into costly immigration systems separate from normal immigration procedures. (Employment and Immigration 1992:4)

> a clearer, more direct and straightforward control over the immigration program… Under this system immigrants in different categories will be selected and processed according to clearly defined principles. (ibid:15)

Summary: Enforcement

By the early 1990’s, Canada had established a migration control regime with many of its key elements largely still in place today, but wholly different from

a few decades before. The stability of this institutional trajectory is only underscored by the major shifts in Canadian society happening around it. At the center of this policy field are the government, the immigration department and the IRB, unified by a regulatory framework for conferring identity. Here, selective control over immigration functions as a mental map with which to stabilize and order the world. As a means for making migrants visible to the migration regime, the regulatory framework has become entrenched as an enduring rule system which molds expectations about the governing of migration (Thelen 1999, Streeck & Thelen 2005). Just like in Sweden, the perceptions that increasing arrivals are resisting and eluding order didn't shake this belief, but on the contrary, rather strengthened it. The top-down separation of refugees into a set of administrative categories was increasingly becoming a taken-for-granted feature at the centre of migration control.

In terms of the analytical model, the *theorization* of the classified show a similar tension as in 1980's Sweden, albeit with different dynamics. Canadian policy elites had long strived for a *flexible* control system, with major discretion for state agents a way of legitimizing a substantial immigration. This is rooted in the Canadian tradition of selecting immigrants from overseas, as an instrument for growth. However, in asylum processing, this is challenged by the ideal of *precision*, the more rigorous and detailed application of legal rules, which is rooted in a Canadian legal tradition that became actualized as asylum operations expanded. Like Sweden, flexibility and precision are seen as representing different mental maps for migration. In Canada, however, they came into much more direct conflict, as Canadian policy elites directly tried to maintain migration control as a "policy" issue rather than a "legal one", seeing the latter as a loss of control. The *Singh* decision and the sequencing of events in the 1980's has been pointed to as reasons for a shift to an increasingly judicialized, precision-oriented system of control. The great pressure for reform due to rising claims and the generally dysfunctionality of RSAC can be seen as contributing to reform pressure.

Normatively and *regulatively*, similar to Sweden, the institutional form of the development shows a movement from classification as a flexible means toward a precise end in itself – classification moved from a being an institutionally regulative aspect, to more of a normative one (Scott 2014). Canadian policy elites were prolific inventors of migration control instruments, such as in the points system and planning procedures, setting up Canada's contemporary position as an "exceptional" country in terms of immigration. These regulatory changes, from a racist to a formally non-discriminatory and *meritocratic* immigration system, contributed to thoroughly transforming the demographics of Canadian immigration, acting as the administrative gateway for

millions of people to Canada. This was animated by ideas of *planned growth* as well as the *philanthropic* orientation of its vast resettlement system, an ideal-type operation in making people legible. Here, classifying migrants moved from a means with which to engineer migration, toward an end in itself, a basic conceptualization of migrants, in which careful systems of selection had a foundational role in legitimizing major immigration to Canada.

In terms of *contestation*, the model has allowed us to uncover similar dynamics of institutional development as in Sweden: That classification became entrenched in response to perceived challenges to it. This is seen here as the engine of institutional reproduction (Thelen 1999, 2004) being the arrival of refugees, which represent a continuous challenge to the state vision. In Canada, the juxtaposition of wanted (resettled) and unwanted (arrivals) – separating deserving from undeserving – is even more marked than in Sweden. From aims at upholding this basic boundary, a massive production of boundaries and differentiation of refugees into different *target populations* has resulted, which has in turned fueled a growing bureaucracy to administer. This is observable both on the level of rendering individuals as cases in RSAC or the IRB, but also of rendering groups of migrants as categories. This is done with much greater ease in the synoptic overview of the Canadian resettlement system, than in the contestation of asylum seeking at the border. The contestation is located in the governing-governed relationship. And in Canada, it contributed to a much greater shift than in Sweden: from the foundation period, Canadian policymakers very clearly set out a vision of Canada as a resettlement country, staunchly opposing asylum seekers when they started arriving at the border. By the early 1990's, an expansive asylum bureaucracy had been established that represented a major reversal to this, and a recognition of Canada as a "country of first asylum". This, however, also had the effect of strengthening attempts to prevent people from arriving and being processed.

Just like in Sweden, through the periods of foundation, differentiation and enforcement, classification was a unifying construct at the center of Canadian migration policy. A major theme in this chapter has been to show how similar institutional arrangements in Canada and Sweden were animated by different normative concepts – similar instruments and aims to selecting but different ideals of refugees, or similar contestations around enforcing a categorical vision, but different traditions of law and administration animating ideas of control. Utilizing these differences, the analytical model allows us to show the similarities in the institutionalization of classification clearer.

Intermission
From Policy to Courts

> One can expect that personal identification of its citizens by the state will increase, even as devices are refined for making the record of a particular individual more easily available to authorized persons and more inclusive of social facts concerning him.
>
> Erving Goffman, *Stigma*

The centrality of classification in migration control should be seen as an expression of a general trend in contemporary society toward increasing administrative identification of people by large-scale organizations such as the state. Erving Goffman, writing in the 1960's when this study starts, made several prescient observations on this phenomenon. He outlined the thorny administrative problem of reliably pinpointing individuals since common identification attributes such as names are easily changeable. He also singled out the increasing use in large-scale organizations of identification devices such as ID cards, writing that their point is "of course, that they allow no innocent error or ambiguity" (Goffman 1963/2022:62). The systems of selection represent the development of regulatory frameworks for establishing such identification as it applies to human movement. As we move from policymaking to courts, the level of detail in the systems of selection will become apparent.

This intermission represents a bridge a between Part I and II, offering a brief, tentative analysis, as well as an orientation and methodological discussion for the court material. In Part I, we saw how contemporary migration control was established in Canada and Sweden. Border control is usually seen as a foundational component of statehood (Hobsbawm 1992, Brubaker 1992), but Part I charts a period in which it also became a major occupation of bureaucratic activity. At the center of the analysis are migration control regimes, made up of a nexus of actors across government, state agencies, and increasingly, courts. These maintain the classification structures that regulate access to the social closures of Canada and Sweden. While similar frameworks developed in both countries, fueled by similar dynamics of institutional

development in rule maker's perception of the rule takers, they were animated with different ideas. In Sweden, the regulatory framework was influenced by ideas of integrating migration control in the country's welfare state; in Canada, it was influenced by ideas stemming from a long immigration tradition of using immigration for economic growth. Consequently, different moral vocabularies of deservingness were articulated when making people governable, leading to different views of refugeehood as defined by vulnerability or adaptability. Contrary to assumption of dominant writings migration control, the results show how the growth of these regimes have centered on the classification of subjects, and how these classes are neither neutral nor objective.

Using terminology from Bourdieu's (1998:ch4) writing on symbolic power and state classification, we can say that the Swedish and Canadian states' attempts to regulate migration through classification rested on "the means of imposition and inculcation of the durable principles of vision and division" (Bourdieu 1998:47). That is, that the emergence of contemporary migration control rested upon a centralization of bureaucratic and informational capacity to enforce a state *vision* within a new policy field, operated by a new set of actors that populate the migration control regime. Importantly, however, this centralized vision generated a *di-vision*: the differentiation of administrative identities for the purposes of effectively regulating human movement. By the end of Part I, this di-vision had become beset by a central control dilemma of how to deal with the rapidly expanding number of statuses. As has been shown in the previous chapters, two contrasting mental maps of control had arisen: one of control as the *flexible* securing of outcomes, and one of control as the *precise* application of standard procedures. This is a conflict in which the role of law and courts had decisive importance.

Refugees as legal-administrative subjects

The results have pointed to Canada's and Sweden's administrative-legal traditions as an important source for the rooting of refugees. Throughout Part I, the increasing role of law has been evident. Apart from the development of new legal frameworks for processing migrants, this is seen in the increasing prominence of procedural rights, most notably appeals. In 1970's Sweden, the processing of refugees became incorporated in general legal frameworks of administrative processing. But the expansion of law meant different things in the two countries, as the judicialization was animated by different perceptions. As we have seen on several occasions, Canadian policy elites appear to have conceptualized a much firmer boundary between policy and law, which wasn't present to the same degree in Sweden. In Canada, policymakers viewed legal procedures and judicial organizations as a potential threat to control, a direct

loss of authority. In Sweden, by contrast, the framing was less conflictual. The development also took different routes in the two countries. In Sweden, perhaps the most notable move toward judicialization was organizational: the establishment of a quasi-judicial tribunal in 1992, followed by full-fledged migration courts in 2006. In Canada, by contrast, the Federal Court had been the destination for judicial review of refugee cases for decades. There, the most tangible expansion was that of legal procedures: an incorporation of refugee processing into what was deemed Canadian standards of justice, finalized with the creation of quasi-judicial Immigration and Refugee Board in 1989.[24]

However, in both countries, the reform toward judicialization made manifest latent conflicts between the contrasting mental maps of control as flexibility or precision. This mirrors what Guy Peters (2021:ch2) has termed a central comparative aspect between administrative traditions: to what extent administrative issues are viewed as matters of management or law. Much of the ideal of flexibility, as embodied in the Canadian policy elites' view of immigration control as a policy issue, reflects a view of migration control as management: about securing outputs and delivering results. This dominated in both Sweden and Canada for much of the foundation and differentiation periods. However, the increasing establishment of asylum operations as a regular government operation contributed to it becoming increasingly embedded in legal-administrative traditions, and instead viewed as a matter of law, where the precise and detailed application of laws onto individual cases came to the foreground. It is to these legal-administrative traditions, and the ascendant role of law and courts in Canadian and Swedish migration control regimes, that we now turn.

An ascending actor in the regime: Migrants in the courts

Based on the literature of migration control recounted in the introductory chapters (Joppke 1998, Massey 1999), we can derive a hypothesis on *converging* patterns across states: courts protect the rights of migrants against the discretionary use of power by state agencies. This view of courts as reigning in states plays a key role in the commonly discussed issue of why nation states fail to control migration (Hollifield et al 2022, Hollifield & Wong 2023). It should be viewed in the context of how the ascension of human rights is seen as an element of globalization which undermines the state, such as in Seyla Benhabib's (2004) work. The convergence hypothesis leads to the assumption that with an

[24] Legal scholar Hilary Evans Cameron writes on the Immigration and Refugee Board that "At the level of its procedures, much about this hearing will be immediately recognizable to those acquainted with common law legal systems. The hearing room looks like a courtroom." (Evans Cameron 2018:29)

increasing role of law and expanding mandate of courts, it should become harder for state agencies to exercise sovereign border control.

These theories are also implicitly assumed to be equally valid across contexts (Johannesson 2018), and thus generally don't focus on variation between countries. Outside of the migration literature, however, there is a well-established separation of nations into different legal systems. Canada is frequently described as belonging to the common law system, originating in the British legal tradition (Bogdan 2013). By contrast, Sweden has been described as part of a specific Nordic variant of the continental civil law system (Carlson 2019). The differences between these systems concern fundamental issues about constitutional design, such as the separation of powers between different branches of government, and they imply different relationships between courts and state agents. (Ahlbäck Öberg & Wockelberg 2015) A legal system can thus be seen as a fundamental part of a state's political culture and identity.

Given the increasing judicialization of migration politics, the presence of enduring differences in legal systems leads in a contrary direction: to assume *divergent* rather than convergent patterns. In other words, the judicialization of similar regulatory frameworks might mean different things in different legal traditions. Part II is devoted to exploring this. To explore the Canadian and Swedish traditions of administrative law, the study specifically focuses on *legal interpretation*. Building on an understanding of the law as indeterminate (Eule et al 2018), as always requiring interpretation to be applied in specific cases, the Canadian and Swedish systems are contrasted as representatives of different modes of legal interpretation. The approach is grounded in an institutional view of legal systems as enduring rule systems, historically contingent phenomena which imply different understandings of law and legal interpretation (Streeck & Thelen 2005, Scott 2014).

By approaching the courts from an institutional perspective, this can be seen as a socio-legal approach as discussed by Adler (2004:345): to "adopt an external perspective to legal process that seeks to analyse administrative justice in terms and concepts that are derived from the social sciences". The court's work is theorized here as an exercise in *authoritative boundary management*: that is, courts have been charged with interpreting and setting out rules for how to process people in the rapidly differentiating systems of selection. This, then, is the specific judicialization taking place in migration control, which different legal traditions are seen as potentially animating with different ideas.

This part of the work moves from the policy-level design and enforcement of classification systems to their application in courts. It is still situated on the meso level in the sense that courts deliberate on individual cases for purposes of elaborating general rules. But it also means we will get closer to actual

migrants, as courts formulate rules through assessment of individual's destinies – actively engaged in rendering people as cases.

Swedish administrative law

Sweden's administrative-legal tradition should be seen in light of the country's internationally distinct model with autonomous government agencies, dating to the mid-17th century. Legal scholars have discussed how the presence of autonomous agencies represented a pre-existing separation of powers between the executive and its departments, out of which administrative law grew (Wenander 2016, Larsson 2020). This means that principles of constitutional design still in force today were formalized before the widespread influence of Enlightenment ideas on the separation of legal and executive powers.

This heritage is often portrayed as decisive for the history of Swedish administrative law, contributing to a specific understanding of the role of courts in making and interpreting law. In Larsson's (2020) depiction, reforms which led to the expansion of Swedish administrative law since the early 19th century have centered on drawing the boundary between what should fall under political or legal authority. Much focus has been on which body should be responsible for appeal, where the government has successively been replaced by courts in many policy fields (Wenander 2016, Carlson 2019:ch6). The negligible role of appeal in Sweden's legal tradition is an expression of a legal heritage with a weak tradition of procedural rights. Traditionally, building on the agency-government separation, decisions were appealed to the agency which made them, and then to the government – not to courts. The enduring influence of the Social Democratic party has contributed to a resistance to the expansion of courts, due to party leaders' long-standing suspicions against the influence of courts over politics, seeing it as a potential threat to democratic rule by government (Ahlbäck Öberg & Wockelberg 2015, Johannesson 2017). Accession to the EU has contributed to changing this. What drove many appeal reforms, however, was a focus on efficiency rather than principle: to reduce the administrative burden of appeals on the government (Wenander 2016, Larsson 2020). Today, migration is one of the few areas of administrative law to have a specialized court in Sweden.

A singularly important element of in Sweden's heritage of administrative law is its tradition of legal interpretation. It belongs to what Bogdan (2013) describes as the *deductive* thinking of civil law. In choosing how to frame what a case is about and how to answer it, Swedish courts often infer answers from general legal rules. A major part of the court's work is to set the frame of interpretation, of how to decide what specific legal framework is applicable to an individual case. In Sweden, a guiding rule in conducting this is to focus on

legislators' intentions (Wenander 2016). This has important consequences for the relationship between courts and policymakers. As Carlson (2019:40) puts it, this means that

> the courts theoretically are simply to determine the intent of the legislator and not make law. The Swedish legal system consequently is based on a separation of political function, but not a separation of political power.

The search for intent can be seen in courts using prepatory works when interpreting laws. These documents, such as bills and inquiries of the type studied in Part I, have a high degree of legal authority, sometimes as great as the legal text itself. If questions and details are unanswered in the legal text, which they often are, the court will search in prepatory works for guidance (Carlson 2019:45). At the same time, as Carlson (2019:48) outline, the courts have discretion in choosing this framework, since there is "no fixed order as to how the legislative works are to be relied upon by the courts… and the courts are fairly free to pick and choose".

Canadian administrative law

In Canada's common law tradition, the traditional source used by courts in legal interpretation is precedents in case law, or judge-made law, rather than legislative intention. (Bogdan 2013:92) This stems from a tradition of a separation of powers between the executive and the judiciary. Due to its origins as a British colony and long-standing ties the United Kingdom, Canada has been heavily influenced by British law. Canada's Confederation in 1867 is often seen as the starting point of the nation, but the country didn't become formally independent until 1982. This means that issues of constitutional design have been prominent throughout the 20th century. Much focus in the development of administrative law in Canada is described by legal scholars as centered on defining and policing the separation of powers (Kelly & Manfredi 2010).

In his work on comparative law, Bogdan (2013) paints some key traits in common law systems. He says that the interpretation of legal rules tends to be *inductive*: starting with the individual case at hand and then comparing it with similar legal cases previously decided by courts and infer general rules from these. In line with this, the principal function of Canadian courts has been described as "to decide particular cases rather than to resolve universal policy questions" (Kelly & Manfredi 2010:40). This is closely related to the principle known as *stare decisis*: that earlier judicial decisions, made in similar cases, should generally be followed.

Similar to the Swedish tradition, the issue of establishing a framework of interpretation then becomes critical. But the method is different. Instead of looking at legislative intentions, the courts look at other decisions: how do you determine which cases are sufficiently similar for a rule to be applicable in both cases? As Bogdan (2013:112) puts it, in common law, "prepatory legislative materials are a foreign element". A reason for this is a suspicion of reading intention into text, and a preference for treating the legal text as depersonalized. In the common law tradition, there is often a dominant focus on procedural rules, which means the interest of finding a true answer can often come at odds with rigid rules of how to process a case.

Just like in Sweden's appeal reforms, the boundary between the legal and political domains in Canada is not stable but continuously evolving. Canadian policymakers, such as in the framing of the 1982 Charter, have been wary that too extensive judicial power might threaten the ability of democratic rule (Kelly & Manfredi 2010). The issue has often boiled down to the how courts should be able to review decisions made by government agencies: how much discretion should courts allow agencies in the application of law? Over the 20th century, the ideal of *judicial deference*, inspired by U.S. law, gradually developed, which is one where courts should give discretion to administrative expertise. As Lewans (2016) writes, the application of deference in individual cases is subject to interpretation. The doctrine of deference doesn't mean that courts simply submit to administrative decisions, but rather that they should only intervene when they deem a decision sufficiently unfair. This can be seen as a balancing act that implies a firm boundary between the domains of policy and law. This boundary is much more present in Canada than in Sweden, as we saw in Part I. Much of the balancing has concerned whether judges deem administrative decisions *reasonable* in light of circumstances under which they were made (Lewans 2016, Evans Cameron 2018:ch2).

Studying courts

Both the migration cases of the Federal Court in Canada as well as the migration courts in Sweden have been relatively rarely studied. In studying how the different legal traditions affect the role of courts in the Swedish and Canadian migration regimes, the traditions of legislative interpretation are approached as ideal types: a heuristic by which the data can be sorted and then contrasted (Swedberg 2012). To answer the research question, three issues are in focus: first, *legislative interpretation*, such as how the courts frame questions, what sources they use and how they develop answers. Second, how this contributes to the way in which *courts solve classification dilemmas*, in exercising boundary management in terms of individuals who don't fit the categories. The

development of answers to these dilemmas is seen as emanating out of legislative interpretation. And thirdly, the *role of the courts in the migration regime* in relation to the contestation between the governing and the governed. Ahlbäck Öberg & Wockelberg (2015) contrast two such roles: The common law model, they say, is one where courts generally have the function of guarding individual rights against state infringements. In Sweden, by contrast, administrative courts have often been a part of the implementation of policies, resting upon an idea that the power of the state is something good, rather than something from which courts should protect citizens.

In both Canada and Sweden, asylum assessment is organized into vertical layers. The court structures of Sweden and Canada are not exactly comparable, however, which has bearing on the data collection. Initial processing takes place in the Migration Agency (Sweden) or the Immigration and Refugee Board (Canada), or alternatively, an overseas visa officer. Much of the information gathering is done in this initial step, including interviews with the applicant. Applicants have a right to appeal decision at the first level: the Migration Courts in Sweden, and the Refugee Appeal Division (RAD) in Canada, which is part of the IRB.[25] The next level is the one in focus here: the Migration Court of Appeal (Sweden) and the Federal Court (Canada). A decisive similarity is that access to this level is *by leave*, meaning that the courts decide which cases to try. The Swedish Migration Court of Appeal accepts only cases on procedural matters, and its proceedings are entirely paper based, meaning it doesn't see claimants. The Canadian Federal Court, by contrast, accepts appeals both on grounds of fact and law – i.e. both in terms of the substance of the case, as well as the legal procedure by which it was solved. It also allows oral hearings of claimants. In addition, there are two more layers of appeal above the Federal Court – the Federal Court of Appeals and the Supreme Court. Access to these, however, is extremely limited (Hamlin 2014:ch5).

The logic of the comparative design here is twofold. First, both the Federal Court and the Migration Court of Appeal represent the first step by which appeals are granted by leave, which suits a focus on classificatory dilemmas because it means judges can be argued to pick cases they believe are especially important. The cases are exceptional in the sense that only a tiny fraction of all applicants make it there. They are consequential because they have a prejudicial function. Second, as Evans Cameron (2018) has argued, so few of the Federal Court's migration decisions are overturned that it in essence functions as a de facto last instance. In other words, while the Federal Court might not be

[25] Overseas applicants don't appeal to the Refugee Appeal Division, but straight to the Federal Court.

exactly comparable in terms of organizational hierarchy to the Migration Court of Appeal in Sweden, it fulfills a de facto similar role.

The process of thematic coding in the analysis was largely similar to that of Part I. Instead of studying the emergence of something over time, however, this part focuses more directly on attempt to sort people into the classification systems developed in Part I. To craft a comparison, the focus has been on the same group of nationals: Afghans. This is because in both countries, they are seen as illegibles, applicants who upset the national order of things (Malkki 1992), for a variety of reasons. Their identities, such as names and ages, are seen as hard to establish, and many of them have lived in other countries for much of their life. Looking at the same nationality means that Canadian and Swedish courts often weigh similar evidence and situations. This includes techniques and procedures for trying to make fundamental concepts of human life governable, such as ”identity”, ”age” or ”nationality”. Afghans, however, occupy different positions in the respective asylum systems: In Sweden, it has become one of the largest nationalities, whereas it’s a mid-sized but steady one in Canada. But they share the similarity of being individuals that challenge the envisioned order. This means the processing of their cases can be used to illuminate the ordering logic of classification system (Bowker & Star 1999)

The court documents show many similarities across Canada and Sweden: roughly 10-25 pages in length and structured by a purpose of imposing order. They start by an account of the asylum seeker’s background, with a response from a state representative. This response is countered by the applicant. Then, the court begins its assessment. A frame of interpretation is established through an account of applicable and relevant law. This singles out some rather than other legal sources as the basis of argument. Then, the principal issue to be decided upon is narrowed down – precisely what is puzzling? Finally, through analysis and argument, a settlement is reached.

After an exploratory phase, three empirical themes emerged as especially fruitful for exploring the workings of Canadian and Swedish courts: how to organize what a case is, the assessment of identity, and the evaluation of danger in Afghanistan, both in general and as relates to ethnic minorities. The development of these themes emerged from the research process, and the writing process of Part II proceeded along the same method of thematic analysis and excerpt-commentary units as Part I. The three themes cover most, but not all, of the cases and classification dilemmas. Specifically, gender-related violence and religious conversion were issues which were the subject matter of a smaller number of cases, and ultimately did not make it into the analysis.

Part II: Boundary Management in the Courts

Identity, which until then had meant nothing
but a card in one's wallet with a photo glued
onto it, became an overriding concern.
No one knew exactly what it entailed.

Annie Ernaux, *The Years*

You might think that fingerprints and numbers
give you a distinct identity. But soon there will be
no identity so distinct as to simply have none.

Cormac McCarthy, *The Passenger*

I got three passports, a couple of visas
You don't even know my real name

Talking Heads, *Life During Wartime*

7
Sweden: The Intermediary Court

Question: Have you ever engaged in political or religious activity?
Answer: No.
Question: Have you ever been tried or investigated?
Answer: No.
Question: Have you ever sought asylum in other countries?
Answer: No.
Question: Do you consent to expert analysis to determine your age from bone tissue?
Answer: What?

Mikhail Shishkin, *Maidenhair*

This chapter explores the role of the Migration Court of Appeal (MCA) in the Swedish migration regime. It does so by looking at its method of legal interpretation, seeing the MCA as engaged in *authoritative boundary management* by solving classification dilemmas within the regulatory framework. Livia Johannesson (2017:ch4-5) has chronicled the origins of the Swedish migration courts, otherwise a rarely studied actor. In 1992, the responsibility for asylum appeals was moved from the government to an administrative tribunal, the Aliens Board (AAB), with a court-like structure. In the 1980's, asylum appeals were very resource-consuming for the government, ultimately becoming the single most common agenda item it dealt with. The AAB was intended as a cost-effective system to rid the government of the appeal burden. In line with the ideal of flexibility, policy elites wanted to maintain control over permitting, however, and for this reason rejected a pure court model. Instead, the AAB was to hand over especially important cases to the government. The AAB was plagued by problems throughout its existence, and after several reform attempts, it was replaced by pure migration courts in 2006. This marked a shift, as Johannesson explains:

> Until the mid-1990s, the idea that asylum determination should be under political control so that it could be adjusted according to the national integration capacity and the influx of asylum applicants had been unchallenged in Sweden. (Johannesson 2017:69)

With key authority moving to the courts, the reform entailed a potential loss of government control. Today, the Migration Court of Appeal (MCA) is located within the Administrative Court of Appeals in Stockholm.

This chapter is devoted to analysis of court decisions, but the context of recent migration politics in Sweden is important to understand their importance. In the last decade, migration has become the central issue of Swedish politics. Between 2000-2009, the number of annual asylum seekers was relatively stable, averaging roughly 25 000. From 2010, the numbers started increasing, culminating with the arrival of almost 163 000 asylum seekers in 2015, more per capita than any other European country. From a rhetoric of openness in the summer of 2015, symbolized by a famous speech in which Social Democratic Prime Minister Stefan Löfven declared that ”my Europe doesn’t build walls”, severe border restrictions were put in place by November 2015. (Kazemi 2021) Many of these restrictions amounted to a governing through classification, such as an imposition of identification requirements which brought arrivals to a sharp halt. While carried out by a Social Democratic government, at the center of the larger political development has been the far-right Sweden Democrat party. Their central focus has been to stop immigration to Sweden, while also wholly reconfiguring integration policies in a much more punitive direction. The party’s massive growth in successive elections has upset traditional power alliances in the Parliament and lead to major shifts in Swedish politics, with effects beyond migration policy. After being isolated for years, they developed a close co-operation with the new center-right Government after the 2022 elections. The party has spearheaded a major reframing of the political debate around migration: towards increasingly restrictive policies, an intimate association of immigration with crime, and nationalism at the heart of Swedish political debate.

At the center of controversy in 2015 were migrants from Afghanistan, especially unaccompanied minors. This group can be seen as manifesting many central contestations in asylum policy. In 2015, more than 35 000 unaccompanied minors sought asylum in Sweden, the largest number of any European country. Over 90% were male, and of these, two thirds were Afghan nationals (Lundstedt 2020). The great majority came during a few months in the fall of 2015. Most were by their own admission in their late teens, and many had their identities questioned by both the Migration Agency as well as in highly

infected public debate. This focused on age – were they actually children, and how should it be established that they are? As part of the Migration Agency's standard procedure, a person seeking asylum as a child was treated as such until the time of decision, unless the person was visibly an adult. This meant that during process, most Afghan unaccompanied asylum seekers were granted access to expansive integration measures, including a social worker, municipal-run housing and schooling (ibid). The massive numbers meant processing dragged out for months and years, resulting in great suffering for those forced to wait in limbo. As the date for decision neared, many of the applicants couldn't prove their stated age according to the Agency's standards, which lead to their administrative age being adjusted to that of an adult. This adjustment made classification highly tangible: the ability to go to school, to keep living in the same housing, the access to social workers and other parts of the child-adjusted reception were abruptly withdrawn, and deportation issues often followed. The drawn-out situation was the source of great political conflict, with calls for both amnesties and increasing controls (Kazemi 2021). However, as the prominence of migration control grew to unequalled levels, the Swedish government had seemingly relinquished major control instruments to migration courts, now a central actor in the migration control regime.

Classification and control in the court

The Migration Court of Appeal only accepts cases that on procedural matters (Johannesson 2018). The court's method of using individual cases as a basis for formulating general rules imply that the decisions represent a form of *microcosmos* of migration governing. The processed individuals are representatives of the categories they are fitted into – the deliberation over how to determine the danger of an unaccompanied minor in Afghanistan, is the deliberation of all people in his or her situation. Since these are prejudicial decisions, they are highly consequential and inform processing at the Migration Agency.[26]

At the outset it can be stated that in 20 of the 30 cases, the MCA delivers a negative ruling for the applicant, either in the sense that their appeal is denied or that the lower court's granting of a permit is revoked. Looking beyond numbers, the way the court's decisions are structured is understood here as indicative of the tradition of legal interpretation. The analysis of the decisions show

[26] The courts anonymize the applicants by letters, usually "A". While sorting different people under the same heading may be confusing, it also evokes the court's view of the asylum seeker: an abstract applicant whose case functions as a basis for formulating a more general rule. To avoid confusion between the different levels of asylum processing, the first-tier migration courts are referred to as "the lower court" and the Migration Court of Appeal as the MCA.

that they clearly align with the expectation of Swedish legal interpretation (Carlson 2019): deductive, top-down, and reliant upon prepatory works. In general, the decisions are structured as follows:

1. A summary of the case: the applicant's story, rulings of the Migration Agency and the lower court, and appeals against them.
2. The claims of the applicant and the Migration Agency.
3. The reason for the MCA's decision, consisting of:
   (a) developing a framework of applicable legislation, consisting mainly of prepatory works and case law
   (b) an application of this to the case, resulting in
   (c) a decision

As part of the third step, the MCA frames the specific question of the case, or puzzle, in front of the court – such as what it means to make an identity probable (UM5156-09), how to decide if someone is a child (UM6147-11, MIG 2014:1) or how to determine the danger of Afghanistan (MIG 2017:6, MIG 2018:6). In this analysis, each puzzle is understood as a classification dilemma, necessitating a solution for purposes of maintaining the ordering system upon which migration control rests.

In solving these dilemmas, setting out a legal framework is hugely consequential. This is the step which most clearly expresses a mode of legislative interpretation: an attempt in reducing the uncertainty of the case to be able to reach a decision, and in doing so, singling out some rather than other legal sources as being of importance. As many researchers have pointed out, asylum processing is characterized by high degrees of uncertainty (Hamlin 2014, Evans Cameron 2018). Because of this, a central issue is setting up rules for how to gather, assess and aggregate information.

The analysis has been structured around three classificatory dilemmas which are central to the MCA's work in making refugees governable: how to organize individuals into cases, how to assess age for purposes of establishing identity, and how to determine the danger of Afghanistan. There is a certain temporal dimension to this ordering, with the first theme being more important in the early part of the court's work, even though temporality is not as central to the analysis as in Part I. As a response to each dilemma, the analysis focuses on how the MCA attempts to develop solutions and articulate principles for how migration should be governed. In doing so, the court's work shows patterns of legal interpretation and its position in the migration regime is clarified.

What is a case? Organizing an individual

The first dilemma concerns perhaps the most basic issue in rendering people as cases: to define what a case is and how to organize the processing of people to fit this administrative standard. The importance of this issue is witnessed in the fact that it occupies many of the MCA's early decisions in the material. These are generally ones in which fundamental issues are set out, to be followed by a greater level of detail in later decisions.

In the following paragraph, we get a summary of the case of "A", whose claim is representative of many Afghan asylum seekers:

> As a basis for his application, he pleaded mainly the following. He is an Afghan citizen, Shia Muslim, of Hazara ethnicity and born in the province Ghazni. Together with his family he moved to Iran when he was little. The reason that his family left Afghanistan was that the Taliban had attacked the family's village and that his father sold land which belonged to him and his brothers. After some time in Iran his father wanted to return to Afghanistan, but his brothers threatened him and said they would kill him because he sold the land. … Upon a return to Afghanistan, A risks being killed due to the land conflict that his father was involved in… He risks persecution due to his religion as a Shia Muslim and his Hazara ethnicity. By his mere presence in Afghanistan, he risks becoming subject to the indiscriminate violence in the country. He belongs to a group especially worthy of protection for two reasons, that he is a child and that he belongs to the Hazara ethnicity. (MIG 2017:6)

A's claim is representative in the sense that it's both varied and compounded. It includes several potential protection reasons, some of which concern his personal history, others which concern the general nature of Afghanistan. In this sense, it's a reflection of the chaotic and mixed reasons for which people flee. From the point of those assessing asylum cases, it is an illustration of how information and certainty are scarce. How has the MCA gone about reducing this complexity to make people governable?

In its earliest rulings, the MCA can be seen as setting out the basic parameters of what a "case" is and how its processing should proceed. Much of this concerns allocating the burden of proof between the applicant and the state. In navigating this issue, the MCA's reasoning is guided by a search for legislative intent. In it its very first case in 2006, the MCA asserts that

> It is an established evidential-legal principle within the Administrative Court Procedure Act that the person who applies for a benefit has the burden of proof that he or she fulfils the demands set in the law for the benefit to be granted. The person who applies for a residency permit has thus, initially, the burden of proof for establishing the actual circumstances required for a residency permit are present (MIG 2006:1)

The burden of proof placed on applicants, importantly, "includes that the applicant must make his or identity probable" (MIG 2007:12). In other words, the burden of proof is the reverse of that applied in criminal cases: unless you prove that you need protection, you are assumed not to be. However, this is balanced by the state's responsibility to investigate cases, as expressed in the ex officio principle. The MCA explains that "it's in the nature of things that many of the circumstances claimed by asylum seekers can't be made probable with written or other evidence" (MIG 2006:1) This is also rooted in general principles of Swedish public administration:

> It is, however, not only the applicant which is responsible for establishing sufficient information decision making. Public agencies and administrative courts are responsible, according to the ex officio principle, for making sure cases are sufficiently investigated. This means that both the Migration Agency and the migration courts should lead the investigation and make sure necessary information is entered into it. (MIG 2012:18)

The balancing of the twin burdens of proof – the applicant's and the state's – can be seen as a basic tension in asylum processing. In a situation of information scarcity, it is very consequential how responsibility is allocated for providing proof. The tension arises out general laws of Swedish administration, and the MCA's interpretation mirrors the rooting of early asylum processing in administrative laws in the 1970's. How to interpret this balance, however, is an open question, requiring determination in specific contexts.

Sequentially organized individuals

In developing solutions of how to render people as cases a major feature of the MCA's decisions has been to organize the assessment *sequentially*. This means that assessing what an applicant is and what category they belong to has been separated into a series of distinct steps for the purposes of establishing a clear order of determination.

In one passage reflecting this, in one of its early decisions, under the heading of "How to process cases", the MCA details the order in which the processing should take place:

> It's in the nature of things that many of the circumstances which are claimed by an asylum seeker concerning his or her need for protection can't be made probable through written or other evidence. In the prepatory works, it is highlighted that evidence requirements can't be placed too high when concerning risk for persecution, because any complete evidence which clearly supports such a risk can rarely be produced… The applicant's story should thus be accepted if it appears credible and probable. In assessing the credibility of an

> applicant's story, according to the benefit of the doubt, weight should normally be given to the story's coherence and a lack of being plagued by contradictory information. The circumstances which are claimed can't contradict commonly known fact, such as relevant and current country information. (MIG 2007:12)

Here, we see how a search for legislative intent guides the MCA in its reasoning. This is also manifest in how cases are organized by compartmentalization into steps, such as weighing credibility and probability. Based on its interpretation of preparatory works, the MCA outlines a general order:

> the Agency/courts initially must assess whether the applicant has made his or her identity and stated citizenship or country of origin probable. The Agency/courts thereafter should assess the invoked protection reasons. This implies two parts: partly the issue of whether the applicant's story is sufficient in itself for the criteria for protection to be fulfilled (first part), partly if the applicant has made his or her asylum story probably either through invoked evidence or by being deemed credible and therefore awarded the benefit of the doubt (second part). (MIG 2007:12)

The sequential organizing, with a heavy focus on procedural aspects (though not necessarily procedural rights), is a major element of the MCA's attempts to make migrants governable. It represents a strategy for dealing with uncertainty: By bracketing asylum into a series of discrete steps, it designs a procedure for valuing and aggregating information.

The consequential nature of this is highlighted by the instances when the lower court has made different assessments. In the case referenced above, the lower court had granted the applicant a permit, judging that his story of government persecution "spans a considerable timespan and contains a multitude of details." (MIG 2007:12) The lower court had assessed the claim as a *whole*, rather than a set of distinct parts. For example, the applicant had initially provided documentation papers later deemed false, but the lower court argued that

> the fact that A initially claimed that his name was AA does not mean that he provided false information. The name forgery can obviously have come about to confuse potential informants from the home country. (MIG 2007:12)

In its ruling, the MCA criticizes the lower court's reasoning. Based on a reading of prepatory works, they point to the need for a "careful separation between what is evidence and what is the applicant's story." (MIG 2007:12) Guided by an understanding of legislative intent, they say courts should

> first assess whether the applicant has made his story probable through the evidence he or she has plead before they start the credibility assessment. It is thus not correct to, as the migration court has done in this case, first start the assessment of the applicant's general credibility before the evidence is valued. (MIG 2007:12)

As a heuristic for creating certainty in an uncertain situation, these procedural rules are of immense importance. In the specific case, the MCA says, since the applicant "consciously provided false information about his identity", this should impact the valuing of evidence. This leads to A not being granted the benefit of the doubt, the evidence seen in another light, and the MCA revoking the permit (MIG 2007:12).

Sequentially organized categories

The sequential organizing has been applied to several types of boundary management; the above concerns the order in which people's claims should be assessed. The MCA has also highlighted the need for a specific order when placing people into categories. In one case concerning an entire family, the lower court had given them a residency permit based on what it called a "collected assessment" of their situation: seeing their lack of network in their home country, the very difficult situation for internally displaced people there, "the children's short but intensive adaptation to Sweden", the lower court argued that "the family is in such a situation that it's not reasonable to deport them." (MIG 2007:33) Here we see a tendency of assessment of wholes to benefit applicants, because it allows piecing together several bits of information which might not be convincing one by one.

Such a mode of reasoning is wrong, the MCA declares, saying that the lower court has mixed up protection categories and applied decision rules in an inconsistent manner. Aiming to clarify "the boundaries between protection needs and particularly distressing circumstances", the MCA argues:

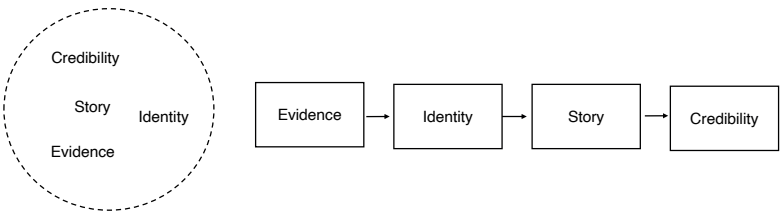
> In the prepatory works to the Aliens Act, the government strongly emphasized the importance of accurately investigating asylum reasons or other protection needs before the issue of a permit according to particularly distressing circumstances is eventually investigated. The government declared, among other things, that a permit for protection reasons should not be mixed up with a permit given on other grounds. There is a lack of a clear distinction between the different permits in praxis and protection reasons are investigated, to a certain extent, within the rules concerning humanitarian reasons. The boundary between protection reasons, as a whole, and humanitarian reasons must therefore be clarified… This is of great significance, not only to the application of law, but also the individual. In refugee investigations, the benefit of the doubt is applied. (MIG 2007:33)

Here, we see clearly how the tradition of legislative interpretation informs boundary management, as the MCA's decision is directly informed by preparatory works. The lower court is seen as having mixed protection grounds and thus aggregated information in the wrong way. Instead, when judging the categories one by one, the MCA found that (a) the law allows for deportation of the family to another part of their country, and (b) the situation of the children does not fit "restrictive application" concerning humanitarian reasons that the government had intended (MIG 2007:33) Through a separation of the categories, the MCA revokes the family's a permit. It does, however, acknowledge the difficulty of matching people with categories:

> It's not possible to generally exhaust which situation in the borderland between protection needs and particularly distressing circumstances which belong to the one or the category. In the individual case, the grounds for a permit can be connected. For example, persecution or harassment can lead to physical damage or traumatization, regardless if this is to be treated as a sickness, a disability or personal suffering, which in a balance could be grounds a residency permit. (MIG 2007:33)

In these and other similar cases, two different modes of aggregating information appear. In terms of organizing an individual sequentially, these can visualized (Figure 5):

Figure 5: Organizing an individual



Different ways of aggregating information: Wholes vs. sequences.

The specific order of steps differs from case to case and should be seen as a continuously evolving legal standard for rendering people as cases. But what the different iterations share, importantly, is the notion distinct steps need to be passed one after another, with the decisive consequences for the ones that follow. In other words, in the version outlined above, you *first* assess evidence, *then* identity, *then* story and *then* credibility. In actuality, however, the distinctiveness of steps is hard to uphold, since the issues flow into one another.

Blueprints for making people processable

Through sequential organizing, the MCA's work has contributed to an organizing of the asylum process which is also the also organizing of its subjects. It is suggested here that the MCA's work can be seen as developing *blueprints* for how to assess cases, functioning as a form of *intermediary* actor in the migration regime between the government and the Migration Agency. Prejudicial decisions, of course, by definition set out general rules for how to interpret laws. But more than this, the MCA's work is generally driven by a top-down, state vision for how to manage the boundaries in the classification system, articulating interpretations from a rule maker perspective. The development of these blueprints, in line with Swedish legislative tradition, is often grounded in a search for legislative intention. It fits well with a deductive, legal tradition (Carlson 2019). The decisions, in essence, often represent solutions for how the Migration Agency should process people. In developing sequential organizing to make people governable, the MCA's work illuminates what can be seen as ordering principles concerning the role of the court in the migration regime, which is close to that of the state. This setting up of a process by which to aggregate information under conditions of uncertainty, in an institutional sense represents a specific regulatory blueprint (Scott 2014).

These blueprints rest on a rendering of people as cases that makes them legible through as a discrete series of steps. This is an articulation of administrative identity that requires individuals to be able to fit into a government vision – to be able to first make their story credible, then presenting sufficient evidence, and so on. The way the MCA articulates a case requires people to be made legible in the eyes of the state for the purposes of processing. While the sequential order they have outlined isn't entirely new, it has contributed to hardening procedures, imposing a series of legally formalized requirements on applicants.

The exactitude of the processes is often what make it hard for applicants to comply with. Being deemed "credible" or presenting a "probable" story is often exceedingly hard. In its work, the MCA attempts to definitively clarify the boundaries of administrative identities, and as such, the procedure represents a certain theorization of social control (Lascoumes & Le Gales 2007). This control is seen here as oriented toward making people *processable* – that is, setting out rules for being able to reach decisions. This rests on simplifying and standardizing case processing through strict and rigorous rules. The less account that is taken of contextual variation, the easier decision-making

becomes. A primary focus in processability thus concerns setting a sufficient level of certainty to make a decision and administratively complete the case.[27]

The lower court has on occasion been more willing to accept the information as presented by applicants, valuing it as a whole. The MCA, on the other hand, has been more fixed on fitting the provided information into a state standard, as a series of steps. This is not a uniform pattern of difference, but it does appear in several cases, and represents two modes of utilizing information in making people legible.

Identity: Assessing and producing age

The second dilemma is a major feature within the sequential organizing of processing: how to define and enforce identity. Proving one's identity is among the first steps in sequential order as defined by the MCA (MIG 2006:1, MIG 2007:12), and it is one of the most consequential. This speaks to how the problem of "unknown" people, in the eyes of the state vision, is a central issue in making migrants governable.

The MCA has repeatedly clarified that identity lacks a legal definition. In practice, however, it means name, age and citizenship. In several rulings, the MCA discusses how identity is fundamental to the *state's right* and responsibility to control migration (MIG 2006:1, MIG 2014:1, MIG 2018:17). According to the MCA, identity is

> such formalities which are necessary for the public to control arriving foreigners in different respects. It has been made clear that as a general rule there is a very high evidence requirement for this information. That the formal identity is proven is usually strongly motivated for the purpose of accommodating both general and individual interests. (MIG 2018:17)

These interests include both national and EU border control. In assessing identity, as already discussed, age has been particularly contested. Since the 1990's, child rights have grown in importance in Swedish asylum law (Lundstedt 2020). The result has been to make age a hugely consequential administrative boundary – being processed as an adult or child can decide whether you get to stay as well as the terms of your reception. Several cases concern how to define and interpret childhood (MIG 2014:1, MIG 2017:6, MIG 2018:6). As a general rule, the MCA has re-iterated several times that

[27] Which is different from carrying the decision out – for example, people can often be ordered deported, even though the country to which they are to be deported doesn't accept returning nationals.

> From the prepatory works to the Aliens Act, among the following is made clear… the best interests of the child can't go so far that, in principle, being a child becomes a criterion for which you can get a residency permit. (MIG 2017:6)

Based on their reading of legislative interpretation, child rights thus require interpretation in the context of specific situations.

Stabilizing age

Preceding the interpretation of child rights in different contexts, however, has been to define and stabilize what a ”child” is. Here, again, differences between the lower court and the MCA illuminate principal issues in the courts' boundary management. Several cases concern how to interpret who can be classified as a child. In one instance (MIG 2007:14), an adult man (M), is given a residency permit through being placed in a humanitarian category by the lower court. This is premised upon classifying him as a child. While his chronological age isn't contested, the lower court judges his situation as sufficiently similar to that of a child, which was makes the humanitarian category applicable:

> M is soon 29 years old and formally speaking not a child. By the inquiry in the case, it is made clear that he suffers a grave mental illness and that he does not have the mental capacity or maturity required to manage by himself in everyday life… the migration court is of the opinion that the section should be applied analogously in his case. (MIG 2007:14)

The MCA pushes back, based on its reading of legislative intent, asserting that

> 'Child' refers to a person who is under 18 years. 'Child' is thus in the application of the Aliens Law a clearly defined legal term. In the prepatory works it is clear that the lawmaker has chosen the method of legal definition to avoid having to decide who is a child in different circumstances… Against this background, the MCA finds no room to depart from the clear and unambiguous definition of children in the Aliens Act. (MIG 2007:14)

Consequently, the permit is revoked. A similar situation is seen in a case concerning an Afghan asylum seeker who claims that he qualifies for protection because his situation is like a child's. The person, A, ”left several pieces of information concerning his age, including that he was under 18”. (MIG 2018:6) Having turned 18 during case processing, however, he is faced with common problem that in asylum cases, it is the time of decision and not the time of application which is the relevant one (MIG 2007:5). A claims that

> even if he is in the sense of the law an adult, conditions haven't changed since he turned 18. He risks ending up in the same situation as a child in Afghanistan. Based on his young age he should be equated with a child in assessing his protection needs. (MIG 2018:6)

A is denied by the Agency on the grounds that he isn't a child. Similar to other cases, however, the lower court grants him a permit based on a broader assessment of his case:

> A is not a child, but still very young. His parents are deceased and he has no other relatives in Afghanistan. Considering his lack of network, young age, and the current situation in the country, he risks ending up in a similar situation as a child… Even if his ethnicity in itself doesn't qualify him for a need for protection, he belongs to a minority which is at risk in Afghanistan (MIG 2018:6)

This type of *analogous* reasoning sits close to assessing cases as wholes. It more closely approximates the stated protection needs, rather than starting from the point of whether a person fits into state categories. The Migration Agency's reasoning, by contrast, illustrate a hardness of the child-adult boundary: they assert there is no evidence that "adult males" are a group at risk in Afghanistan, and that A, as an adult, "ought to have good conditions, especially in comparison with a child, to develop a network and establish himself" (MIG 2018:6). The MCA, after a lengthy assessment on the uncertain situation in Afghanistan, agrees with the Agency:

> A claims that, due to his young age and his personal circumstances, he risks ending up in a similar situation as a child in Afghanistan, and that he in assessment of his protection needs should be equated with a child. The assessment of protection reasons for children and adults, however, are different in several ways. According to the first chapter, tenth paragraph in the Aliens Act, for example, decisions about children should consider the child's health and development, as well as the best interests of the child. These cannot be applied analogously to a person over 18 years old.
>
> In UM911-16, children in Afghanistan were judged at risk of being exposed to child labor, forced marriage, prostitution, sexual abuse and forced recruitment. Child labor is a child-specific form of ill treatment, which can't form grounds of protection for A… Neither in terms of prostitution nor sexual abuse, the country information does not state that adult men are at risk of this in Afghanistan. (MIG 2018:6)

Based on this interpretation of legislative intent, the MCA contributes to entrenching the boundary around "child" by a *literal* interpretation, defined by the number of a days a person has lived.

In a similar case, a young man from Afghanistan sought to reunite with his mother and seven siblings who had already been granted a permit in Sweden (MIG 2015:21). He applied before turning 18, but became an adult during the processing of his case. He argues that a special relation of dependency is in place, a legal term that can make applicants qualify for a humanitarian category of protection. This is much easier for children to access than adults, meaning that age is decisive to A's claim. A's claim is a good account of the interdependent whole of a claim which doesn't fit well with state standards:

> He is living at home, single, newly 19 years old and has always been surrounded by his younger siblings and his mother. He is now left alone in the origin country with his father, a man who regularly beats him. He has no other relatives. Considering factors such as family, civil status, age and connection to another country it should be considered clear that there is a special relation of dependency between him and his relatives living in Sweden… He is still dependent on his mother, economically as well as emotionally. He lacks employment and, therefore, economic opportunities in his origin country. That his mother couldn't reunite with him when he was still under 18 years old was due to circumstances beyond her control, that is, the processing of the Migration Agency (MIG 2015:21)

The lower court grants A a permit in a "collected assessment" of his situation, similarly to the other cases above. Again, however, the MCA pushes back, reiterating that turning 18 years old represents a hard, precise boundary which makes someone an adult:

> A is now 20 years old. He is an adult young man who has lived his whole life in Afghanistan and has grown up in the environment of the country's culture and language. The emotional bonds between A and his mother and siblings do admittedly appear very strong, particularly against the background as regards the conditions in the home. The vulnerable position which A finds himself in at home with his father and the circumstances surrounding the mother's escape from the same man, makes the natural bond between relatives appear extra strong between A and his mother. A must, however, be assumed to be able to live his own life, independent of his parents and siblings… In a collected assessment of the circumstances in the case, the MCA therefore finds that there is no special relation of dependency. (MIG 2015:21)

The state vision: What counts as proof

Yet another major feature in both the sequential processing as well as the specific issue of identity and age, is the weighing of evidence. For travelers from many countries, such a literal interpretation of age does not represent a problem. But in the conditions of uncertainty surrounding Afghan asylum seekers, the hard age boundary is a major issue. It imposes requirements which often

clashes with the information that Afghan applicants can provide. For example, one applicant asserts that "he found out his approximate age by his father when he was fifteen years" (UM6147-11). Another says that he "asked his mother when he left Afghanistan how old he was, and she had answered 16" (MIG 2014:1). But while they need to prove their identity, the documents available to them often aren't deemed sufficient, since the Migration Agency doesn't trust them. This lack of trust is often shared by the courts, as in the assessment of a *tazkira*, the most common Afghan identity document:

> The high court concurs in the low court's assessment of the evidence value in the tazkira and other documents provided by A to prove his identity. With these documents he has not made his identity, including the stated age, probable. It can be added that authenticity controls of tazkiras are not meaningful, because the basis for their issuing can't be controlled. (MIG 2014:1)

In assessing the value of identification documents, the MCA relies on a previous case concerning Somalia, a country seen as similar to Afghanistan:

> The high court is aware of the problems to prove identity for applicants from, among other countries, Somalia. It is, however, not possible for the legal implementer to generally or for certain groups of applicants allow exemptions from the demand for a proven identity and passport. Such exemptions are the responsibility of lawmakers/government to arrange. (MIG 2011:11)

This is an area where it becomes especially clear that the rulings of the MCA are closely aligned with a state vision, by upholding a standard of proof which excludes many documents. Not coincidentally, this is close to the Migration Agency's standard of proof. As this represents administrative simplifications which are hard for Afghan applicants to fit their lives into, the MCA's stance has major consequences for the ability to be granted protection.

The cases are full of attempts of applicants desperately providing information, but the Agency and courts only accepting a few sources. In one case concerning an Afghan applicant trying to prove his age, for example, provides "a tazkira, a birth certificate and several other documents" (UM5156-09), but this is not seen as satisfactorily having proven his age. As the MCA states in one of its decisions, it prefers documents over applicant's stories:

> When considering information about age it is, similar to other information about an applicant's identity, primarily written evidence which is relevant. (MIG 2014:1)

It is not any written information, however. In several cases, applicants' whose age is deemed uncertain have acquired certificates from officials who've they encountered during their reception, such as social workers or doctors, who attest that they believe the claimants to be under 18 years old (UM6147-11). This is generally not seen as relevant by the MCA, however. In one case, for example, an applicant claims to suffer from deteriorating mental health and suicidal tendencies. An extract from his medical journal is presented to prove this, but it is disqualified since it doesn't conform to the standards of a doctor's certificate outlined by the National Board of Health and Welfare:

> Doctor's certificates should contain information about the doctor's employment position, why the certificate has been issued, what information the assessment is based on and what medical conclusions that can be drawn from this information. In valuing a doctor's certificate, journal extracts can be of significance, but individual journal notes without any connection to a doctor's certificate rarely have a high evidence value. (MIG 2007:35)

The MCA's rulings aren't uniformly against applicants in terms of setting the standard of proof, however. In one case, the potential reunification of an Afghan family hinged on the death of the father in the family. The issue concerned whether the father had actually died, and what type of certificate should be required for proving this. The Agency initially denied a permit, saying the provided death certificate was of a "simple standard" (MIG 2015:8). However, the MCA argues differently:

> As the MCA has previously argued, there can in certain cases exist circumstances which motivate a lowering of normal evidentiary demands (MIG 2012:1). This can concern people seeking protection who come from countries where there is a lack of functioning authorities that can issue identification documents. In such countries there is also, in general, a lack of authorities which can issue documents of the kind which is relevant in this case. There can, due to this, be reasons to question the credibility of the documents being invoked. It is well-known that such circumstances have been in place for several years as concerns documents issued in, for example, Afghanistan (prop. 2005/06:72, p. 69). There, it can be problematic or even impossible to produce the necessary written documentation which supports that a person is deceased. A high evidentiary demand would therefore, in practice, make it nearly impossible to prove this. (MIG 2015:8)

For this reason, the MCA concludes that the family has provided an "in all accounts similar description of the events surrounding the father and the circumstances of his death", and are thus seen as indeed having made reasonable that the father had deceased (MIG 2015:8). This is deemed satisfactory, as opposed to the evidence standard of certainty which the Agency had applied.

Producing age

The issue of age represents a specific instance of reaching a decision under conditions of uncertainty. Because issues of identification are basic to any classification system, a person must, for the purposes of being processed, be defined by a number of characteristics. This means that certain information, despite being perceived as unknown, is still mandatory - a person *must* have an age. There is no neutral alternative since an administrative identity is required for making a decision. This is what makes the burden of proof so consequential in terms of age: if you can't prove that you are a child, and it's not obviously apparent that you are, you are treated as an adult. Here, the MCA's blueprints are important in setting out decision rules, authoritatively saying how a person can be made processable despite uncertain information.

Due to the literal interpretation of age as the number of days lived, it represents a very precise legal boundary. This represents a problem in relation to the court's standard of proof. This is discussed by the MCA in different cases:

> At present, there is not medical or psychosocial method which exactly can determine the chronological age of a person in their upper teens… It is of course unsatisfactory that such an important issue as what age an asylum seeker is can't be investigated, especially as it in certain cases can be wholly decisive for the issue of a residency permit. The asylum seeker, however, has the burden of proof for his age and if he can't make probable that he is a minor, then he should be regarded as an adult. (MIG 2014:1)

> there is no exact medical procedure for determining a person's real chronological age. The issue of whether the asylum seeker has made his identity probable must therefore be assessed from case to case according to the burden of proof rules applicable in cases of this kind. An asylum seeker without an accompanying adult who claims to be a minor thus has the burden of proof for his or her stated age (UM6147-11)

For applicants whose age claims aren't accepted, they get processed as adults. Due to the placing of the burden of proof, this is the general tendency: unless having proven their age according to state standards, applicants are treated as adults – which often means they are denied a permit and ordered deported.

Moreover, the MCA generally doesn't argue against the Agency's assessments of proof, but rather upholds the discretion of the agency as most suited to assess how to make migrants legible. In an important way, the processing administratively *produces age*, by inscribing information onto applicants, representing a form of enforcement of the classification system. Perhaps the most concrete illustration of how age is produced through the process in this way are medical age tests. In a lengthy investigation typical of its search for

legislative intent, the MCA discusses the framework for the Migration Agency's use of medical age examinations:

> There are no provisions in the Aliens Act regulating how the assessment of age should be conducted… After discussions with the Migration Agency, the National Board of Health and Welfare published a decision in 2012 concerning medical age examinations for, among others, unaccompanied minors in their upper teens, when the child claims to be under 18 years old, but where there are signs that the person's real age is older and it isn't apparently obvious that the person is adult…. Age examinations must fulfil demands for objectivity, science, quality and rule of law. For example, it's not acceptable to use unscientific methods such as appearance assessments. There are great uncertainties with medical age examinations. Today, there is no medical or psychosocial method which can exactly ascertain the chronological age of a person in their upper teens. Medical methods, as in doctor assessment and x-rays, appear to be the most fit for purpose methods. Age examination of persons in their upper teens with the help of radiological methods, however, always show a margin of error of between +/-2 to +/-4 years. (MIG 2014:1)

This margin of error of several years is of course highly consequential when most applicants are by their own admission in their upper teens, and the day you turn 18 represent a precise legal boundary. At this point, age examinations aren't carried out by staff at the Migration Agency but commissioned to forensic staff at the National Board of Forensic Medicine. The x-rays focus on dental and skeletal development.[28] Here is an example of how the results of the investigation is utilized for arguing that the applicant is over 18 years old:

> According to the medical age examination of A in the form of a dental X-ray provided by a forensic dentist at National Board of Forensic Medicine in July 2012, the estimation of A's chronological age, if the choosing the for him most favorable method of interpretation, 19,2 years with a 16% probability that he was under 18,2 years and a 2,5% probability that he was under 17,2 years… Despite the result of the investigation, in line with recommendations from the National Board of Health and Welfare and the UNHCR, being interpreted favorably for the applicant, and even though they are characterized by great uncertainty, in the absence of acceptable identification documents, this makes it probable that A, at the time of the X-ray in July 2012, was over 18 years old. (MIG 2014:1)

[28] The issue of medical age tests for unaccompanied minors became subject to a set of major reforms following the developments of 2015, after which the usage of age tests dramatically expanded. These policy reforms do not form part of this chapter, which focuses on the work of the MCA. Importantly, though, the MCA's work recounted here can be seen as a developing a framework within which successive reforms were made.

This illustrates how, despite an acknowledged lack of validity, age tests are given weight as one of the few available pieces of evidence which are trusted, providing information which make applicants processable. Similarly, in another case using medical age examination, the lower court argues that ”the X-ray examination conducted in the case must, however, be considered an indication that A is an adult”. Therefore, as in the case above, the applicant was treated as an adult, and being an ”able-bodied young man”, this made deportation possible (UM6147-11).

In these and other cases, it is illustrated how the processing system enables what can be seen as an administrative production of age for the purpose of making individuals governable. Information is inscribed onto applicants through their legal processing. In this sense, the state-defined age becomes real in the pragmatist sense of being real in its consequences (Bowker & Star 1999:ch1), since a person who is processed as being over 18 years old can be denied a permit.

Analogous and literal interpretations

The organizing of the asylum process into sequences or wholes represented different ways of *aggregating* information. In the boundary maintenance surrounding age, a related dichotomy concerning how to *interpret* boundaries appear: analogously or literally. These mirror and are closely related to the whole/sequence dichotomy: the organizing of the process into a set of distinct steps aligns with a literal interpretation of boundaries, whereas the treatment of the process as a whole aligns with an analogous interpretation.

These two modes of interpretation can be illuminated by Bowker & Star’s (1999:ch2) typology of Aristotelean and prototypical classification. The former, defined as *literal* here, works according to the idea that people/objects can be classified “according to a set or binary characteristics that the object being classified either presents or does not present” (Bowker & Star 1999:62) – i.e. child/adult is defined as being either over or under 18. The prototypical idea, defined here as *analogous*, by contrast relies on fuzzier boundaries, where people rely on “a broad picture in our minds” of what something such as age is, “and we extend this picture by metaphor or analogy when trying to decide if any given thing” fits this category (Bowker & Star 1999:62).

Patterns in difference of legal interpretation between the lower court and the MCA allows us to see these differences. While the work of the lower court is marked by greater variation, it is clear that the MCA interprets boundaries in the literal vein, asserting age as the number of days lived. In terms of the ordering principles this points to, it reinforces the way the MCA, guided by a search for legislative intent, develops legal interpretations which sit close to a

top-down, state vision of subjects. The main issue is often how individuals fit within the classification system, rather than whether they deserve protection. This leads to requirements on individuals posed by being identifiable on terms set by the state vision which often represent an insurmountable barrier – saying that Afghan applicants must have identification documents which adhere to Swedish evidence standards, despite individual applicants not being responsible for the evidence standards of Afghan state documents. Within the highly asymmetrical relationship between a lone asylum seekers and state actors, the high court has on several occasions affirmed a high bar for the burden of proof.

Since the MCA's interpretation is drawn from a search for legislative intent, it strengthens the perception of the court as a form of intermediary between the government and the Agency, developing authoritative interpretations of the law as it requires articulation in specific cases. In the analogous interpretation of boundaries, the question, as framed by the lower court, is often the opposite, focusing on whether people deserve protection and fitting them into the classification system depending on the answer. But in the literal understanding of the MCA, the upgrading of child rights can contribute to drawing a firmer boundary between categories, showing how the clarification of rights can have a powerfully exclusionary effect.

Nationality/danger: Assessing Afghanistan

The third and final dilemma concerns another specific issue in the sequential order: how to determine the danger of Afghanistan. Besides identity, assessing the danger of the origin country is an integral part of the asylum process. As we saw in Part I, a general assessment of a country enables collective assessments of people. For the Agency and the courts, Afghanistan represents a problem: it is generally seen as opaque, illegible and quickly shifting.[29] For purposes of developing an understanding of it, the MCA utilizes a range of country documentation, at the center of which is information produced by the Migration Agency. Here are two examples of the MCA's analysis of Afghanistan:

> There is extensive reporting on the situation in Afghanistan. The reports, however, give a fragmented view of the situation, which is also changing very rapidly…. The security situation in Afghanistan has recently deteriorated. The conflict level is particularly high in the Helmand province. The violence there is of such intensity that each and every person is at

[29] The Taliban takeover in the summer of 2021 represents yet another dramatic step in this unpredictable development. The cases here all precede that takeover.

> risk of suffering from indiscriminate violence. The provinces with the lowest level of conflict are Panshir, Bamyan and Daikundi. These provinces should be characterized as having serious conflicts. Other provinces suffer from armed combat and the conflict level is higher than in the provinces where the serious conflicts rage. The situation in these provinces qualify for requisite of internal armed conflict. (MIG 2017:6)

> Violent conflicts and widespread violations of human rights make the situation in Afghanistan very complex. The country information, however, doesn't given an unambiguous picture of the situation. There are reports that the situation has worsened in recent times, but also reports the number of civilian causalities decreased slightly during the first nine months of 2017. Even if there are major differences regarding the conflict intensity in different parts of the country, the conflict has intensified with a great number of violent clashes and complex attacks which have led to many civilian casualties. The Afghan government controls Kabul, major population centers, important transportation routes and provincial capitals. The government, however, is challenged by the Taliban which threaten provincial capitals and have temporarily taken control over central transportation routes. Direct armed conflict has during the period 2015-2017 become the most common cause of civilian deaths. (MIG 2018:6)

This uncertainty needs stabilization to make Afghan individuals processable. Therefore, how to properly investigate the danger of Afghanistan is a frequent topic in the MCA's decision.

This is an area where state simplifications are vociferously contested by applicants, whose claims don't fit into them. For example, many Afghan unaccompanied minors have in actuality spent much of their lives as undocumented migrants in Iran. They protest deportation to Afghanistan, a country where they have sometimes barely spent any time at all. But such arguments are generally discounted by the MCA, which is focused on identity as defined in the state vision: nationality, name and age. This means that a person's case is tried against what their nationality is on paper. Such is the case of an applicant, DH, who have lived as an undocumented migrant in Iran. This is used as an argument for assessing his case against the circumstances of Afghanistan:

> DH has made probable that he lacks a right to live in Iran. His application is therefore only assessed against Afghanistan. Against the background of him not having been in Afghanistan since he was a small child, and his limited knowledge of his home region, he has not made probable that he has any connection to a specific village or province in Afghanistan. His claim is therefore tried against Afghanistan as a whole, and the current situation there. (MIG 2017:6)

Here, applicants' protests can be seen as attempts to argue against the narrowness of the state vision they are fitted against, ones which are often fruitless.

In the analysis there are what can be seen as *threshold* concepts – ones such as "internal armed conflict" and "indiscriminate violence", which, if they are deemed to cover an entire country, give its citizens a presumption of asylum. Such was the case for many Syrians who arrived in Sweden in 2015. But throughout the period studied here, neither the Agency nor the MCA has classified Afghanistan as being in such general danger. Because of this lacking danger, the concept of "internal flight" is applicable:

> The issue of an internal flight options has been discussed several times in the prepatory works to Swedish migration law. In bill 2005/06:6 it is stated that the internal flight option, i.e., the principle that the individual can access protection in other parts of his or her home country, is an internationally established principle and that the demand for a lack of protection in the home country and the issue of a so-called internal flight option should be assessed in the same way, no matter which type of persecution is at hand. In bill 1996/97:25, furthermore, is stated that in the case of internal conflicts which don't cover the entire country, there is an internal flight option and in such cases there is, of course, no need for protection in Sweden… It is, in other words, a precondition for a protection need that there is no internal flight option… It is thus not possible to arrive at the conclusion that an asylum seeker is in need of international protection without having assessed this person's ability to settle in another place within their home country's territory. (MIG 2013:2)

Based on this reading of legislative intent, the level of danger in a country sets the conditions for making deportation possible. However, this is tied to a different burden of proof than age:

> The prepatory works to Aliens Act discusses the burden of proof on parties and the Migration Agency's investigatory responsibility in asylum cases… The Agency has a larger investigatory responsibility in asylum cases than in many other application cases…. In asylum case, protection needs must be weighed. The Agency must therefore be an active part in the investigation and make sure any ambiguity of significance for the case is investigated. However, the applicant has a major influence of how far the investigation can reach, because, in many cases, it is the applicant who has the answers, and the agency can't force the answers. (MIG 2012:18)

> The Migration Agency has the burden of proof for there being an internal flight option which disqualifies the applicant for international protection… For an internal flight option to exist, two criteria are of decisive importance. First, it must be a relevant alternative, i.e., the individual must in another village or another place have access to effective protection, and second, it must be a reasonable that the foreigner avails himself or herself of such an option (MIG 2009:4)

In the tension between the burdens of proof, based on the reading of legislative intent, it's the responsibility of the Migration Agency to prove danger, a part of its duty to conduct a thorough investigation.

However, this seemingly adversarial relationship actually reinforces the tendency of the MCA to function as an intermediary in relation to the Agency's processing. Their blueprint for how to assess internal flight has not proven hard for the Agency to adhere to. The MCA has disqualified Agency decisions only pointing to Kabul as a destination for internal flight, and instead required more alternatives in order to fulfill the criteria of relevant and reasonable alternatives. After this, the Agency simply started using standard phrases also including two or three other major cities. This has generally been deemed by the MCA as sufficient, and through a minute difference, the deportation decisions were made legitimate. Here, the MCA's rulings act as a form of guidelines for making Agency decisions legally legitimate.

Re-interpreting categories

Much of the analysis above has been focused on what can be seen as restrictive tendencies in the MCA's work, with the court aligning closely with a state vision of migration control, organizing the asylum process in a manner which is hard for Afghan applicants to fit. There are, however, also countervailing tendencies, even though these are not similarly strong in the material.

In one such exercise, the MCA sets out to define whether children in Afghanistan, as a category, have general protection needs. This is elaborated as part of the blueprint for how different classes of people should be separated in the migration control system:

> the boundary between protection reasons and other grounds for residency permits should be clearly drawn with the purpose of not diluting the asylum institute so that the right of asylum can be protected… From the prepatory works to the Aliens Act, the following things are made clear. A residency permit for protection needs should not be confused with a residency permit given on other grounds. Children can have their own protection needs and these reasons can't, by definition, be assigned to the sphere of humanitarian reasons. Principally, protection grounds and other grounds, such as the current humanitarian reasons, should be separated… The oversight inquiry has highlighted a number of circumstances which, according to the inquiry, in a collective assessment can form part of the reasons for a residency permit on humanitarian grounds. This includes social banishment, traumatization due to torture or similarly severe experiences in the home country or as a result of human trafficking. (MIG 2017:6)

The MCA here emphasizes keeping ’protection’ and ’humanitarian’ cases separate, which can be seen as part of its development of guides for how to process cases according to what it interprets to be legislative intentions. Based on these general concerns, the MCA turns its focus onto children in Afghanistan as a specific category:

> Concerning the situation of children in Afghanistan it is evident from the investigation, however, that children are particularly subjected to violence and can be subjected to child labor, forced marriage, prostitution or sexual abuse. Children constitute a third of all civilian victims of the prevailing violence. They are also recruited to ongoing conflicts for combat or are exploited by conflict parties in other ways. It also occurs that children are recruited to carry out suicide bombings (MIG 2017:6)

The MCA sees this as meeting the threshold concept of ”inhuman and degrading treatment”, which in turn means that Afghan children, as a category, qualify for protection status. It is one of the few decisions in the material in which the MCA awards protection to a new category. As such, it also represents an example of how the MCA’s work contributes to the ongoing differentiation in the classification system. By virtue of the decision, Afghan children are classified as a category in need of protection, marking a clear case of status production and people being made up through legal interpretations (Hacking 2007). However, as we have seen previously in the chapter, how to determine whether someone is actually a child is far from straightforward.

Dual roles: The Migration Agency’s production of proof

In assessing the danger of Afghanistan, country information is vital. For this purpose, the MCA utilizes sources called country reports. There is an abundance of such documents from different sources, such as the U.S. State Department, the UNHCR, the EU’s asylum agency, and the U.K. Home Office. The MCA has discretion in which information to rely upon. To the extent that they do utilize different sources, it becomes clear that the assessment of Afghanistan differs across sources. This is especially clear if we focus on the ethnic minority of Hazaras. They make up nearly 10 % of the Afghan population. Many Afghan applicants belong to this group, seeking protection from ethnic and religious persecution. Here are two examples:

> He claims he is persecuted and harassed in all of Afghanistan. Because he and his family are Shia Muslims and Hazara, they are exposed to persecution and harassment from Sunni Muslims (Pashtuns and Tajiks). He has no social network to return to… Because it’s commonly known in his village that he has been active in the Wahdat party it doesn’t matter that a few years has passed. He can never settle in Afghanistan without his past and his

> Hazara identity becoming known. He will be persecuted, punished and probably killed. (MIG 2008:20)

> During processing, A has, through his public counsel, as the main ground for his asylum application stated that he belongs to the Hazara ethnic minority, which makes him particularly exposed to Taliban attacks. (MIG 2012:18)

Assessing the danger facing the Hazara minority is an example of how the assessment of danger in Afghanistan differs across sources: for this group, you can find arguments that Afghanistan is both dangerous and safe. Which information to rely upon is therefore crucial. And in the cases studied, it becomes clear that MCA consistently relies upon the Migration Agency's country reports, produced by their expert unit Lifos. Here are two examples of MCA analysis, which largely recount information from the Migration Agency:

> Many Hazara have senior positions in the civil service and politics, both nationally and locally. Hazaras are perceived as ambitious and send their children to school, as well as being overrepresented within higher education. Network, belonging and local knowledge are important protection mechanisms in a country such as Afghanistan. The growth of the Islamic State (IS) and the wars in Syria and Iraq have worsened the relationship between Iran and Saudi Arabia, which has a negative effect on the Hazara situation in both Iran and Afghanistan… Even if the country information makes clear that situation for Hazaras in Afghanistan is difficult, the high court doesn't consider that the conditions qualify for Shiite Hazaras to be a group at general risk of persecution upon return. (MIG 2017:6)

> The situation for Hazaras in Afghanistan has improved markedly since the fall of the Taliban regime in 2001. Despite this, many Hazaras feel the subject of continued discrimination in Afghan society. Targeted abuse occurs against Hazara, but sectarian violence has generally been relatively low in Afghanistan during later years. The Taliban movement has an interest in growing nationally and their strategy is to win as broad a support as possible, which means they don't want to create tensions between ethnic groups (MIG 2018:6)

In response to such claims, applicants often utilize a range of sources which give a different assessment. Here, an applicant questions the Agency's assessment of Afghanistan by using reports from other agencies:

> The Swedish Ministry of Foreign Affairs explicitly highlights the vulnerable status of Hazaras, but despite this, the Migration Agency, in their guiding decision, states that Hazaras need not fear abuse or discrimination in Kabul. The decision references the government's bill concerning Sweden's continued participation in the international security force in Afghanistan. The bill states that the security situation has deteriorated in Kabul, as well as the country's Eastern and Western regions… UNHCR reports that the security

> situation in the country has severely deteriorated in the last year…. The assessment of internal flight, in general, should not only focus on the individual's prospects for finding a livelihood and a place to live in a new place, but also other circumstances pertinent to the individual as well as the country's particular social structure. The last condition is of particular significance in Afghanistan, if not decisive. Lacking a functioning legal system and judicial authorities, in Afghanistan, the individual's only source of safety, security-wise and economically, is his or her social network in the form of the family or the clan. This primarily exists in their in their home village. Despite the formal ability to travel and settle anywhere in the country, this is associated with great risks in practice, and is not a real or reasonable alternative. The social and cultural obstacles are almost insurmountable. The real legal system governing social relations between people in Afghanistan is, in all essence, founded on tribal and clan structures. (MIG 2008:20)

This can be seen as protest to state vision, where the assessment of Afghanistan is administratively simplified to focus on the existence of formal legal structures and institutions. These, the applicant claims, are insignificant to actual Afghan life. But in general, the MCA does not take such appeals into account. Instead, they follow the Agency's assessment. The Agency thus in practice has a dual role: the MCA requires the Migration Agency to prove Afghanistan is dangerous – but they also use country analyses from the Migration Agency as the main source to evaluate the danger of Afghanistan. This is yet another indication to the role of the MCA in the migration regime, reinforcing the overall conclusion of a closeness between it and the government and Agency.

The Migration Agency's ability to produce fact also is another important aspect in making migrants processable. The lack of general danger in Afghanistan presented by the MCA and the Agency is counter to almost all Afghan applicant's accounts. This classification of Afghanistan's danger as ambivalent leads to a need to individually demonstrate a need for protection. If individuals can't, this makes deportation possible:

> A's protection reasons are grounded in the general situation in Afghanistan. The certificates concerning his health, issued in October 2007, can't be qualified as showing him suffer from such severe mental illness that it's unreasonable to refer him to an internal flight option. Neither considering what A has stated concerning his Hazara ethnicity and personal circumstances in general is sufficient for being unreasonable to refer him to an internal flight option. The conditions can't be seen as such that A in, for example, Kabul is at risk of serious abuse due to internal armed conflict or other severe conflicts. (MIG 2008:20)

Only in one of the included cases does the MCA conduct an analysis of Afghanistan which differs from that of the Agency's. This is triggered by a ruling

that the Agency has not fulfilled into investigatory responsibility. The MCA then assesses the Agency's view on Afghanistan, using other sources:

> The central administration has been strengthened but is still weak. In many cases, there is a lack of a functioning legal system to investigate and prevent crimes. In other cases, representatives of the legal system choose to refrain from legal action due to the perpetrator's political contacts or ethnic or tribal belonging. The lack of a functioning legal system means it's impossible to establish an independent and impartial administration of justice, and rule of law in a common sense doesn't exist. Laws exist in the conventional sense, but the knowledge of them is limited. Corruption is widespread and contacts with policymakers, as well as military and economic powers, are near-guarantees for impunity. (MIG 2009:4)

Here, the assessment is less deferential to the Agency, and less informed by Swedish interests of migration control. By including a wider frame of information, they reach a diametrically different result, testifying to the importance of how to assess information.

The court as an intermediary

Since their inception in 2006, migration courts have become a central actor in the Swedish regime of migration control, speaking to an increasing judicialization of Swedish migration policy. Traditional assumptions around the role of courts in migration would lead us to assume that the court should protect migrants' rights against state actors (Joppke 1998, Hollifield et al 2022). This, however, often does not seem to be case for Afghan asylum seekers in Sweden. By contrast, it appears to be the opposite: the Migration Court of Appeal often *protects the right of the state* to control migration. This reinforces Johannesson's (2018) findings on the lower migration courts. It is understood here as rooted in a specific tradition of legislative interpretation and role of administrative courts. The cases of the MCA line up well with an ideal type of Swedish legal interpretation: deductive in nature and oriented towards a search for legislative intent. In the deliberation of migration cases, this means the court has generally enforced a top-down vision of migration governing. Rather than being in opposition to the state, the courts can be seen as part of the migration control regime, fulfilling an *intermediary* role of interpreting policy for the purposes of implementation. This interpretation, of course, is not straightforward or mechanical. It can lead to seemingly unintended consequences, such as the extension of protection to Afghan children. But overall, the results here indicate that the introduction of migration courts in Sweden has not led to as great a loss of government control as initially might seem to be the case.

In terms of the ordering principles in the MCA's role as an authoritative boundary manager, this is manifested in the way the MCA develops *blueprints* which make migrants *processable* for the Migration Agency. This should be seen as setting out standards for how to legitimately aggregate information under conditions of uncertainty. The notion of processability singles out how MCA's decisions reinforce the state's ability and authority to enforce its vision of the world. Uncertainty characterizes asylum cases and decisions are required, and for this purpose the MCA has developed blueprints for how gather the necessary. This ensures that the pieces of information required from a state perspective is supplied. It also reveals ow fundamental classification is to migration governing, a basic theorization of social control (Lascoumes & Le Gales 2007): the entire presumption in the court's work is that individuals must be knowable and classifiable according to state standards.

The notion of processability, importantly, has a *productive* aspect. On the face of it, the issue of identity is often treated in the cases as neutral and objective. Instead, the MCA's work can be seen as contributing to an administrative standardization of identity and a production of administrative facts about people – to assign people an age or nationality, for example, in turn allowing a decision to be reached. Whether or not people fit the categories or their assumptions, making people processable allows cases to be cleared. The requirements placed upon applicants often presupposes identity information which requires a state with a significant bureaucratic capacity, such as an extensive population registration that registers people's chronological age. This is not in place in Afghanistan, and Afghan applicants bear the consequences. Even though these difficulties are acknowledged by the MCA, the fact that Sweden has one of the oldest population registries in the world (Brambor et al 2020) can contribute in setting expectations about what can be known about people.

In adhering largely to a state vision, the MCA only accepts few forms of evidence and generally focuses on legally simplified, top-down aspects of identity and danger, which means all those aspects of asylum claims that do not fit the narrow frame of state procedure are seen as irrelevant. This is a powerful example of how, in a classification system, *ignorance fulfills the function of maintaining order* (Bowker & Star 1999). Not allowing too much information, as well as only accepting information in a standardized format, is a central heuristic for making migrants processable. Here, the MCA fulfills an important role in simplifying migrants as well as the complex classification system which surround them. In its closeness to state actors, the MCA tends to aggravate rather than compensate for the massively unequal power situation which applicants face when applying for asylum.

In terms of interpreting boundaries, the difference between *analogous* and *literal* interpretation is of great significance. Here, the MCA has contributed to an increasing legal differentiation and hardening of precise legal boundaries between categories. Its work is testament to the continued centrality of classification in Swedish migration governing. The literal interpretation of categories represents a continuation of the long historical process whereby that which one was the means of migration control – the design of different target populations for purposes of distribution of benefits and burdens – has now increasingly become its ends. Whereas the focus of policy elites in Part I was often on *who should get protection*, oriented towards securing results, the focus of the MCA is generally on *the process by which protection is assessed*, oriented towards standardizing procedures. The developments charted in this chapter can thus be seen as a further reinforcement of the development from flexible to a precise ideal of control in migration governing. It is evident, for example, in the increasing attention paid to child rights – it generally becomes focused on assessing who is a child, rather than why certain groups deserve protection.

In sum, Sweden's tradition of legislative interpretation clearly informs the way in which the MCA use individual cases to formulate general rules for the processing of migrants. This has major consequences for applicants, whether it concerns the assessment of danger or the literal interpretation of age. The results make clear how the rooting of the target population in the context of Swedish public administration procedure is vital to the making up of refugees. This affects the role of the court in the migration regime, where the MCA can be understood as an intermediary actor. Rather than standing in opposition to state decisions, the MCA often engages primarily in interpreting and setting out exactly how to implement legislative intent.

8
Canada: The Oversight Court

Answer: What about me?
Question: You don't exist yet. Look for yourself – the paper sheets are completely empty.

Mikhail Shishkin, *Maidenhair*

In Canada, in contrast to Sweden, there are no specific migration courts. The Federal Court, located in Ottawa, has long been the destination for appeals. However, the introduction of the Immigration and Refugee Board and subsequent reforms to it enacted major changes to the procedure by which applicants are processed and the route by which they get to the Federal Court.

Continuing the pattern of asylum reforms established in Part I, Canada's new asylum processing system was the subject of contestation throughout the 1990's. It was reformed through the 2002 Immigration and Refugee Protection Act (IRPA), which is still in force today but has been majorly amended since. The IRPA reform, according to Rebecca Hamlin (2014:ch3), was intensely focused on relieving administrative burdens and making processing more efficient – in other words, representing a clear institutional continuation of developments outlined in Part I. The resulting asylum procedure, as carried out by the Refugee Protection Division (RPD) within the Immigration and Refugee Board (IRB), is portrayed by Hamlin (2014:ch5) as one which values efficiency and expertise, characterized by high levels of bureaucratic centralization and insulation from political influence. The IRB is characterized by both Hamlin (2014) and Evans Cameron (2018) as enjoying a comparatively strong reputation among both policymakers and refugee advocates.

As part of the IRPA, an internal appeal organization within the IRB, the Refugee Appeal Division (RAD), was set to be established. However, it took a decade for this reform to be implemented, since several governments were worried instituting appeals would delay refugee processing and make it more costly (Rehaag 2012) – yet another instance of historical patterns repeating themselves. After pushes from advocacy groups the RAD was finally

introduced in 2012 as part of a set of broader reform which, again, were engineered toward expediting processing. Since then, the RAD represents the first level of appeal for applicants within Canada or at its border. It's not available for applicants who seek protection from overseas, through Canada's extensive resettlement programs. These instead go directly to the Federal Court.

While Canada's immigration and refugee programs have been extensively studied on the political level, its rarer for studies to focus on courts, especially outside the domain of legal studies. Hamlin (2014) portrays the Federal Court's judicial review as relatively uninvolved in the IRB's operations. This is true in the sense the Federal Court is only involved in a small minority of cases, ultimately overturning very few of the IRB's total number of decisions. But the more significant influence of the Court's decisions can be argued to be their prejudicial function, acting as a guidance for the IRB's processing. This study is devoted to those exceptional cases that make it to the Federal Court.

The requirement to obtain leave – i.e. permission – by the Federal Court to have one's case heard has been studied by Rehaag (2012). In a study of over 23 000 applications, he shows there is massive variation in the patterns by which judges at the Court grants applicants review. The results show how judges have major discretion in applying the law, and that for applicants, it comes down to the "luck of the draw" (Rehaag 2012:3) due to which judge happens to be processing one's case. The cases that do make it into the Court's judicial review are subject to Canadian administrative law norms, such as the deference shown to administrative tribunals. These norms also include, according to Evans Cameron (2018:40) that a "reviewing judge *must* and *may only* uphold a tribunal's decision if that decision is reasonable."

Within Canadian migration policy, in contrast to Sweden, Afghan applicants are not an exceptional group that has been the subject of tailored legal proposals or extensive public debate. Instead, Afghans can be characterized as a mid-size, average origin country, if there is such a one. Over the decade from 2013 to 2023, almost 7 000 Afghan applicants lodged an application at the border or inland. (Immigration and Refugee Board 2023) The resettlement numbers, meanwhile, are much higher: from 2015 to 2023, more than 46 000 Afghans were resettled (Government of Canada 2023). The demographic is often composed of families, as opposed to unaccompanied minors in Sweden. Nor has immigration, while always a major issue in Canadian politics, played center stage in a similarly dramatic upheaval of the established political landscape as in Sweden. While the context differs, the cases, however, concern the same types of evidence, the assessment of danger in the same places, and threats posed to the same minority groups.

Classification and control in the court

Similar to the Swedish MCA, the Federal Court's method of using individual cases as a basis for formulating general rules imply that the decisions represent a *microcosmos* of migration governing, in which the processed individuals are representatives of the categories they are fitted into. There are, however, major differences in the way the courts process cases.

In the Federal Court (FC), the approval rate is slightly higher than in the Migration Court of Appeal – in 15 of the 30 decisions, the Court rules for the applicant. Beyond the numbers, however, there is a much greater variation. Looking at the way the decisions are structured, as a sign of the tradition of legal interpretation, there are similarities to the MCA in Sweden, but also clear differences. The general order is as follows:

1. A summary of the case: the applicant's story, rulings of the Immigration and Refugee Board or visa officer and lower-level courts, and appeals against these
2. The claims of the applicant facing the Federal Court
3. The reason for the Federal Court's decision:
   (a) setting the standard of review,
   (b) developing a framework of applicable case law,
   (c) an application of this to the case, resulting in
   (d) a decision

While the two first steps are essentially identical, the critical third one that sets up the framework of legal interpretation is clearly different. It still centers around a classification dilemma, such as how applicants should prove where they live (2016 FC164), what it means for a decision to be reasonable (2016 FC313) or how to value evidence when the applicant's credibility is in question (2014 FC547). These dilemmas necessitate a solution for the maintaining the classification system. And the process should still be seen as concerned with rules for gathering, assessing and aggregating information in order to make decisions under the uncertain circumstances that characterize asylum cases.

However, the judges of the Federal Court go about this in a different way than their counterparts in the Swedish MCA. First, the FC consistently engages in explicitly setting out a degree of deference to administrative agencies – that is, discussing to what degree the court should trust the IRB or visa officers at overseas posts. Second, there is not a single mention of prepatory works in any of the FC's decisions, even though the legal text of the Immigration and Refugee Protection Act is sometimes referenced. Instead, the judges rely almost entirely on case law. The overall number of cases is much greater in the FC,

which means that judges have a large body of law to choose as their potential framework of reference. In using case law to frame the case, the inductive nature of common law proceedings shines through. Judges in the Swedish MCA tend to use cases to independently frame a puzzle which, in a deductive fashion, is deemed to be of general importance to migration regulation. The judges of the Federal Court, instead, work inductively: they assess questions set out by the applicants (even though these are re-formulated in legal terms), and rarely start by situating them in the broader context of migration regulation. This method generally aligns with the tradition of legal interpretation outlined in the common law tradition (Bogdan 2013).

The analysis is structured around three classificatory dilemmas which are central to the FC's work in making refugees governable: how to set the standard of review, how to assess where people live for purposes of establishing identity, and how to determine the danger in Afghanistan. These dilemmas closely mirror those of the Swedish MCA and address similar issues, even if traditions of legal interpretation and different migratory patterns makes these manifest in different forms. As in the Swedish case, there is a certain temporal dimension to the ordering, with the first theme being more important in the early part of the FC's work, even though temporality is not as central to the analysis as in Part I. As a response to each dilemma, the analysis focuses on how the Federal Court attempts to develop solutions and articulate principles for how migration should be governed. In doing so, the patterns of legal interpretation and the court's position in the migration regime is clarified.

Selecting the standard of review

The first dilemma in Canadian Federal Court concerns how to render people as cases, a dilemma which is manifested in a different form than in Sweden. In Canada, it has come to center on applying a *standard of review*. This means how to set the degree of deference that the Federal Court should exercise when reviewing administrative cases. The standard of review speaks to how to aggregate and assess information. But it does so in a manner informed by the boundary between legal and administrative spheres that it's central to the Canadian tradition of legislative interpretation.

In the following paragraph, the case of AA is introduced, which is representative of many asylum cases:

> The applicant is a citizen of Afghanistan. He recounts that about 35 years ago, a dispute over land escalated between his family and the family of his father's cousin (AK). The applicant states that in an exchange of gunfire between the applicants father and AK, two

> of AK's sons were killed. The applicant's family moved from the Paktia province to Kabul out of fear of retaliation. The applicant states that his family believes that his brother was killed in Kabul 21 years ago by a hit man hired by AK. The police were advised, but nothing was done. The applicant claims that in 2003, he was shot twice from a moving vehicle while he was walking on the street. He believes that he was shot by his family's enemy. He also claims that he received threatening calls about a year after the shooting. He states that due to the conflict in Kabul, the police could not assist him. He did not report the incident to the police until 2013. The applicant arrived in Canada via China and Dubai in 2013.
>
> The RPD found that the applicant had not provided sufficient reliable and credible evidence to establish his identity or the credibility of the risks he alleges on a forward-looking basis and had, therefore, not established his claim under section 96 or subsection 97(1). With respect to the applicant's identity, the RPD found that, given the inconsistencies with his Tazkira card, his travel from Dubai to China with a UK passport bearing his picture and other credibility issues, it was not satisfied that he had established his identity as AA rather than BB (the name on the UK passport) or some other person. (2015 FC 1028)

Here, the complexity of refugee cases is evident: AA's case is extended over a long time period and concerns threats related to land conflicts and the lack of protection by the Afghan state. Issues of identity and credibility are central, and the placing of people into categories developed in Part I abound. How, then, have judges in the Federal Court gone about reducing such complexity?

The standard of review originates out of a Canadian tradition of balancing the boundary between legal and administrative spheres. It sets out the degree to which the Federal Court should trust the processing of agencies and implies a decision rule for how the Federal Court should weigh information. Writing of judicial review, a judge in one case cites an oft-referenced passage:

> Judicial review does not consider the decision in parts; instead, judicial review is concerned with the decision as an organic whole. Moreover, judicial review is not a treasure hunt for errors. Judicial review instead is concerned with justification, transparency and intelligibility within the decision-making process. (2016 FC164)

Between 2008 and 2019 the *Dunsmuir* case by the Supreme Court provided a framework (2008 SCC9) for how to conduct review.[30] In *Dunsmuir*, the Supreme Court developed two standards of review. The first focuses on whether administrative decisions are *correct*. As outlined by a judge in one case,

[30] *Dunsmuir* was replaced by *Vavilov* (2019 SCC 65), in 2019. This changed the standards of review but addressed the same issue of judicial deference. Nearly all cases covered here were decided under *Dunsmuir*.

> When applying the correctness standard, a reviewing court will not show deference to the decision maker's reasoning process; it will rather undertake its own analysis of the question. The analysis will bring the court to decide whether it agrees with the determination of the decision maker; if not, the court will substitute its own view and provide the correct answer. (2016 FC164)

The correctness standard is adversarial, implying that the Federal Court should essentially try the substance of the case. The second standard focuses on whether administrative decisions are *reasonable*. As outlined in oft-referenced passage from the *Dunsmuir* framework, reasonability deals with the

> existence of justification, transparency, and intelligibility within the decision-making process and also whether the decision falls within the range of possible, acceptable outcomes which are defensible in respects of the facts and law (2008 FC1310)

This standard is more deferential. In determining reasonability, the Court is not supposed to question the basis of individual ingredients in the decision, but rather focus on the process by which it was reached. For example, if a permit is denied because a person is deemed to fall outside of a refugee category, the important thing is that this is transparently and clearly argued for in the decision, and not whether the person is actually deserving of protection.

In the *Dunsmuir* framework, the decision of which standard to apply builds on what type of issues are stake. There are three types of issues: law, fact and mixed fact and law. In the ideal schema, on issues classified as "facts", more deference is to be given to administrative agencies (i.e. reasonableness standard), but in issues of "law", such as matters of procedural fairness and natural justice, there is less deference (i.e. correctness standard) (2012 FC134).

Setting the standard of review is part of every case, meaning that a Federal Court judge classifies what it is about and sets a standard of review. Such classification is guided by how earlier decisions have classified similar cases, as explained in one decision:

> The first step in ascertaining the appropriate standard of review is to ascertain whether the jurisprudence has already determined in a satisfactory manner the degree of deference to be accorded with regard to a particular category of question (2010 FC589)

The reliance on earlier court decisions aligns with common law tradition (Bogdan 2013). In a representative paragraph, one judge is looking to previous case law to determine what standard of review to apply to the issue of how to place refugee applicants in different classes:

> In Azali v. Canada (Minister of Citizenship and Immigration), 2008 FC 517, F.C.J. No. 674 at paras. 11-12 (QL), Qarizada v. Canada (Minister of Citizenship and Immigration), 2008 FC 1310; F.C.J. No. 1662 at paras. 15 to 18 (QL); Kamara v. Canada (Minister of Citizenship and Immigration), 2008 FC 785, F.C.J. No. 986 at para 19 (QL); and Alokzai v. Canada (Minister of Citizenship and Immigration), 2009 FC 266, F.C.J. No. 374 at paras. 18 to 20 (QL), it was found that decisions of visa officers determining if applicants are members of the Convention refugees abroad class or the country of asylum class essentially raise issues of fact or of mixed fact and law, and are consequently to be reviewed on a standard of reasonableness; however, issues concerning natural justice and of procedural fairness raised by such decisions are to be decided on a standard of correctness. (2010 FC589)

The standard of review represents a highly consequential aspect of the way in which judges review cases. By explicitly setting the level of deference to the investigating agency, the standards of review should be seen as two modes of organizing the procedure by which information is assessed and aggregated.

Judicial deference in information aggregation

Depending on which standard of review is chosen, the procedure is very different. As a telling sign of the enduring importance of the systems of selection, several of the Federal Court cases concern how to place applicants into the classification systems elaborated in Part I. In a case which reflects many common elements, an Afghan family have fled to Pakistan, fearing danger from a powerful former neighbor. They are denied by an overseas visa officer for not fitting into any legal category:

> The visa officer determined that the Applicant did not meet the requirements for immigration to Canada. Citing the relevant legislative provisions and after carefully assessing all of the factors relative to the application, the officer was not satisfied that the Applicant was a member of any of the classes… Although the officer sympathizes with the Applicant and his family, their reasons for having sought refuge do not correspond to the relevant categories. (2013 FC1229)

During the review stage, the family also claim protection as Hazaras, fearing ethnic and religious persecution. Based on case law, the judge reviews the case on a reasonability standard. This leads to the conclusion that their Hazara status is irrelevant, because the original denial had been reasonably argued:

> The Applicant's ethnic and religious status was not presented as a separate ground of risk. In those circumstances, it was therefore reasonably open to the officer to conclude that the Applicant had not discharged his burden of establishing that he would be seriously and personally affected by armed conflict or massive violation of human rights in

> Afghanistan… Much like the officer, this Court is sympathetic to the family's situation but is unable to conclude that the officer erred in determining that the reasons for having sought refuge do not correspond to the definition found in section 147 of the IRPA of a member of the Country of asylum class (2013 FC1229)

The importance of the court's deference to agencies is illuminated by a similar case which is instead assessed on correctness grounds. Again, an Afghan family have fled to Pakistan and are seeking shelter in Canada. A Canadian visa officer deems that their application lacks credibility, suspecting that they are fabricating part of their story to access to protection (2013 FC67). In this case, however, the judge focuses on a procedural issue: whether the entire family was actually present at the interview and had the chance to respond to credibility issues. The visa officer claims some applicants were not present, while applicants claim they were and that the visa officer didn't give them the chance to respond. The judge accepts the applicant's claim, setting the standard of review at the more adversarial correctness standard.

Crucially, the adversarial nature of the assessment is seen in how the judge independently brings in new information into the case. This is a testament to how the standard of review sets out rules for information aggregation. The visa officer had described it as damaging to the applicants that they brought up claims that they were jailed, beaten and tortured by the Taliban at the interview, but hadn't mentioned this in their application form. This negative credibility finding, the judge says, "is at first blush, reasonable", but

> However, and most importantly, given the fact that the Officer did not mention the interviewees' explanation that the principal applicants is illiterate, and that the principal's son in Canada is illiterate, it was unreasonable for the Officer to ignore that part of the explanation. The Officer erred in this regard (2013 FC67)

The introduction of the applicant's illiteracy represents new information that contextualizes interpretation. The assumption of a more adversarial stance is often associated with such introduction new information, shifting overall assessment of the case. Based on case law, the judge finds that

> the Officer's assessment of whether the applicants met the definition for being members of the Convention refugee abroad class requires a different consideration. On this question, this Court found in Adan at para 39 that it was incumbent on an Officer assessing an application for permanent residence in Canada as a member of the Convention refugee abroad class or as a member of the Humanitarian-protected persons abroad class to exercise his legal duty to consider whether the applicant's claim supported a finding of persecution based on his membership in a minority clan, even though the applicant did not explicitly

> raise that ground himself, and the Officer had failed by not doing so… The Officer merely states the following at the end of the decision, after finding the applicants were not members of the country of asylum class. (2013 FC67)

This rather technical account illustrates how the standard of review is decisive and sets a standard for the Court to aggregate information in a different manner than visa officers or the IRB. The decision of which standard of review to apply structures the rest of the case, implying major consequences for status production and the ability of applicants to have their review granted or not.

Credibility as coherence

Similar to the Swedish MCA, the Federal Court has also been occupied with how to properly assess a case. And the procedure set out by FC judges often builds on the separation of a case into different steps. One such critical step is determining applicant's *credibility*, which in absence of decisive evidence is often a determinative issue in the entire case. Judges have several times discussed the importance of credibility, saying that when

> the Board makes a general finding that the claimant lacks credibility, that determination is sufficient to dispose of the claim unless there is independent and credible documentary evidence in the record capable of supporting a positive disposition of the claim. The claimant bears the onus of demonstration there was such evidence. (2009 FC266)

Here, we see how "credibility" is a separate step in a sequential order, and a negative decision on this issue has repercussions for the assessment of the entire case. The sequential aspect of the assessment is even clearer in that credibility is associated with *coherence* – in other words, to be credible is to have a coherent narrative and evidence which spans across the sequences of asylum processing. In one passage which is representative of many cases, a visa officer outlines such concerns:

> The Visa Officer was not satisfied that the evidence presented at the 2015 interview was credible. The Visa Officer noted the inconsistencies in the answers given between the 2011 and 2015 interviews as to why the Principal Applicant had left Afghanistan and did not think a return was possible. The Decision also noted that the Principal Applicant had not declared the prior 2010 application during the interview. The Visa Officer acknowledged the Principal Applicant's response to the procedural fairness letter, but stated that the concerns regarding the inconsistencies remained unsatisfied. As a consequence of finding the Principal Applicant not to be credible, the Visa Officer was unconvinced he had a well-founded fear of persecution. (2016 FC1357)

Credibility is one of the issues in which FC decisions show most deference to administrative agencies, as it is often classified as matter of "fact" rather than "law". In a case reflecting many common circumstances, an Afghan family seeking protection are denied on credibility grounds. Based on a reading of relevant case law, the judge in the Federal Court firmly frames credibility findings as an administrative matter:

> reasonableness review recognizes that the delegated decision maker is better situated to understand the policy concerns and context needed to resolve any ambiguities in the statute (McLean, at para. 33). Reviewing courts must also refrain from reweighing and reassessing the evidence considered by the decision maker (Khosa, at para. 64). At its core, reasonableness review recognizes the legitimacy of multiple possible outcomes, even where they are not the court's preferred solution.
>
> The Federal Court of Appeal confirmed that findings of fact and determinations of credibility fall within the "heartland" of the expertise of the RPD: Giron v Canada (Minister of Employment and Immigration) (1992), 143 NR 238 (FCA). In my view the same applies with respect to credibility findings made by visa officers after an oral hearing, as here. (2019 FC1117)

In another case concerning an Afghan man claiming protection because he had been CEO of a company that provided logistical support to U.S. troops in Afghanistan, the IRB deny his claim on what it saw as inconsistencies giving rise to credibility concerns, such as different birthdates on documents and changes to the claim during processing. The judge upholds this:

> I agree with Mr. A that there are some instances where the RPD did engage in improper speculation. For example, the finding that the Afghan officer issuing a passport would have checked the birth registry if there were doubts relating to the applicant's birth date is not based on objective evidence. The conclusion is speculative. However, in light of the many negative and reasonably available findings that had been made relating to the credibility of Mr. A and the authenticity of the documentation, the errors made do not render the RPD's decision unreasonable. The RPD is entitled to considerable deference in making credibility findings (2019 FC11)

In yet another case concerning a couple who claimed to have married and fled Afghanistan due to fears that the wife's family would hurt them, they were turned down by both instances within the IRB on credibility concerns, which centered on issues such as the couple changing important dates in their claim, and that their claim was not consistent with the documentary evidence. Judged on a reasonableness standard, the judge asserts the following of their claim:

> I am not convinced by either argument. The RAD undertook a detailed analysis of each of the many negative credibility findings made by the RPD. In doing so it ultimately concluded that the applicants were not credible witnesses on issues concerning central aspects of their claim… The applicants have not demonstrated that the ultimate conclusions were unreasonable. There was an ample evidentiary basis upon which the RAD could conclude that the applicants lacked credibility. In reaching this finding, the presumption of truth no longer applied to the applicants' evidence (Hussain v Canada (Minister of Citizenship and Immigration), 2004 FC 1186 at para 11). (2016 FC1023)

Here there are both similarities and differences between the Swedish and Canadian cases. On the one hand, both courts occupy seemingly similar places in the migration regimes of the countries, upholding the authority of administrative agencies rather than posing a check to it. But they do so for different reasons. Instead of trying to conclusively organize what a case is, the comparatively important aspect of information aggregation in Canada concerns how much to trust the administrative agency in each individual case. In the case of credibility assessments, judges generally do. From a series of inductive assessments, a body of case law emerges from this, but not in the same deductive, top-down mode as in Sweden.

Internal consistency vs external validity

The centrality of the standard of review for aggregating information in asylum cases represents a difference to Sweden. Similar issues of how much to trust agencies also appear there, but not in a comparatively formalized manner. The centrality of this issue in Canada is seen here emerging from the enduring importance of the policy/law boundary, rooted in a legal tradition in which administrative law has continuously evolved around the degree to which courts should interfere in agencies' implementation of law (Lewans 2016). In this tradition, the Federal Court fulfills a traditional judicial review function, conducting a form of oversight over administrative decisions. In line with this, it is proposed here that the standard of review should be understood as a decision rule that sets out the Court's role in the migration regime. The correctness standard is more adversarial to agencies, implying a greater correspondence with the notion that courts protect migrant rights (i.e. Hollifield et al 2022), whereas the reasonability standard is more deferential.

This is manifested in how the court's decisions are formulated as guidance for agency processing. Whereas the Swedish MCA can be seen as setting out top-down blueprints for how to make individuals processable, the Federal Court judges do not, to the same extent, develop general rules to answers they deem to be of systematic importance for migration regulation – rather, they

conduct oversight by reviewing whether individual asylum decisions are reasonable or correct. From this oversight, a body of instructions emerges gradually. While the order of processing individuals is also sequential here, there is much less of a concerted effort to formulate a set of blueprints through a set of top-down instructions. This difference should be understood as deriving from a common law preoccupation with maintaining a proper boundary between the administrative and the legal spheres.

The standards of review imply two different modes of information aggregation: in reasonability reviews, the focus is on the *internal consistency* of a case, asking whether a decision is justified, transparently and consistently argued. In correctness reviews, the focus is instead on the *external validity* of a decision, essentially asking whether a person deserves protection or not.

Identity: Rooting people in place

The second major dilemma, just like in the Swedish MCA, concerns identity. The issue of satisfactorily proving identity is an early and determinative part of the asylum process, and its central to many of the included cases (i.e. 2013 FC 1025, 2014 FC 547). Similar to Sweden, the burden of proof is on the applicant. This is outlined in many cases, such as the two following:

> the question of identity is determinative of a refugee claim (2014 FC1134)

> Parliament has established identity as a mandatory threshold requirement, the onus of which lies on the applicant to establish. (2012 FC352)

In Sweden, as we saw, a major contested issue concerning identity is age. This is not as common concerning Afghan applicants in Canada since there are much fewer unaccompanied minors. Instead, a comparatively issue in assessing identity is people's location.

Where is your home? Placing people in territory

To reach protection in Canada, many Afghans applicants apply for resettlement from Pakistan. This represents continuation of Canada's long heritage as a resettlement nation. Pakistan has long been the initial destination of many Afghan refugees, and there are estimated to be more than 1.4 million Afghan refugees there as of 2022, many of them undocumented (EUAA 2022). For Canadian state agents, the issue of *where* they actually live has become a central concern in assessing their identity (2015 FC1400, 2016 FC164, 2016 FC354). Just like a person needs to have an age in Sweden to fit with

administrative frameworks, an applicant also needs to be firmly rooted in space to fit Canadian processing formulas – you need to have a specified nationality, and it needs to be clear where you are residing at time of your application.

There are several cases in which Canadian visa officers doubt whether applicants actually live in Pakistan. They see the long border between Pakistan and Afghanistan as porous and suspect that applicants actually live in Afghanistan. This, in turn, would undermine their need of protection, because they then reside in the country from which they are claiming protection. As a visa officer posted in Pakistan put in one of the cases:

> There is a high incidence of fraud in this office and a high number of applicants who incorrectly claim residence in Pakistan in order to pursue refugee applications with this office (2016 FC354)

If visa officers believe that applicants reside in Pakistan, this is often determinative to their claim. Here, for example, a visa officer questions why an applicant traveled from Rawalpindi, in Pakistan, to Jalalabad, in Afghanistan, to obtain identification documents:

> The Applicant states that he is residing in Rawalpindi and travelled to Jalalabad to obtain tazkiras and passports for this interview. It does not seem reasonable that the applicant would travel all that distance to obtain these documents when he can obtain a passport from one of the Afghan consulates in Pakistan who regularly issue passports without tazkiras. (2012 FC239)

The quotation makes clear the importance of written documentation for placing people in territory, a vision in which people are made legible through documents. Similar to the Swedish cases, the cases are full of applicants who protest the perceived narrowness of this vision. Here, one family argues against suspicions that they live in Afghanistan and are trying to explain the lack of a birth certificate for their youngest son, who they claim was born in Pakistan:

> It is submitted that the applicants provided sufficient explanation for the failure to provide a birth certificate for the fifth child. Also, the finding that there is no evidence to prove that the youngest child was born in Pakistan is not based on the evidence and is unreasonable. The officer had the opportunity to see the principal applicant just 13 days before she gave birth. The applicants submit that to conclude that the principal applicant would be able to travel to Afghanistan on such late stage of the pregnancy is not realistic. (2012 FC134)

How, then, have the judges of the Federal Court reviewed decisions concerning the whereabouts of people? On this issue, in several cases, Canadian judges

have been consistently more adversarial to agency decisions than their Swedish counterparts. This is exemplified in one case where a visa officer initially denies a claim due to suspicion that the applicants don't reside in Afghanistan:

> I am not satisfied that you meet the definition of either a Member of the Country of Asylum Class or the Convention Refugee Class. I am not satisfied that you are residing outside of your country of citizenship. You presented few documents from Pakistan, some dated August 2014, appeared extremely recent that you admitted were obtained as part of your preparations for interview, some showed medical treatment in Pakistan in 2011 and 2012 which is often sought by Afghans resident in Afghanistan border areas, our call in letter was returned undeliverable with a post office notation that no one of that name lived at the address and, finally, your explanations for Tazkiras, which require the person receiving them be present at the time of issue, issued last week in Nangharhar, Afghanistan was not credible. (2015 FC1400)

When reaching the Federal Court, this is assessed on correctness grounds, because the applicant accused the visa officer of violating procedural justice by not being able to submit complementary documentation. Rather than looking at the internal consistency of the decision, then, the judge examines the external validity of the visa officer's decision. The more adversarial stance is manifested by how the judge introducing new conditions and contextual information into the case:

> Recognizing the chaotic situation of the past in Afghanistan, original documents may not have been able to be submitted; therefore, a necessity exists to ensure that documents which establish residence in Afghanistan, be verified for their authenticity before speculating that they lead to a lack of credibility (Osmani, above at para 22), as the immigration officer has done. As recognition of the identity and origin of claimants for refugee status (applicants before the Federal Court) may be questionable due to the history of Afghanistan, therefore, a need exists for either verification of data, or greater analysis on the part of decision-makers, in order for fatal mistakes not to be made subsequent to written responses from claimants (applicants) who could be in dire danger. The benefit of the doubt, in respect of the jurisprudence as to the granting of refugee status, must be kept in mind in acknowledging and understanding that the fragility of the human condition, or its vulnerability requires a balancing act. That balancing act requires an analysis as to the fragility and/or vulnerability of the human condition, on the one hand, coupled with analysis as to maintenance of the integrity, and thus security of the immigration system, on the other. (2015 FC1400)

Here we see how the more adversarial position of the court is seen in introducing a broader analysis. This has clear effects on status production: rather than assessing whether people fit administrative simplification, the judge's position

is closer to the claim of the applicant. Rather than just determining whether the procedure by which the agency has assessed the information is reasonable, the judge introduces new information to the claim that impacts the interpretation of information. In the same case, the judge cites the UNHCR Handbook for processing claims, where it is discussed how ”in most cases a person fleeing from persecution will have arrived with the barest necessities and very frequently even without personal documents” (2015 FC1400). The judge criticizes searching for ”complete certainty” in terms of documentary evidence:

> it must be recalled that if complete certainty was desired in respect of refugee claimants, the risk to refugee claimants (applicants) would be such, that it would make the Refugee Convention meaningless, as, in a very large proportion of cases, only corpses or cadavers would be granted refugee status. (2015 FC1400)

This introduction of new information of decisive importance is only present in one Swedish case, where the general tendency is instead that the MCA relies on state agents. Even though the pattern is not uniform in Canada, it is much more common that Federal Court judges introduce new information. In one case, the judge highlights the importance of applicants' illiteracy against visa officer complaints of inconsistencies in application forms:

> Reading the Principal Applicant's response to the Visa Officer's fairness letter, it is clear that he is not well-educated, does not know English, and requires the help of others to complete the forms and to reply to the letter. In fact, he says that "my children know a little bit English"… The Visa Officer must have known, having interviewed the Principal Applicant, that he was dealing with someone who is in a very difficult situation in terms of understanding the application process, what is important and what is not important, and simply translating his own thoughts into English and communicating them (2016 FC1357)

What's more, judges have on several occasions pushed back against the belief of visa officers that applicants must reside out of their own country to be eligible for protection:

> I agree with the Applicant's submission that simply being outside one's country of nationality is required… Note that the verb is not "to reside", nor is it "to live", but rather "to be". In my view, in terms of establishing the quality of connection to a country other than that of their nationality, persons claiming Convention refugee or country of asylum class protection outside Canada need only establish what the statute requires, namely that one "is outside" their country of nationality, i.e., that they be outside such other country. Officers lack the legal authority to require applicants to meet any higher requirements. In my view they also act unreasonably and without statutory authority to the extent they impose, as I

> find they did in this case, a requirement that such claimants reside or live outside the country of their nationality; being outside their country of nationality is enough (2016 FC164)

Similar arguments have been present in other cases (2015 FC673). Together, these cases show a clear indication of a more adversarial relationship between courts and agencies in the migration regime. This is manifested in a processing which is less rooted in a state vision, or the internal consistency of the case, and more oriented toward through viewing the case through the lens of the migrant's situation, and concerned with external validity, of whether the person deserves protection. It is most often manifested when reviewing cases on the correctness standard, but not exclusively so, as the material here shows that the standards are ambivalent and open to interpretation.

What counts as proof: The state vision

The weighing of evidence, similar to Sweden, is of course a major element in the FC's decisions. Many evidence issues concern establishing identity and there are several accounts of applicants which elude state control:

> The applicant stated that he arrived in Canada on September 21, 2009, and filed his refugee claim on September 23, 2009. Since the applicant had no identification documents in his possession at the time of this application, the Canada Border Services Agency (CBSA) immediately detained him. On October 27, 2009, after three detention reviews, the applicant testified before the Immigration Division of the Board that his real name was "AA".
>
> The RPD found there was no connection between the applicant and AA; the applicant had not submitted any credible evidence that he was AA… the RPD added that, even if it had believed that the applicant was indeed AA, there was no evidence on the record that showed an objective basis of risk that the applicant would be persecuted by the government of Afghanistan. (2013 FC1025)

> With respect to the applicant's identity, the RPD found that, given the inconsistencies with his Tazkira card, his travel from Dubai to China with a UK passport bearing his picture and other credibility issues, it was not satisfied that he had established his identity as AA rather than BB (the name on the UK passport) or some other person. The RPD found that the applicant's inconsistent answers about whether he spoke only Pashto or both Pashto and Persian also undermined his credibility relating to his identity (2015 FC1028)

By eluding the systems of selection, these applicants are illegible to control and represent a troublesome population. The way in which the judges deliberate on procedures for dealing with such individuals represent some of the most concrete manifestations of status production within the Federal Court.

Just like all other elements of the Federal Court's work, the weighing of evidence is filtered through the standard of review. In several cases concerning identity (i.e. 2014 FC1134), judges show deference to agencies, which are seen as best positioned to investigate the matter. This is manifested in a reasonability standard, such as in one case in which a judge deems that the "RPD had the benefit of seeing and hearing the applicant, thus it is in the best position to assess the probative value of any evidence produced", and going on to say that

> Essentially, the applicant was not able to present persuasive evidence to the RPD that he is indeed AA. The connection between him and Mr. AA is too tenuous. While he had photographic evidence of a person called AA in the record, it was not clear. This shows a significant gap, a space without an answer. Thus, the RPD was not able to determine whether the person resembled the applicant sufficiently to make a link between the two. This assessment of the evidence was completely reasonable. (2013 FC1025)

This shows how, when employing a more deferential standard, the judges are often aligned with the vision of state agents in making refugees legible. This means that in many cases, the standard of review determines whether applicants are given protection. The same goes for assessing documentary evidence:

> The Board's conclusion with respect to the applicant's failure to satisfactorily establish his identity is based on the evidence. As proof of his identity, the applicant only submitted a photocopy of a Taskera – the national identity card – apparently bearing his name (although the applicant alleges that the translator has made spelling errors in his name)… The Board found that the applicant had not reasonably explained the lack of acceptable documentation or shown that he had taken reasonable steps to obtain documents… The Board is better placed than the Court to determine whether a photocopy of a Taskera is sufficient to establish the claimant's identity and whether reasonable steps have been taken to obtain the missing original… since the applicant had submitted no credible documentary evidence that he was targeted by anti-government extremists, and considering the Board's findings on identity and lack of credibility, it was reasonable for the Board to conclude that there was no credible basis to the claim (2014 FC1134)

In both Canada and Sweden, documentary evidence is prioritized over the narrative claims of applicants. But in contrast to Sweden, Tazkiras are often accepted as legitimate identity documents by both Canadian courts and state agents (2015 FC1400). The Tazkira, surrounded by such controversy in Sweden and determinative to so many denied permits, is largely a non-issue in Canada. It is frequently taken as an acceptable piece of evidence, only mentioned in passing:

> Once the applicant's identity is established – as it has been due to the RAD accepting his properly translated Tazkira card and passport (2015 FC1028)

Conversely, in some cases, the failure to produce Tazkiras contribute to applicants being denied, because they are seen as not able to prove their identity:

> The applicants lacked credibility as they failed to produce Afghani identification cards (called Tazkiras) (2016 FC313)

This difference, however, is not rooted in different traditions of legislative interpretation. It is rather that Canadian state agencies see the tazkira as sufficient evidence of one's identity. Both Swedish and Canadian courts defer to the assessment of agencies, but the agencies have different positions in the countries.

The discretion of judges

As stated at the outset of the chapter, there is a much larger variation in the cases of the Federal Court than in the Swedish MCA. This variation is manifested in the lack of a clear general tendency in terms of whether the Federal Court protects migrants or not. In the Swedish MCA, the court prioritizes the right of the state to control migration. No comparative tendency is present in the Canadian Federal Court. The decisions, instead, vary a lot – there are ones in which the judge is highly adversarial to the administrative agencies, and ones in which judges aren't.

This is manifested in how, through the standard of review, judges use case law to classify what a case is about. Such classification is not straightforward but should rather be seen as a matter of legal interpretation. It is compounded by the fact that, as Evans Cameron (2018) has pointed out, there is relatively little guidance from the higher echelons of judicial decision-making in migration matters. Since the Federal Court tries many more cases than the Swedish court, there is a vast body of case law to utilize for establishing potentially different frameworks. In many cases, the decisive issue seems to be *how* the review is approached by the judge. In issues concerning similar issues, such as whether applicants reside in Pakistan, how the issue is approached is of vital importance. If the case is approached as one of questioning the substance of the administrative decision (2012 FC134), i.e. whether applicants reside in Pakistan, this is often judged on reasonability grounds, and more deferential to administrative agencies. But if the review instead concerns the procedure by which the decision was reached (2015 FC1400), i.e. the process by which it was ascertained that applicants reside in Pakistan, this is more often classified

as concerning issues of natural justice or procedural fairness, judged on a correctness standard. Suffice to say, this distinction is often blurry.

What's more, not only is the selection of standards fluid, but so is the interpretation of what they entail. Within the reasonableness standard, judges are often more deferential – but not always. We see this when observing how judges have gone about assessing identity, including in cases concerning a specific identity document, a so-called Proof of Registration (POR) card issued to Afghans in Pakistan. In late 2006 and early 2007 the Pakistani government and UNHCR "completed a regulation process of Afghans living in the country for those that were included in the census" (2012 FC134), in which all were issued computerized POR cards with biometric features. The POR cards allowed Afghans to be legally registered and remain in Pakistan for three years, formally protected from arbitrary deportation. The process itself speaks to the perceived illegibility of Afghans in Pakistan, and the importance of territorially rooting them through documents. In one case, a group of applicants recount the circumstances of their leaving Afghanistan, capturing many of the central issues concerning the processing of migrants. The applicants

> allege that they have resided in Pakistan since 1998 after leaving Afghanistan for fear of being persecuted by the Taliban due to their ethnicity as Hazaras. The Principal Applicant's husband was killed by a rocket explosion during the communist regime of Najibullah. The Applicants claim that none of them has an elementary level of education and they do not know their exact ages. Nor do they know the exact date their husband or father passed away, or the exact date that they left Afghanistan (2016 FC354)

The application is denied because the visa officer didn't believe they were residents of Pakistan. The applicants claimed they had tried to get POR Cards, but the officer doesn't believe them:

> The Officer noted that in 2005-2006, Pakistan had registered nearly all Afghans living in Pakistan… Without a POR card, Afghans in Pakistan face discrimination from the police throughout the country. At check points they will often be harassed from bribes and in some cases can and are deported back to Afghanistan. Instances of such harassment have been reported to UNHCR. The lack of POR cards for long term residents presents concerns given the important of these documents to the holder. (2016 FC354)

This is judged on a standard of reasonableness, but it is still less deferential. Writing of the visa officer, the judge says that

> Her logic appears to be that the Applicants' testimony is not plausible because the failure to obtain a POR card exposes the Applicants to various problems in dealing with the

> authorities. A explained that, indeed, the police stop her brothers but not the women in the family. Notwithstanding these difficulties, there is nothing implausible about the Applicants eventually giving up attempting to obtain POR cards for the reasons they gave. The Court has consistently warned against the dangers of implausibility findings and, in Divsalar, above, endorsed the view that plausibility findings should only be made in the clearest of cases, where the facts as presented are either so far outside the realm of what could reasonably be expected that the trier of fact can reasonably find it could not possibly have happened. This is not such a case. (2016 FC354)

In the classification of what type of a case something is, as well as the solution to similar cases, there is a much greater variation in Canada than in Sweden. This reinforces earlier findings that the judges of the Federal Court have great discretion in applying rules (Rehaag 2012) and can plausibly be linked to the much larger body of case law available which, together with relatively little guidance from the Federal Court of Appeals and the Supreme Court, means there is a wealth of potential legal frameworks around.

Interpreting boundaries

In both Sweden and Canada, the way the asylum process is organized has decisive importance for how information is assessed and aggregated. In Sweden, a decisive issue in the MCA's boundary management is interpreting the boundaries between classes, such as by saying what a child is. In Canada, however, the decisive boundary management of the Federal Court is rather how to interpret what a case is classified as being about – such as interpreting what, exactly, a reasonable decision means and the role of the Court is in determining this. In the great uncertainty surrounding asylum applications, the distinction between what are issues of procedure and substance often break down. Neither the standard of "reasonable" or "correct" is stable but are rather part of the ongoing need to administer classification systems (Bowker & Star 1999).

The studied decisions show that the interpretation of these standards is anything but linear, and that they are rather fluid and ambiguous. The same issue, based on how it is presented, is sometimes classified as a correctness issue, other times as a reasonability issue. Different parts of the massive body of case law are invoked on similar matters. There is, all in all, less top-down stringency when compared to the Swedish MCA, and seemingly much more room for individual discretion among judges.

There are important comparative points to be made about the Swedish MCA and the Canadian Federal Court here. As has been argued, the FC is in a de facto similar position as the MCA, but not de jure, as there are additional layers of appeal above it. This implies several differences. First, the Federal Court repeatedly tries similar issues. This rarely ever happens in Sweden,

because the legal procedure in Sweden is not oversight of administrative work: it is about authoritatively formulating top-down rules, and the MCA rarely provides decisions on identical cases. But in the Federal Court, judges don't develop blueprints or set out answers to what's deemed principally important issues from a top-down perspective. Rather, they review if administrative decisions are lawful. This is partly an indication of differences in legislative interpretation, reflecting a difference between an inductive (case-by-case) approach and a deductive (settle problems top-down) one. But it's also because the respective courts have different principal roles. However, for virtually all Afghan asylum seekers exceptional enough to get to the Federal Court, this instance is the de facto last one, whose body of work informs administrative agencies.

These differences can be seen as originating in different legal traditions, ones which in turn animate the assessment of similar issues. While assessing identity focuses on place rather than age in Canada, there is still a clear similarity in terms of how applicants are made legible through a state vision. In both countries, official documentation and objective evidence is key to state status production. In assessing where people live, the more adversarial stance that Canadian judges sometimes have is clearly different from the Swedish MCA. By introducing new information and taking the perspective of the applicant rather than that of the state agent, in some cases, the Canadian judges protect migrants' rights as expected by dominant migration theory hypotheses (Joppke 1998, Hollifield et al 2022).

Nationality/danger: Assessing Afghanistan

The third and final dilemma focuses on assessing the danger of Afghanistan. While the focus of identity assessment differs across Canada and Sweden, the assessment of danger in Afghanistan is very similar. It often focuses on danger for minorities in Afghanistan, most commonly that of Hazaras, who are also often Shia Muslims. Similar to the Swedish situation, the assessment of danger is conducted through various country reports. Just like the Swedish Migration Agency, the IRB provides its own country analyses. Here, Afghanistan is often portrayed as opaque and quickly shifting. At some points, a positive development is portrayed, such as when a judge summarizes the IRB's analysis:

> Taliban governance as being repressive and brutal towards women, but stated that since the Taliban regime collapsed at the end of 2001, the new government had made efforts to implement democratic principles, gender equality and principles of international human rights law… The Board also found that although there were limitations to freedom of expression, Afghanistan was in the process of developing a free civil society. (2008 FC946)

Again, the standard of review is the central issue. Judges have on several occasions discussed how to deal with the uncertainty surrounding Afghanistan. Should the Court assume that the investigating officer has gathered sufficient information, or should it question the basis of the analysis? This is no minor issue, since it essentially amounts to the burden of proof. Country analysis is decisive for the applicant, and the assumption of a proper analysis having been conducted creates a much more difficult path. Relying on previous case law, one judge discusses how the Court should refrain from questioning agencies:

> In the case of Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration) (1998), 157 F.T.R. 35, 83 A.C.W.S. (3d) 264, the court held that an administrative agency is presumed to have considered all of the material placed before it when making a decision. This presumption can be rebutted by an "agency's failure to mention in its reasons some evidence before it that was relevant to the finding, and pointed to a different conclusion from that reached by the agency" (Cepeda-Gutierrez at para. 15). (2010 FC419)

Other judges echo this, saying that state agents should generally be presumed to have investigated conditions sufficiently, unless proven otherwise:

> There is no evidence that she failed to consider documentary evidence about conditions in the region at the relevant times. In any event, such documentary evidence, including country condition reports, that the applicant wishes the officer to consider should have been presented as part of their application. (2008 FC1310)

We can see the importance of this issue when it is manifested in individual decision. In one case, a visa officer denies a family permits, since their claim of persecution by a military commander isn't deemed credible:

> I am not satisfied that you have been and continue to be personally and seriously affected by armed conflict, civil war or massive violation in human rights in Afghanistan…. While I sympathize with your sincere wish to provide your children a quality education and to reunite with your family members in Canada, I am unable to conclude that you meet the definition of Country of Asylum Class (2008 FC1310)

When appealing for review, the family claims the officer didn't seriously account for the danger of Afghanistan. This is classified by the judge as a reasonableness issue. Rather than conducting its own analysis, the judge asserts the inquiry is satisfactory:

> The application before the officer was not based upon the general conditions in Afghanistan after several decades of insurrection and civil war but upon Commander A's purported

> enmity towards the principal male applicant stemming from his refusal to allow the Commander to marry his sister. The officer was not obliged to search out and to reference country condition evidence to address issues that were not raised and were not grounded in the evidence: Kamara v. Canada (Minister of Citizenship and Immigration) 2008 FC 785 at paragraph 25. This is not a case where the applicants were claiming that conditions in Afghanistan were such that they could find no durable solution in any region of the country if they were to repatriate. (2008 FC1310)

As in reasonableness cases, the issue didn't turn on whether Afghanistan was safe or not, but on whether the issue had been transparently attended to.

The danger facing Hazaras

The assessment of Afghanistan's danger, however, is another issue in which the discretion of judges is illuminated. In several cases, judges have made different decisions on similar issues and conducted independent analyses of Afghanistan. This is especially true of cases concerning Hazaras, showing how the standard of review has very direct implications for status production. This exchange between a visa officer and an applicant highlights the detailed classificatory nature of determining danger:

> Visa Officer: you have to prove that you meet the definition of a refugee as defined by the Geneva Convention… you said that you were part of the Hazara and said they were oppressed. However, you are unable to give any details on how you were persecuted as a member of this group. The story you told me about a person who stole the land on which your ancient house was build (sic) does not constitute persecution in my eyes.
>
> Applicant: I said that they followed me. They also give (sic) me warning. They told me that if I applied another time, that they will kill me. We continue to follow our claim. They followed us. They persecuted us…. I have a lot to say about my thirty five years. I experienced a lot of torture. There have been a lot of events… Ten armed people came to my house came with weapons. They took whatever I had in my house. They warned me that they could also kill me. (2010 FC589)

The situation of Hazaras offer the most striking difference between the Swedish and Canadian courts. In Sweden, Hazaras have repeatedly been classified as not in need of protection. In Canada, the direct opposite is the case. As one judge puts it, "the objective documentation… makes it clear that people with Hazara ethnicity are in danger throughout Afghanistan." (2016 FC1357)

Furthermore, this is not another case of the judges agreeing with administrative agents, such as on the evidence value of tazkiras – it is rather one where judges produce their own analyses, adversarial to that of administrative

agencies. The following quotations are representative of many judges' critiques of how administrative assessments of the danger for Hazaras. Crucially, these assessments often build on material outside of that discussed by case officers. This includes reports from international NGOs and the U.S. State Department:

> Although the new constitution gives the Hazaras equal rights, a significant margin of difference exists between the theory and reality on the ground. It is recognized that the Hazaras are not only considered the traditional enemy of the Taliban but the Pashtuns also consider them as outcasts. It is important also to note that the Allied forces in Afghanistan often employ the Hazaras for their knowledge of the country, language and fierce loyalty to values other than those opposed by the Allied forces… The Hazaras have often faced considerable economic discrimination – being forced to take on more menial jobs – and have also found themselves squeezed from many of their traditional lands by nomadic Pashtuns. Starting at the end of the nineteenth century, successive Pashtun leaders pursued active policies of land colonization, particularly in the northern and central regions, rewarding their supporters, often at the expense of the Hazaras. This policy was partially reversed during the Soviet occupation, but started again under the Taliban. (2010 FC419)

> Citizens had limited access to justice for constitutional and human rights violations, and interpretations of religious doctrine often took precedence over human rights or constitutional rights. The judiciary did not play a significant role in civil matters due to corruption and a lack of capacity. Land disputes remained the most common civil dispute and were most often resolved by informal local courts… The precious situation of the Hazaras is moreover confirmed by the jurisprudence of this Court. (2010 FC589)

> the officer relied primarily on a 2012 report to conclude that the applicants' fears of mistreatment in Afghanistan were no longer well-founded. Even that report, however, noted that minority groups continued to endure religious persecution and that the safety of Shia Muslims would be uncertain if foreign troops were to leave Afghanistan, as they did in 2014. In addition, later reports from reliable sources, which pre-date the officer's decision, show that Shia Muslims are targeted for violence, intimidation, kidnappings, and execution and that they cannot rely on the state to protect them. Further, they reveal that Hazaras have endured various forms of abuse in recent years, including extortion, abduction, detention, and murder. The officer did not refer to any of that evidence. The recent evidence also supports the applicants' contention that their fear of returning to Afghanistan is not a general concern about safety that all residents of that country may experience. It points to specific threats to Shia Muslims and Hazaras… Given that there was substantial and widely available evidence that contradicted the officer's conclusions, which the officer did not take into account, I find that his conclusions do not represent a defensible outcome based on the facts and the law. They were unreasonable. (2016 FC313)

In these quotes, we see the uncertainty around Afghanistan handled in a different way than in the Swedish MCA: using a broader range of information, and more concerned with on-the-ground realities, rather than the existence of formalized legal structures. There is a clear and consistent assumption of Hazaras being the subject of persecution. This is often premised upon Federal Court judges making their own analysis and taking an adversarial stance to the analysis of the IRB or visa officers, irrespective of whether the standard of review is reasonableness or correctness. Being Hazara is generally seen as a sufficient reason for protection, such as in another case, where a visa officer had denied a Hazara applicant a permit due to perceived inconsistencies within the claim. The judge argues against this:

> There were no inconsistencies with regards to the Principal Applicant's Hazara ethnicity… It is also supported by objective documentation available to the Visa Officer, which makes it clear that people with Hazara ethnicity are in danger throughout Afghanistan. (2016 FC1357)

Whereas visa officers on several occasions argue that Hazara applicants haven't satisfactorily argued they need protection, judges instead point to what they see as a lack of satisfactory investigations. In one such case, a judge points to too high expectations placed on the applicant:

> Often the applicant himself may not be aware of the reasons for the persecution feared. It is not, however, his duty to analyze his case to such an extent as to identify the reasons in detail… It is for the examiner, when investigating the facts of the case, to ascertain the reason or reasons for the persecution feared and to decide whether the definition in the 1951 Convention is met with in this respect… an applicant may have been subjected to various measures not in themselves amounting to persecution (e.g. discrimination in different forms), in some cases combined with other adverse factors. In such situations, the various elements involved may, if taken together, produce an effect on the mind of the applicant that can reasonably justify a claim to well-founded fear of persecution on cumulative grounds…. (2010 FC419)

In another such case, applicants had argued that due to their Hazara ethnicity, they are especially vulnerable in Afghanistan. A visa officer denies this, saying that "although the Applicant's situation may have been dire, he failed to prove that he was persecuted as a member of an ethnic group" (2010 FC589). They were not allowed to enter new information on Afghanistan into the case. A judge assessed it on a reasonableness standard, but still much less deferential, arguing against the notion that the claimants should have to prove that

Afghanistan is dangerous, and instead seeing this as a fact which was readily available to the investigating officer:

> In the case of a refugee claim determination, it must be assumed that the generally available country conditions were before the officer prior to the decision being made. Consequently, this is not a case where the Applicant is adding to the record. The Applicant is rather setting out the facts which were available to the officer and which should have been taken into account in his decision. Pushed to its limits, the Respondent's argument would lead to the conclusion that visa officers could make decision concerning eligibility to the Convention refugees abroad class or the country of asylum class without reference to, or knowledge of, country conditions.
>
> In this case, even though the tribunal record shows no reference to any country conditions documentation concerning Afghanistan, it may be assumed that the officer was either knowledgeable of these country conditions or could easily access available country conditions documentation in order to carry out his duties properly. I would add further that if it can be showed that the officer made a decision without knowledge of country conditions, this in itself could constitute a valid reason to overturn the decision in judicial review. It would indeed be unconscionable if Canadian visa officers were making a refugee claim determination without any reference to or knowledge of country conditions. (2010 FC589)

This case, as well as other judged on a reasonableness standard (2016 FC1357) are quite adversarial, which is manifested clearly in how judges offer independent analyses of Afghanistan. Again, a mark of independence can be seen as the introduction of new information or contextual conditions, beyond those discussed by the state agents. In several rulings, judges of the Canadian Federal Court line up with the expectation that courts protect the rights of migrants, by questioning the assessment of authorities and conducting their own analyses. These analyses tend not to be concentrated on the vision of the state, but rather to start from the perspective of the migrant – not only concerned with the internal consistency of the argumentation provided by the officer, but also exploring the external validity of its conclusion concerning protection. The assessment of danger to Hazaras in Afghanistan presents the clearest pattern of a consistent analysis of judges in Canadian Federal Court.

The oversight court

The Canadian Federal Court lines up well with theoretical expectations from the legal interpretation of common law countries (Bogdan 2013): an inductive interpretation reliant upon case law, which mainly fulfills a judicial review function over administrative decisions. This has the consequence that in

contrast to Sweden, the court's position in the migration regime is different: rather than an intermediary, the Court fulfills an oversight function. This is derived from a preoccupation with the boundary between policy and law found in Part I. Here, the standard of review represents a form of institutional reproduction of this boundary, a continuous balancing between the administrative and legal spheres enacted through the Court's work.

In Sweden, the MCA is closer to the government and agencies, designing top-down blueprints to authoritatively settle issues based on what they perceive as legislative intent. In Canada, the Federal Court makes decisions on individual matters, from which a body of jurisprudence gradually emerges. In general, the Canadian Federal Court is marked by an absence of clear patterns in terms of whether court protect migrant rights or not. Instead, the cases here characterized by larger variation and nuance. Compared to Sweden, the body of legal interpretation is less uniform, and the position of the court in migration regime is vaguer. This because the Federal Court is characterized by case-by-case review rather than a design of general rules for agencies.

In both Canada and Sweden, the courts engage in similar classification dilemmas and negotiate boundaries around administrative identities in the systems of selection. The uncertainty around asylum can be seen as made governable through organizing ways to assess and aggregate information. The Federal Court is also engaged in making migrants processable for visa officers and the Immigration and Refugee Board, setting out legally legitimized standards for how cases should be processed. This contributes to administratively simplifying migrants and the complex classification systems which surround them. The order is often a sequential one, in which issues of identity and credibility are central. But the general mode of developing this processability is different. Stemming out of the judicial review tradition, the development is more indirect: not an attempt at conclusively solving classification issues and characterized by a comparative lack of top-down order. The standard of review represents the basic orientation in which the uncertainty surrounding asylum decisions is dealt with it. This has major consequences for status production: what type of information to allow, how to assess danger, and so on, with direct repercussions on whether a person is granted protection or not. Choosing a standard of review provides a model for information aggregation in the cases, of adopting either a deferential or adversarial position to administrative agencies. The enduring policy/law boundary in the Canadian tradition represents a fundamental theorization of social control in which judges in the migration regime are occupied with articulating applicants as either legal or administrative subjects (Lascoumes & Le Gales 2007).

Within the standard of review, the aggregation of information and interpretation of boundaries deals with similar issues as its Swedish counterpart, but in a different manner. Matching the two standards of reviews, the analysis has identified two main focuses in the court's review: First, the reasonability standard is seen here as equated with a focus *internal consistency*. This concerns whether procedures have been transparently and satisfactorily carried out and the argued for. Here, several potential decisions are acceptable, as long as the procedure is reasonable. Second, the correctness standard is equated with a prioritization of *external validity*, concerning whether the decision was actually correct. Here, only one decision is acceptable, namely the correct one concerning whether a specific person deserves protection.

A clear difference between the countries is seen in how information is introduced, assessed and aggregated. As we saw in the Swedish chapter, the narrow utilization of specific forms of documentation and specific sources is testament to role of ignorance in maintaining order (Bowker & Star 1999) – the more rigorous standards of documentation used, and the less types of sources accepted, the more expedient processing becomes. This also implies a hard frame for applicants to fit inside, a type of formal, top-down state vision. Consequently, the single most important aspect of the more adversarial stance of judges in the Canadian Federal Court is the way they independently introduce new information into cases, such as new country reports on Afghanistan. This is most clearly the case concerning the protection of Hazaras. The introduction of such new information often has the consequence of entirely shifting the analysis. Whereas in Sweden, the court often upholds and clarifies a unified state vision, in Canada, the vision is more fragmented, in line with an inductive problem-solving of cases one by one. There is, however, a larger presence of judges which challenge the state vision and protect migrants in the sense assumed by dominant theories on migration control (Hollifield et al 2022). This is expressed in the acceptance of different forms of evidence as well as an orientation to migrant narratives and perception of on-the-ground realities which complicate issues of documentation and evidence, for example. The results thus indicate that the common law tradition of Canada more clearly aligns with the assumptions of courts in dominant writings of migration control.

The larger variation in the Federal Court has been linked to the greater discretion of judges, which has also been discussed in earlier research (Rehaag 2012, Evans Cameron 2018). This, in turn, is made possible by the function of review – it is that the Federal Court repeatedly tries similar cases which opens space for discretion. The Swedish MCA rarely does this since it primarily sets out authoritative blueprints for how to process immigrants. In Canada, the massive body of case law allows several potential frames to be developed for

similar cases. Here, the standard of review can be seen as an indication of the position of the court in the regime – but since what is ”reasonable” and what is ”correct” is interpreted differently, it is an imprecise one. Moreover, the classification of cases also varies, and the distinction between ”fact” and ”law” that it builds upon is hard to uphold when the courts review cases, since it’s the process of law that determines what becomes established as fact.

In sum, Canada’s tradition of legislative interpretation clearly informs the way the Federal Court use individual cases to build a body of case law from the bottom up. This has major consequences for applicants in terms of how the court sees its relationship to administrative agencies and the nature of judicial review, again making clear how target populations and classification systems more generally are rooted in specific administrative and legal traditions.

9

Concluding Discussion: Institutions of Identification

> Legal regulations and political-administrative apparatuses are charged with managing the social and cultural preconditions and consequences of this program of always expanding our reach – or rather they are charged with ensuring that social processes can be predicted and controlled. The ever-growing accumulation of regulations, provisions, and statutes is the manifest expression of our effort to make social life predictable and controllable in the sense of being justiciable – an effort, however, that is on the verge of failing dramatically… In fact, the ubiquitous struggle for power can be understood in all respects as a struggle for control: the struggle to expand our share of the world.
>
> Hartmut Rosa, *The Uncontrollability of the World*

The aim of this study has been to contribute to theory development on how states make refugees governable through classification – that is, attempts at expanding the state's reach to predict, control and ultimately govern human movement. The study has done so by exploring Canada and Sweden, guided by two research questions: how classification systems for refugees became institutionalized, and how the existence of different legal traditions has affected the role of courts in migration regimes. The analysis builds on a range of archival and documentary material to answer these questions.

The study's core premise is that the unifying construct of migration governing is the aim to select desirable subjects, and that this requires a bureaucratic apparatus of classification that effectively renders people as cases. This, however, is seldomly acknowledged by dominant theories on migration control. And while there is an expanding literature on classification in migration, this rarely addresses classification as a matter of policy or administration. For this purpose, this study has set out to explore the systems of selection as an instance of the general phenomenon by which states authoritatively classify people to govern over them. This means to explore the categories used by states

to classify migrants as administrative simplifications which standardize human beings for purposes of regulating human movement. The categories function as gateways which guard entry into a nation's social closure, carriers and embodiments of the closure they aim to guard. Classification systems have been conceptualized as institutional arrangements whose dynamic can be understood by exploring how they are rooted in time and develop over time.

This chapter is divided into three parts. The first two parts summarize the study's findings and present answers to the research questions. The third and final part synthesize findings, discuss their implications and sets out avenues for future research. Before doing so, the basic social process identified in the thesis will be summarized. At the heart of the systems of selection is a desire to distinguish between "real" and "false" refugees. The aim to distinguish these basic categories has engendered a process of continuous *differentiation*, manifested in a production of increasingly detailed administrative boundaries, which in turn demand a growing bureaucracy to administer. This has been conceptualized borrowing terms from Bourdieu (1998:ch4): the emergence of contemporary migration control rested upon a centralization of bureaucratic and informational capacity to enforce a state *vision* within a new policy field, operated by a new set of actors in the migration control regime. This vision, however, generated a *di-vision*: the differentiation of administrative identities for the purposes of effectively regulating human movement. It can be expressed in a basic formula: if *d* is differentiation and *b* is bureaucracy, the basic social process observed in this study is $d \rightarrow b \rightarrow d'$. This differentiation is the general social process that the thesis has studied – from the historical roots which gave rise to it to the increasingly judicialized management of boundaries within it.

Roots of the refugee

Here, the main results from Part I are set out, divided into three sections. The first outlines the different ideal-type refugees that arose in Canada and Sweden: vulnerable and adaptable. Building on this, the first research question is answered by setting out a looping form of institutional development that is similar across both cases. Finally, a major implication is drawn from the results: how two competing notions of control emerged out of the institutionalization of the systems of selection, of control as flexibility or precision.

Vulnerable and adaptable refugees

The study has shown how two different ideal type refugees arose in Canada and Sweden: the *vulnerable* in Sweden and the *adaptable* in Canada. These national notions of the refugee were rooted in three institutional legacies: the

immigration traditions, welfare models and legal-administrative traditions of Sweden and Canada. In essence, these legacies provide foundations for a form of moral vocabulary, wherein different notions of deservingness were administratively elaborated. The process of developing new forms of control was similar in both countries: in the mid-1960's, ambitions of wanting to govern immigration in new, proactive ways arose in governing circles. This centered on the idea of actively molding migration through making its subjects administratively legible, allowing for new forms of selection. Through regulatory inventions which manifested these new ambitions, new migration control systems were gradually built up. This represented the establishment of a new form of state capacity, as immigration was reformed into a policy field in a manner which is still recognizable in both countries toward. But these processes were imbued with different normative ideas.

In Sweden, with its relatively short immigration history and being at the peak of the post-war expansion of the welfare state, the key issue was for immigration policy and immigrants to be integrated into the country's welfare state. The central guiding idea was that the formal universality of the welfare state set limits of integrative capacity that were necessary to maintain for purposes of inclusion (Brochmann 2014). Rooted in this welfare framing, refugees became defined by vulnerability, articulated within social policy as a form of *perfect victims* requiring help and assistance, enveloped in the "thick" social contract of the country. This came with an often less than implicit strain of paternalism: to associate refugees with helplessness and see the role of the state as authoritatively caring for them.

In Canada, with its colonial past, liberal market orientation and long-standing association of immigration with economic growth, the new immigration policy was instead animated by the central idea of planned growth: how to maintain an expansionary immigration policy actively molded by the state. Here, refugees became adaptables, easily integrated individuals who required little social assistance and could swiftly access the labor market. Canadian policy elites developed a highly rationalist and technically calibrated order for making migrants legible and selecting desirable ones, symbolized by the points system which grades migrants according to preferable traits. The resulting immigration model is *meritocratic* in its formal non-discrimination and attempts to select migrants that fit Canada, and its long-standing emphasis on resettlement from abroad makes it adhere to a *philanthropic* model of protection. This comes with a less paternalistic attitude, and more of an assumption that migrants have agency to take care of themselves – or, at least, that state agents will choose ones that have such capability.

Theoretically, the study's results show how government systems for classifying people can be analyzed as institutionally enduring rule systems. This hinges on an interplay between normative and regulative components. Immigration traditions, welfare model, and legal-administrative culture are nation-level, institutional heritages in which the new classification systems were rooted. They represent normative components (Scott 2014), which mold expectations, social obligations and notions of appropriateness in different ways in Sweden and Canada. In both states, however, there were similar regulative developments, where control through selection is a key to new forms of migration control. This is manifested in regulative components, such as formalized rules, laws and sanctions (ibid), which was what the new classification systems were made up of – permits, visas, processing frameworks, planning systems, and so on. The analysis has shown how the normative aspects can be understood as *animating* their regulative counterparts – how similar processes of administrative differentiation were imbued by different institutional legacies.

The results contrast to dominant theories of migration control, where the refugee is linked to an objective legal standard, and different interests in migration policy have fixed preferences in regulating this group (Joppke 1998, Massey 1999, Hollifield et al 2022). As a contrast to approaches which see government classification as negligent or neutral, the result show how the classification and maintenance of target populations has continuously been at the center of the development of new forms of migration control. The status that is refugeehood is a product of this ongoing process. While originating in the Refugee Convention, there were no ready-made templates for how to define refugees in either Sweden or Canada. Instead, a composite view of refugeehood emerged over time as new forms of movement regulation were articulated, a process in which the preferences of actors in the migration regime also developed. The refugee is made and re-made over time, rooted in a set of ideas about immigration and control which are not stable but continuously reproduced through the administrative articulation of refugeehood.

A hypothesis on the *culturally contingent nature of deservingness* can be derived from the findings: who gets to be a refugee is dependent upon cultural perceptions of deservingness in a specific country. While it might seem self-evident, the hypothesis runs contrary to dominant ideas in research on migration control and policy, which tend to see the refugee category as a neutral and universal standard. While the category may be universal, it so in a different manner: as a projection screen for one's own preconceptions and norms.

An important element of this hypothesis is how the forming of an unwanted population inherently rests on a juxtaposition to a wanted one. In this study, this is expressed in the relation between unwanted arrivals and the wanted

processed through proper procedures, such as labor migrants or resettled refugees. Whereas many studies of migration tend to assume that ”labor” or ”refugees” are real and separate categories, and focus on one or the other, the results here show that migration is regulated as a totality, and that the statuses used for this purpose are interlinked in a state vision. In Sweden and Canada, the basic categories of “labor” and “refugees” were administratively separated in the mid-1960’s, despite many actual migrants fitting both statuses. Rather than separate, target populations should be viewed in the context of the larger policy field in which they are formed.

Looping institutional development

This part directly addresses the first research question by discussing how the systems of selection became enduring features of political life in Swedish and Canadian migration politics. The difference in the substance of classification – i.e. who got to be a refugee – allows us to see similarities in the process of institutional development. One of the advantages of in-depth comparative research, especially in terms of theory-building (Ragin & Becker 1992, George & Bennett 2005), is that it allows such cross-case similarities and differences to illuminate one another. The similarities of the processes allow us to see both general features of how refugees are administratively differentiated, but also to distinguish ideas which imbue such processes in different directions.

The analysis in the empirical chapters was divided into the periods of foundation, differentiation, and enforcement. In each of the periods, classification was central to the development of migration control. In the foundation period, the drawing of boundaries around new classes of immigrants informed the drawing of boundaries around the new policy field being formed. It was essential to establish a foundational boundary of difference against other target populations, collecting authority over immigrants firmly within the field of immigration policy, rather than as subjects of labor or social policy. In the differentiation period, the emergence of classification systems was associated with *bureaucratic capacity-building* with the purpose of enforcing a detailed, synoptic vision. For target populations to function as instruments for distributing benefits and burdens (Schneider & Ingram 1997), this required an extensive set of organizational resources to effectively render people as cases and migrants as categories. By the enforcement period, the problematizations of migration policy had effectively stabilized, and the focus turned to how to maintain the state vision and efficiently manipulate migration. This period is one in which the envisioned control was challenged by the arrival of migrants perceived as eluding the schemes of the governing.

The institutionalization of migrant classification systems take place during the enforcement period and it is most clearly expressed in *how that which was once a regulative aspect*, the tools of classification, ultimately *became a normative aspect,* an end in itself. This movement is manifested in the focus of reforms: in the foundation and differentiation periods, reforms focused on designing categories as a means for selecting the right migrants. Starting in the enforcement period, reforms instead focused on how to maintain processing systems and standardize procedures for reliably placing people into categories.

The key to understanding the institutionalization of the systems of selection lies in the governing-governed relationship. A central issue in institutional analysis, as Thelen (1999, 2004) has written, is to specify the engine of institutional reproduction, the feedback which underpins institutional development. In a view of institutions as requiring continuous reproduction rather than being automatically self-reinforcing, the analytical focus should be directed onto how such stability is maintained over time (Clemens & Cook 1999, Mahoney & Thelen 2010, Scott 2014). In state attempts to control migration, the *arrival of migrants* continually triggers tensions in the control regime, functioning as an engine of reproduction in the development of institutional arrangements of migration control. This is grounded in an interactive dynamic of classification, of how it is inherently a relation between the classifier and the classified. It is manifested in the reactive nature of policymaking, with both large-scale changes and regulatory inventions often representing reactions to arrival of immigrants. The invention of the modern asylum process, especially in Canada, represents attempts at dealing with arrivals.

The results point to a specific feedback: how state classification systems can *become naturalized as they are challenged*. If the systems of selection are understood as mental maps with which to reduce the complexity of the world and make it governable, the consistent challenge toward these maps by the arrival of immigrants contributed to an entrenchment rather than a challenge of them. In other words, the arrival of people who don't fit administrative formulas reinforce the perception that such formulas are necessary – and ultimately, the administrative simplifications become more real than what they are meant to portray. When the mental maps of policymakers were contested, this gave rise to a feedback in the form of a self-fulfilling prophecy as discussed by Douglas (1986:100) – where, even though institutions produce categories, over time these categories can come to "stabilize the flux of social life and even create to some the extent realities to which they apply".

This feedback dynamic is made possible by the openness of the institutional arrangement, in that immigrants arrive and apply for asylum (to the extent this is still possible, since nation states expend massive energy and violence to

prevent people from doing so). This is key to understanding how, over time, the classification systems in both Canada and Sweden were transformed from means to ends – from an instrument by which to optimize migration, into a rule system which in an institutional sense molded expectations among policymakers in the regulation of immigration (Clemens & Cook 1999, Streeck & Thelen 2005). It represents a *categorical vision* increasingly taking hold of migration policy, in which enforcing the systems of selection became a central end in itself, as the categories built into large-scale bureaucracies become naturalized over time (Douglas 1986, Bowker & Star 1999:ch2).

In historical institutional theory, there is a frequent debate over the primacy of exogenous or endogenous sources of institutional change (Streeck & Thelen 2005, Mahoney & Thelen 2010, Cappoccia 2016). The shape of the feedback, in this case, includes both: exogenous shifts – the arrival of immigrants – contribute to entrenchment and reinforcing of endogenous perceptions – the need, purpose and roots of classification. The reforms of the 1980's weren't caused by shifts in the goals of refugee policy or re-imaginings in the role of immigration in society, but rather represented an entrenchment of those already in place. (Streeck & Thelen 2005, Mahoney & Thelen 2010)

From these results, a distinct form of institutional development can be defined, arising out of the interactive dynamic of classification: policy as *looping* around the same issues. This is evident in how asylum policy in Canada and Sweden, since the 1980's, has stabilized into a pattern of *moving by standing still*, a series of reforms around the same issues: cutting processing times, making asylum processing more efficient at separating deserving claimants from undeserving, reducing costs, identifying unknown people, and better enforcement of tools against the undeserving. The term looping has been borrowed from Ian Hacking, who discusses this on a micro-level by detailing the "resistance by the known to the knowers" (Hacking 2007:306):

> There is a looping or feedback effect involving the introduction of classifications of people. New sorting and theorizing induces changes in self-conception and in behaviour of the people classified. Those changes demand revisions of the classification and theories, the causal connections, and the expectations. Kinds are modified, revised classifications are formed, and the classified change again, loop upon loop. (Hacking 1995:370)

This dynamic between governing and governed is expressed here on a policy level. The core of loop of asylum policy, the institutionalized and basic problematization of migration control, is about how to reliably distribute benefits and burdens to the desired target populations. This striking endurance stands in stark contrast to much of the public perception and debate on migration as characterized by high political turmoil and rapid changes.

The results attest to the non-functional nature of institutional change over time (Thelen 1999, Mahoney & 2010); that is, that institutional arrangements should not be seen as something which are completed at a single point in time according to a unified intent, but are rather cobbled together over time. The analysis has shown how this develops in terms of a governing system which classifies people. It adheres to a view of institutional change and development as gradual and dependent on continuous reproduction, rather than being automatically self-reinforcing in the path-dependent manner. (Thelen 1999, Cook & Clemens 1999, Streeck & Thelen 2005) In this development, policy instruments play a crucial role. As pointed out by Lascoumes & Le Gales (2007), instrument have institutional qualities in that they can become enduring over time. This has been clearly manifested in this study: Major shifts were preceded by gradual changes to instruments in which migrants were categorized in new ways for purposes of excising a more proactive form of movement regulation. Instruments such as visas and permits often preceded large-scale change and act as templates for large-scale control reforms.

Control: Flexibility or precision?

The final important result of Part I concerns how the institutionalization of the systems of selection implied shifting ideas of control. Whereas immigration and welfare traditions were important in articulating deservingness, administrative-legal heritages were important in instilling ideas of control rather than ideas of migrants. This is an aspect of classification becoming an end in itself: how the idea of control developed from that of *flexibility* to that of *precision*, from *securing outputs* toward *standardizing procedures.*

From the mid-1960's, in the emerging migration regimes of Sweden and Canada, the new control ideal that arose was that of flexibility, of effective migration governing as setting up a system of regulations adaptable to the changing nature of migration. The classification of people was a means for this, and classes were tailored toward the goal of securing outputs, even though these outputs differed across Canada and Sweden. The central question was thus: Who should be given protection?

From the middle of the 1970's, however, a new control ideal emerged, manifested in the new asylum processing systems. As asylum became a regularized government procedure, this contributed to an increasing rooting of immigrants in the legal-administrative traditions of the respective countries. In the 1980's, the establishment of a professionalized bureaucracy for assessing claims contributed to asylum processing becoming more rigid and formalized. Asylum seekers, more and more, were conceptualized as *applicants* for government services, with their processing couched in general administrative and

legal frameworks. In both Canada and Sweden, issues such as appeals, evidence rules and legal obligations for both parties became increasingly important. As a contrast to flexibility, this second development represented a governing mode in which precision was increasingly important, with a concomitant focus on standardizing procedures rather than securing outputs. Here, the central question was rather: How should we assess people?

The movement toward a procedure-focused, precision-oriented notion of control in both countries is intimately tied to increasing judicialization. These different ideas of control are the arena in which the arrival of immigrants most clearly made latent tensions manifest in both countries. This is especially the case in Canada, where the common law tradition informed a consequential boundary between policy and law, which made policy elites resist asylum turning into a matter of "law", equating this with a loss of control. At the same time, standard expectations of justice and fairness clashed with their perceived absence in asylum processing, leading to continued calls for asylum reforms within the migration regime. The resistance to reform, coupled with a dysfunctional processing system and increasing arrivals, contributed to a building up of reform pressure, which was ultimately released with the Supreme Court's *Singh* decision. The new asylum processing was modelled on an incorporation of legal standards, meaning that by the 1990's, asylum procedures recognized Canada as a "country of first asylum" and set out legal obligations toward applicants, directly opposite to the intentions of lawmakers in the foundation and differentiation periods. A similar tension was not present in Sweden, with its Nordic civil law system and less of a perceived boundary between policy and law. The firmness of the policy-law boundary in Canada thus contributed to the drastic nature of the policy change, as contrasted with the series of gradual adjustments in Sweden. The results point to the importance of legal traditions in comparative administrative work.

Flexibility and precision have been seen here as representing different mental maps of control (Pierson 1993) for reducing the uncertainty of immigration and make it governable. The ascension of precision as an ideal is closely related to the institutionalization of the classification system: when classification became an end in itself, the maintenance of classificatory boundaries became more important. We get, as Bowker & Star (1999:24) write, a "substitution of precision for validity" – a shift from results to procedures. As more and more classes were introduced for purposes of selective precision, with finer boundaries, this in turn required more administrative capacity to separate and process people. In their increasing detail, the systems of selection generated problems of control: the attempts to make people precisely legible resulted in more and more in-betweens, categorial spaces where people didn't fit. With the

boundaries between being inside or outside of government status becoming more consequential, the placing of people into categories became more important. For purposes of precision, increasing demands were placed on the investigation of individual cases, but this made them more resource-consuming and created demands that were harder to fulfill. Calls for precision were often part of an increased ambition to control migration, but at the same time contributed to complicating processing: raising demands and making administration more drawn out and costly. In a sense, policymakers and officials became entangled in a web of their own making.

This tension between flexibility and precision shouldn't be seen as a wholesale shift, but rather the establishment of an enduring tension in migration control – one in which standardized procedures can contribute to goal displacement. The results point to "control" being a construct which, in an institutional sense, is reproduced and molded over time, rooted in legal-administrative traditions which give rise to certain endogenous perceptions of how public authority should be exercised (Clemens & Cook 1999, Thelen 1999, Streeck & Thelen 2005). In other words, just like "refugees", notions of control are culturally and historically contingent. These results are important in relation to the migration control literature, which tends to have a static definition of control (e.g., Massey 1999, Hollifield et al 2022).

Boundary maintenance in the courts

This part sets out the main results from Part II, again divided into three sections. The first outlines how the expansion of law has meant different things Canada and Sweden. Building on this, the second research question is answered by pointing to two different roles of courts in migration regimes: as fulfilling an intermediary or oversight function. Finally, an important implication is drawn from the results, on how courts make migrants processable.

The expansion of law can mean different things

The thesis has outlined how, from the dominant theories on migration control, we can formulate an assumption of *convergence* across states, where courts protect the rights of migrants against discretionary authority by states. This view of courts as a check on state authority plays a key role in explaining the seeming paradox of why states accept unwanted migrants (Joppke 1998, Boswell 2007, Hollifield & Wong 2023). The convergence hypothesis leads to an assumption that with the increasing role of law and expanding mandate of courts, it should become harder for state agencies to exercise sovereign control over borders. As a contrast to this, outside of the migration literature, there is

a well-established separation of different legal traditions (i.e. Bogdan 2013, Carlson 2019). Such legal systems, theorized here as institutionally enduring rules system which set expectations about the rule of law, make it plausible that the expanding role of law and courts in migration would engender a *divergence*: that different norms on legal interpretation and the role of courts would create institutionally enduring differences between countries in terms of how courts process migrants.

The result supports a divergence, with the expansion of law meaning different things in Sweden and Canada. However, it does so in a manner which doesn't predictably map onto the distinction of whether courts protect migrant rights or not. The study approached the legislative traditions as ideal types, and the cases align well with them. It is abundantly clear that the judges of the Canadian Federal Court and the Swedish Migration Court of Appeal formulate their decisions differently, a difference located in the realm of legal interpretation. This is effectively illuminated by the similarity of large components of the process, dealing with similar types of cases concerning Afghans.

In Sweden, the Migration Court of Appeal is working in a *deductive* tradition, engaged in establishing a top-down order by authoritatively setting out principal rules. Using prepatory works from the government as the main source the court can, in a sense, be seen as filling out the gaps left by policymakers when writing the law. From this follows that Court of Appeal aligns its decisions with what they perceive as the intentions of policymakers, rather than protect migrants against these intentions. This directly subverts the assumption that courts act as a check on state agents. This implies that judicialization is not simply a loss of state control, but rather a re-allocation of tasks within the migration regime.

In Canada, by contrast, the Federal Court is working in an *inductive* tradition of assessing cases one-by-one. Rather than trying to map out a top-down order, they develop rules gradually. Here, judicial review within administrative courts focuses on a balancing of power between different spheres of government. This is manifested in the standard of review, where the court assigns itself a more or less adversarial role in relation to the agency it reviews. Judges pay no attention to prepatory works and instead rely on case law.

These differences are important for the way in which courts produce status. The courts deliberate on similar issues, such as credibility and identity, and assessing similar types of evidence, but they do so in different manners. In Sweden, the court does protect rights – but it is the *right of the state* to control migration. This can be interpreted as a continuity of Sweden's long tradition of a blurred line between policy and law (Wenander 2016), which might from an Anglo-Saxon perspective be perceived as a lack of a separation of powers.

In Canada, no such clear pattern is evident. This lack of uniformity is itself understood here as a result of different legal traditions. The courts engage in different things: the Swedish Court of Appeal develops an authoritative set of solutions for purposes of clarifying policy, and the Canadian Federal Court engages in a judicial review function, a case-by-case oversight of administrative decisions.

Consequently, the Federal Court decisions take little heed of general migration policy considerations. The Canadian judges are not always more adversarial, but when they are, they conduct an independent analysis which questions state agencies. This is most clearly seen in the case of the ethnic minority of Hazaras, a large group within Afghan refugees, who are consistently seen as suffering from persecution by Canadian judges. The opposite is the case in Sweden, where the court has repeatedly denied Hazaras protection, siding with the position of the Swedish Migration Agency.

Similar to earlier, a hypothesis can be formulated on *the legal contingency of refugeehood:* the role of courts in protecting migrant rights depends on the tradition of legal interpretation in a state. The implications of the findings point to the need pay attention to legal traditions in comparative research on migration and beyond, in the many other policy areas beset by judicialization. They are of special significance for the national implementation of international frameworks, which can be considerably affected by national methods of legal interpretation. The results clearly indicate that the legal tradition of a specific country is important, allowing us to make sense of why courts assess the same group of applicants differently.

The study adds to the limited research on migration courts (c.f. Johannesson 2017, 2018, Evans Cameron 2018, Dauvergne 2021). It also highlights the need for more socio-legal studies to bridge the law/policy gap in migration. While there is a large literature on migration policy, and a large literature on migration law, these are seldom intertwined. In an era marked by an increasing intertwining of policy and law, research should bridge these domains.

Courts in regimes: Intermediary or oversight

This part directly addresses the second research question of how the enduring importance of different legal traditions affects the role of courts in the Swedish and Canadian migration regimes. The results show two different functions of courts: an intermediary and an oversight function.

In terms of Sweden, the results show how the Migration Court of Appeal can be seen as filling an *intermediary* function, not part in implementation in the sense of realizing policy, but rather in the sense of developing detailed legal guidance for how to apply laws. This is most clearly expressed in how the

court's decision can be understood as representing detailed legal and administrative *blueprints* for the Migration Agency to process people. That courts develop legal guidelines is, of course, in the nature of prejudicial decisions. But there is a closeness between policymakers, the court and the Migration Agency which goes beyond this. Based on their interpretation of legislative intent, Swedish judges produce clarifications on how to implement policy, which serve as instructions for the Migration Agency. While the court has overtaken the authority to issue prejudicial decisions from the Swedish government, in most of studied cases, Swedish judges actively attempts to formulate rules as they believe Swedish legislators intended them. In doing so, the MCA provides authoritative investigations into issues such as how to assess identity or how a case should be processed, ones which fill perceived gaps in the legislation.

In Canada, by contrast, the court can be seen as fulfilling an *oversight* function. Instead of using individual decisions to formulate questions deemed of general importance for migration regulation, in Canada, judges generally frame cases using the issues raised by applicants. They conduct reviews of individual cases and try whether the decisions are reasonable or correct. This is derived from a preoccupation with balancing the policy/law boundary in the administrative-legal tradition of Canada. Rather than authoritatively settling issues, the judges make decisions on individual cases, from which a body of jurisprudence emerges, a form of continuous balancing (and institutional reproduction) of the policy/law boundary.

This means that as opposed to clarifying policy by designing blueprints, the judges of the Federal Court engage in rectifying what they see as errors. There is wider variation in judges' rulings, which has been seen here as a symptom of discretion. Whereas the Swedish court tries to authoritatively settle principal issues once-and-for-all, the Canadian court repeatedly deals with similar cases. Often, the Canadian judges reach different conclusions in similar types of cases. This is made possible by the vast body of case law available to frame a case in many different potential ways. But more than just the presence or absence of discretion, it is rather that discretion plays different roles in the two courts. The Swedish judges use discretion to interpret policy maker intentions and develop a top-down body of legal instructions. The Canadian judges use their discretion to frame the review similar cases in different ways. This body of law serves as guidance for the Immigration and Refugee Board, so in both cases, the courts fulfil a function in developing rules for government agencies. But the process of developing them differ and indicate different functions of the courts. The different positions of the respective courts are testament to how traditions of legal culture are enduring features of the political landscape in an institutional sense (Thelen 1999, Scott 2014).

Making people processable

An important implication of the results is that they show how courts are engaged in making migrants *processable*. Asylum decision-making is seen here as concerned with organizing the gathering and aggregating of information under conditions of uncertainty. Courts should be understood as engaged in providing models for doing this. The analysis focused on three types of classification dilemmas presented by Afghan applicants: how to organize what a case is, what identity is and how to assess the danger of Afghanistan. Here, the courts engage in a "practical ontology" (Bowker & Star 1999:45) that implies reducing fundamental components of life to make them governable for purposes of asylum. In doing so, the work of courts represents a continuous institutional reproduction of boundaries (Clemens & Cook 1999, Scott 2014) within the systems of selection.

The results show how courts set out *legally legitimate decision rules* for agencies in the determination of issues such as credibility and identity. But the nature of this differs in the two countries. In Sweden, the MCA's blueprints represent an authoritative set of rules which establish a satisfactory standard for making decisions under uncertainty. These blueprints deal directly with how to organize processing and evaluate information on issues such as age. In Canada, the court is less engaged in definitively solving issues. Instead, judges focus on the balancing the policy/law boundary by choosing a standard of review, where the court adopts either a deferential or adversarial position, and then review individual decisions.

But in both cases, the results offer a concrete illustration of how courts produce status, by setting out rules that make possible the placing of people into categories under conditions of uncertainty. In doing so, the basic assumptions of the classificatory framework in migration control are laid bare, such as the necessity of individuals to be identifiable in key terms such as age and nationality. These represent core components of the state vision: the basic theorizations of social control manifested in the classification systems. How to make decision under uncertainty is what the notion of processability centers on. Courts make people processable by setting out rules for how to evaluate information and by clarifying the burden of proof for actors in providing such information. This means that applicants can become, as Erving Goffman has expressed it, "anchored as objects for biography", that is, "an entity about which a record can be built up" (Goffman 1963/2022:63-64). A file can be developed about them, information can be entered into it, and decisions can be reached. In the sense, the organizing of the asylum process is also an organizing of its subjects.

Information plays a key role in making people processable. Court decisions on which type of information is acceptable is an empirical manifestation of state informational capacity – not only the collection of informational capital, but also the authoritative declaration of which information is legitimate. Here, a difference has been identified across the cases. In Sweden, the court enforces a narrow, top-down state vision primarily concerned with whether an individual fits within the state framework for regulating migration. The weighing of evidence and applicants' narratives is highly standardized, only accepting specific forms of evidence like passports, and consistently prioritizing quantifiable information such as medical age tests. The country reports produced by the Migration Agency, upon which the Court relies, reinforces a top-down view of Afghan society, focusing on issues such as the presence of formal legal institutions and the lack of overt discrimination in legal frameworks. Here, the results show the *role of ignorance in maintaining order*: how a narrowly defined state vision allows for the production of standardized human statuses, an administratively expedient way of making decisions. The ideal of control as precision might sound conflicting with ignorance, but the results here line up with writing on classification that point out the function of restricting information to maintain order (Bowker & Star 1999, Jenkins 2008). The fewer types of information allowed and the more standardized it is, the more expedient processing becomes. The resulting formulas are often exceedingly hard for Afghans to fit into, and when they provide identification documents in non-standardized formats, such as the Afghan tazkira or certificates from social workers, this is generally not accepted by the Swedish court.

In Canada, by contrast, there is larger variation. The standardized, narrow vision is present there as well – but also one that is broader and closer to the account of the migrant, based on a more adversarial position to the assessment of state agents. This is especially clear in cases concerning Hazaras, which are oriented toward to people's claims rather than how they fit into the classification order. The clearest mark of a more adversarial position is how information is introduced and aggregated: the degree to which judges introduce new information or present independent interpretations of information in the case – such as by explaining that forms might be filled in incorrectly because applicants are illiterate or question the assessment of Afghanistan by migration agencies through the introduction of reports from other organizations.

In both cases the results show the productive aspects of making individuals processable. Through the asylum process, despite its uncertainties, a status must be produced. The courts set out rules for how to make individuals identifiable to allow status production. These are rules which often hinge on the placing of the burden of proof and allow for an *administrative production of*

identity: of assigning people an age or a nationality which becomes socially real in the pragmatist sense, as it generates consequences in terms of permits or deportation. In doing so, the Migration Court of Appeal in Sweden and the Federal Court in Canada are two organizations engaged in the historically and culturally contingent task of government status production. Just like the standardization of age, names or nationality are phenomena that have historically been brought about by artifacts such as population registration and passports, so human identity is today defined and reproduced in the paperwork of courts.

Comparative people processing

At this point, the research questions have been answered and the results summarized. This final section of the thesis looks forward to future avenues of research. It does so by synthesizing important findings from the thesis into two ideal type models for studying *comparative people processing*: that is, how regulatory frameworks through which people are rendered as cases vary across contexts. The first model concerns the organization of people processing and second sets out two modes of conducting it. After this, important implications and avenues for future research are addressed.

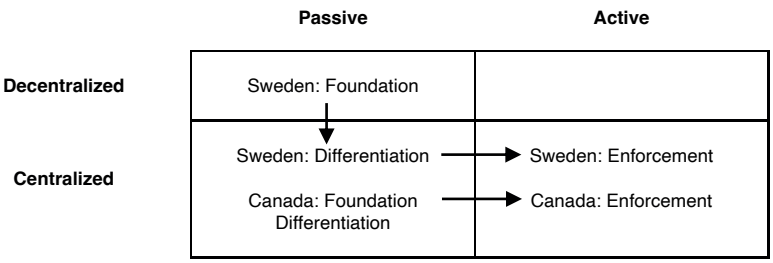
The organization of people processing

This study has looked at one type of people processing and examined how it varies according to three major institutional legacies of nation states: immigration traditions, welfare models and legal-administrative traditions. The case of refugees is special as there is an international legal framework and set of international institutions which is often not present in state status production. Nevertheless, the results from an in-depth comparative study allows for the drawing of more general conclusions which can inform future studies. People processing is often a neglected area in comparative research on public administration, but it is a key function of modern states, and something which comparative work should engage in.

A first important issue for such research is the organization of people processing. The results of this study indicate how the authority of processing can be *centralized* or *decentralized*. The making up of people can be concentrated to a single agency or spread out across different policy areas. The degree of centralization is signified by the extent to which decisions of a centralized authority are binding for other agencies – illustrated by how a residency permit functions as a key that has effects on how a person is processed by other agencies. The greater the degree to which this is true, the greater the extent to which an authority has control of exercising authority over a population.

Secondly, authoritative state classification can either be *passive* or *active*. In its passive form, individuals are classified as they come into contact with the state in its different manifestation, such as by applying for permits or social services. This carries with it an assumption that individuals are classified as the need arises. On other hand, the orientation can be active, meaning that agencies attempt to pre-emptively classify all individuals under its operations, with the intention to gather everyone in an encompassing state vision. This is a much more extensive operation, the pre-eminent example of which is the modern asylum process. In this study, the establishment of an active system is intimately associated with bureaucratic growth and capacity-building.

Figure 6: Organization of people processing



Part I of this study can be seen as studying the historical movement within this model (Figure 6), as indicated by the arrows above, toward an organization of control that is centralized and active. Such a processual approach has been foundational to exploring government classification here, as something which isn't static but always in the making. But the model can also be used as an ideal type for typologizing cases in future research: exploring how the organization of people processing of the same target population differs across contexts, or how processing is organized for different target populations in the same context. In exploring such dynamics, it is important they are couched in context-dependent relations between governing and governed, such as institutional legacies which give rise to moral vocabularies of deservingness.

One important issue for future research concerns exploring the characteristics of target populations which make them become subject of centralized, active governing. Is this an effect of increasing political interest in specific groups, such as through agenda-setting, or has it rather to do with the nature of interaction between classifier and classified? Is it something which is specifically associated with the disciplining of disadvantaged groups, or are there are similar dynamics for advantaged groups?

Two modes of people processing

Second, in terms of the actual matching people with state categories, two ideal type modes can be identified: flexible and precise (Table 7)

Table 7: Modes of people processing

	Flexible	Precise
Organizing of a person	Whole	Sequence
Boundary interpretation	Analogous	Literal
Orientation	External validity: Does this person deserve protection?	Internal coherence: Does this person fit the legal framework?

A flexible mode builds on the assessment of the whole of a person's case together. A precise, model, by contrast organizing it into a series of distinct steps to be dealt with one by one. This implies different methods of aggregating information, which is important because when every bit of information is associated with uncertainty, adding them together or judging them one by one is of great consequence – by analogy, it is the difference between adding a set of low values together into a total sum, or dismissing them one by one and ending with up nothing. While a sequential order allows for standardizing cases, it entails more rigorous demands which are hard for applicants to fit into.

In a flexible model people are matched with categories through analogous reasoning, meaning that people are assessed against the perceived intention of a government status. The precise version is instead characterized by a literal, narrow reading of a category. This is the difference between asking whether a person's general situation creates a need for protection versus asking if the person fits a legal category of someone eligible for protection. Flexible processing is ultimately oriented toward the external validity of the classification. Precise processing, by contrast, is oriented towards internal coherence and the procedure by which a person was classified.

Since these are ideal types, similar to the previous model, they can be used to typologize cases. The general pattern in the empirical material in this study is a movement from a flexible form of processing to a more precise one. This is consequential, because the models are characterized by a trade-off between *discretion* and *standardization*: the flexible system might sound more humane, but it also implies larger room for chance and abuse of power, where the arbitrary notions of deservingness of the official who happens to be deciding a case becomes decisive. The precise model comes with standardized procedures, intimately associated with increasing judicialization. This can benefit equal treatment and a certain understanding of the rule of law, but also be alienating in its rigor. Too standardized a treatment doesn't necessarily entail equal

treatment, either, since it doesn't allow sufficient adaption of rules to the specific situations of different people. Ultimately, precision can engender goal displacement, where the procedures become more important than the ends they are supposed to serve. And it's not certain that arbitrariness disappears: the presence of a massive body of rules might allow for discretionary combinations of them. This has important implications for accountability. In the flexible model, it is more apparent who is making the decision, whereas in the precise version, it is made opaque in the massive body of rules. The discretion doesn't necessarily disappear, but it can become less visible.

Finally, when studying people processing, it's important not to view categorizers as omnipotent and the categorized as passive. In future research, there is much to be explored about the interactive nature of government classification. Humans, as Hacking (2007) writes, are moving targets, who react to regulations imposed upon them. The degree to which the governed are perceived to resist need not be seen as an expression of deviancy, but rather a symptom of the inherent inability of state actors to compress the multiplicity of the world into the desired simplifications of legibility (Scott 1998, Jones 2009, Stone 2012). In future research on people processing, this interactive dynamic between categorizer and categorized offers a rewarding avenue, since it is seldom explored. It amounts to a frontier of state capacity: the actual work of fitting people into classification schemes on the street level.

As a conclusion, we now turn to three important implications of the increasing administrative identification of people by the state: on insiders and outsiders, the legitimacy of control through classification, and the state's reproduction of inequality.

Insiders, outsiders and the suffering in-between

The results here depict an ever-increasing complexity of legal regulations and administration that classify people for the purposes of governing over them. One particularly important consequence of this development is a potential *disassociation* between governing models and the reality to which they apply.

The developments charted in this study can be seen as a victory for a governing mentality in which the richness of human beings is compressed into a poverty of bureaucratic boxes with hard boundaries. It implies that the exercise of public authority rests on increasingly standardized views of human beings. A recurring theme has been that the increasing standardization of classification is done for the sake of administrative expediency and efficiency. The more streamlined cases are, the easier it is supposed to be process people. This is what the notion of processability centers on.

But the tendency of administrative systems to become increasingly precise for the purpose of creating order, is not the same thing as this order being realized. On the contrary, the opposite can take place: the categories can become fictions of abstract administration, simplified to a degree that their relevance for the reality they are supposed to apply is diminished. This rooted in the fact that even though administrative and legal frameworks can be designed to allow for clearing cases, the actual people and their needs don't just disappear.

Expressed differently, while the systems of selection have been given rise to a large bureaucratic growth, this has not necessarily engendered capacity – or at least not the capacity to achieve what was originally intended. Instead, an increasing disassociation between a state vision and on-the-ground realities is among the most pressing issues in migration control. The systems of selection in Canadian and Swedish migration control have often, by their own designs, failed: they have failed at maintaining systems of reliably reproducing state classification schemes and failed at preventing people from arriving in undesired ways. But rather than achieving their stated ends, they have been very effective at generating suffering for people in the in-betweens, those who don't fit into the increasingly narrow categories. They have been able to submit people to administrative processing and routines which make their lives exceedingly hard, shuffling people through punitive bureaucratic rituals over torturous waiting periods that extend for months and years.

On a societal level, the expansion of such narrow classifications in different policy fields can give rise to major difficulties. Instead of an efficient rendering of people as cases, we might get a series of extensive and costly control apparatuses in which "unwanted" populations circulate between different authorities – people who are denied access to welfare in terms of social services, or eldercare, or migration permits, but whose persistent needs mean they keep rotating in different applications. In such a development, more and more resources will be directed to guarding the access to services, rather than provide the services themselves. In the long run, the maintenance of narrow categories of inclusion can have severe consequences for societal cohesion, generate processes of social exclusion and a politics of containment in which tax expenditures are channeled to maintaining costly structures of discipline and control. Immigrants present a particular case, as it concerns people who are formally outside of the nation state. But similar dynamics are reasonably applicable for other populations.

Future research can explore whether the dynamics of such increasing distance between government classification systems and the reality to which they apply in other policy areas and context. Two different general directions of such research can be set. On the one hand, one can imagine that with increasing

complexity, proliferating statuses, judicialized and precise boundaries, and ever-growing bureaucracies, such systems of selection will generate a set of internal tensions which ultimately lead to a collapse in their functionality. In other words, as Hartmut Rosa writes, that the state's attempts at predicting and controlling the world will dramatically fail, at root due to the inherently misconceived assumption that the richness of human experience can be captured in increasingly detailed attempts of state regulation.

But one can also imagine a different perspective: that systems of governing people through status production should not primarily be understood through functions and consequences, but rather as a matter of ideology. Here, the disciplining and control of specific groups would not be ultimately geared toward garnering certain political outcomes, but rather a goal in its own right: to maintain social control and submit groups to the authority of the state. Certain empirical patterns in the case of refugees point in this direction, such as the fact that border control is generally a matter of principle rather than expedience, and much of the increasing complexity and cost of such control is a result of state reforms.

The legitimacy of control through classification

A second implication concerns the legitimacy of control through state classification. In large administrative systems, some form of classification is conceivably unavoidable to manage the distribution of services. The perceived legitimacy of this control is that resources and services should be distributed in a correct, expedient and just manner. Without controls, public services could suffer rampant abuse and fraud. But while classification may be unavoidable, it shouldn't be made to appear neutral or invisible. Such a *naturalization* of categories carries important implications.

In research and public debate, government-produced statuses are often presented as objective and neutral phenomena. This treats categories as if they are "inside" of the people categorized, and the process of state classification is the search for an answer that is already there. When the rendering of people as cases is incarnated in administrative and especially in legal frameworks, this reinforces such an air of objectivity and neutrality. As categories become naturalized, they turn into a form of Platonic ideas, more real than the people they are meant to portray – i.e. the "real" refugee become a fictive person in the minds of Swedish or Canadian policymakers or officials, rather than actual people fleeing and seeking protection. This internalization of categories has here been called a categorical vision. As this study has shown, such a view is mistaken: the categories can and have been different, and classification is a process which is embedded in the eye of the beholder, rather than in the people

classified. Government classification isn't static and objective, but the result of a deeply political and continuously ongoing process.

An important consequence of the naturalization of categories is that it can lead to a *displacement of responsibility*, making it seem as if flaws in the classification systems is due to applicants rather than designers. If the categories are perceived to be natural phenomena located "in" the people classified, then this make it seem necessary to have a control apparatus which validates that which is already there. The density and complexity of systems contribute to classification becoming naturalized, which makes it seem as if people don't fit, that it's their fault. Flaws in the categories can become displaced, instead perceived as flaws in the people they are applied to. This is especially clear in identification procedures in agencies and courts, which is treated as if it's search for facts already there. While it is true that people have certain characteristics and have experienced certain events, the model of precision into which these are pressed by agencies and courts is something different: a production of administrative identity for purposes of governing.

The expansion of complex and intricate legal systems has important implications for accountability, because it lessens transparency and the role of decision-makers becomes opaque. It also raises issues about the legitimacy of control. If the legitimacy stems from the idea that there needs to be control to guarantee a fair distribution of goods, how big a bureaucracy is proportional? This is an especially pressing issue in an age of supposed public austerity (Pollitt & Bouckaert 2017). There seems to be no end to the expansion of public expenditures for the sake of control and enforcement in migration.

Future research can explore such growing bureaucracies of control of people processing in other policy areas. How is the naturalization of categories transformed when it is enshrined in digital formats or used in automated decision-making? Does a movement of formulas to new formats further enhance tendencies toward standardization and differentiation? And what is the role of people processing in controlling access to public services of great importance in the future, such as access to eldercare for aging populations, or protection from turbulence in the labor market with the introduction of new forms of technology? Here, the bureaucracies of control and classification which render people as cases will be of enormous significance.

State reproduction of inequality

Finally, the findings of the study speak to contemporary debates on how immigration policies can reflect and reproduce societal inequalities through its regulation of entry into the social closure (Elrick & Lightman 2016, Ellermann 2020). Here, the systems of selection are highly consequential because they set

the terms of integration frameworks for those migrants who are allowed a residency permit. But there is one critical aspect of the contingent nature of deservingness which has been missing in this work: social class. As many have pointed out, the global movement of people has overt class dimensions. People seeking refugee often flee from poor countries to rich ones. The extensive migration control apparatuses in the global regulation of migration are also the regulation of poor people's movement (i.e. Zolberg 1999, Jones 2016, FitzGerald 2019). This is made all the more flagrant by the fact that capital and wealthy people are allowed to move much more freely across international borders.

More research is needed to explore the class dimensions of the systems of selection, looking at how they function as a way for the state to regulate and reproduce of societal inequalities. This can be done in terms of exploring desired immigrants and their characteristics, rather than looking at the unwanted. Many countries have special, fast-track immigration programs for investors and high-skilled labor. These are also part of the systems of selection, and seemingly run counter to the contemporary tendencies of border restriction. Such studies can compare controls directed at different groups, contrasting the examination of asylum seekers to that of business immigrants, for example. It seems self-evident to assume that social class directly impacts how they are processed and the degree of intrusiveness. While it may not be surprising that the poor are treated worse than the rich, how this comes about in more specific dynamics merits further exploration. This is also an enormously important aspect in the future of migration beset by the calamities of climate change, another global issue which that has overt class dynamics, wherein new forms of refugees can start to emerge.

Beyond migration, the class dynamics of people processing and how they vary across policy fields needs further exploration. How state agencies and their classification systems contribute to shaping and reproducing persistent inequalities in society – how the state doesn't just reflect, but also reproduces and aggravates inequality – is an issue the highest importance. This represents a persistent challenge to the notion that everyone should be equal before the law, and can contribute to creating circles of insiders and outsiders managed and reproduced by the representatives of the state.

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Swedish Summary

Den här avhandlingen undersöker hur stater försöker göra flyktingar styrbara genom att upprätta klassificeringssystem som sorterar in människor i administrativa identiteter. Studiens utgångspunkt är att statliga försök att kontrollera och styra migration till sin grundläggande natur består i att upprätta *urvalssystem.* Målsättningen med sådana system är att effektivt sortera mellan människor som anses värdiga respektive ovärdiga skydd. Den här typen av klassificeringssystem har expanderat kraftigt de senaste årtiondena. I en mängd stater bygger dagens reglering av mänsklig rörelse på en detaljerad indelning av migranter i administrativt och juridiskt definierade målgrupper – såsom konventionsflyktingar, ensamkommande flyktingbarn, subsidiära grupper och olika typer av arbetskraftsmigranter. För detta används instrument som asylprocesser, uppehållstillstånd, pass, visum och flera andra. Även om FN:s flyktingkonvention innehåller en definition av vad en flykting är, finns det en stor skillnad mellan länder i dess uttolkning. På senare år har det vuxit fram ett intresse för olika typer av klassificeringsprocedurer inom migrationsforskningen, men de dominerande teorierna om migrationskontroll bygger fortfarande på antagandet att begreppet ”flykting” är en neutral status, och att klassificeringssystem följaktligen inte är centrala för att förstå migrationspolitik. Den här avhandlingen utmanar den föreställning genom att studera flyktingskap som en administrativ identitet där statlig klassificering producerar snarare än avbildar status. Här ses klassificeringssystem som ett uttryck för hur stater försöker bygga upp en byråkratisk kapacitet att förvandla folk till fall. Dessa system är centrala element i att reglera mänsklig rörelse över internationella gränser.

Avhandlingens syfte är att bidra till teoretisk vidareutveckling om hur stater gör flyktingar styrbara genom klassificering. Detta åstadkoms genom att fenomenet migrationskontroll teoretiseras med ett ramverk utanför migrationslitteraturen. Klassificeringssystem förstås här som institutioner, genom ett teoretiskt ramverk bestående av historieinstitutionell teori samt styrnings- och förvaltningslitteratur kring klassificering. Med hjälp av dessa byggs ett analysverktyg som undersöker hur klassificeringssystem kan förstås som kulturellt och historiskt betingade. I en sådan syn inbegriper klassificeringssystemen olika föreställningar kring vem som är värdig skydd, vad är det vara flykting och vad det innebär att kontrollera mänsklig rörelse. Denna historiska förklaringsansats står i kontrast till dominerande teorier om migrationskontroll, som

istället brukar förklara migrationspolitik som ett resultat av konflikter mellan organiserade politiska intressen. Avhandlingen har också ambitioner att bidra bortom migrationsfältet, till teorier om hur människor görs styrbara genom offentliga klassificeringssystem mer generellt.

Studien består av en komparativ fallstudie av Sverige och Kanada. Dessa två länder erbjuder en fascinerande kontrast: deras migrationspolitiska reformhistoria är liknande, de har båda tagit emot ungefär en miljon flyktingar sedan 1980 och har liknande rykten om sig att vara ”humanitära stormakter”. Bakom dessa skenbara likheter finns det dock stora olikheter. Kanada är ett typexempel på ett invandringsland, ett tidigare kolonialt projekt där invandring än idag är tätt förknippat med nationsbyggande, ekonomisk tillväxt och nationell identitet. Sverige utgör istället ett exempel på ett invandrarland, där invandringen började senare och inte utgör en del av nationalmyten, utan istället har varit föremål för en välfärdspolitisk inramning. Länderna har även helt olika juridiska traditioner, där Kanada är ett exempel på ett common law-land och Sverige brukar sorteras som ett civil law-land, i en specifik nordisk variant. Studien bygger på arkivforskning och dess material utgörs av en lång rad dokumentära källor i form av förarbeten, lagförslag, parlamentsdebatter, myndighetsutredningar och domstolsbeslut. Den är utformad i två steg.

Del 1 söker svaret på frågan: hur institutionaliserades klassificeringssystem för migranter i Sverige och Kanada? Här undersöks de historiska rötterna och utveckling av det som skulle komma att bli den moderna migrationskontrollen i båda länderna. Från mitten av 1960-talet fram till 1990-talet utvecklades nya sätt att reglera migration, framburna av föreställningen att migration kräver aktiv styrning för att integreras i samhällslivet, vilket ersatte en syn på migration som en självreglerande företeelse. Detta krävde i sin tur att dess subjekt, eller målgrupper, definierades genom att göras administrativt läsbara. Detta inbegriper att mänskliga företeelser behöver förenklas för att uttryckas i byråkratiska termer. Ur denna dynamik växte de nya och alltmer komplicerade klassificeringssystemen som konkretiserade flyktingskap fram.

Del 2 rör sig från den historiska utformningen av regelsystem till deras samtida tillämpning och söker svaret på frågan: hur har olika juridiska traditioner påverkat förvaltningsdomstolars roll i de svenska och kanadensiska migrationsregimerna? Laglig reglering och domstolar har fått större vikt inom migrationspolitik på senare årtionden, och i del 2 undersöks hur kanadensiska och svenska förvaltningsdomstolar bedömer afghanska skyddssökande under 2000-talet. Dessa fall utgör en form av klassificeringsdilemman, eftersom individerna ofta faller utanför de förväntningarna som finns inbyggda i de statliga kategorierna, t.ex. genom att upplevas svåra att identifiera. Genom att studera hur domstolarna hanterar den osäkerhet som omgärdar sådana frågor

blottläggs hur de därigenom gör grundläggande mänskliga aspekter, såsom ålder och identitet, konkreta och därmed styrbara. Här kontrasteras hur skilda laguttolkningstraditioner leder till olika bedömning av liknande fall.

Studiens resultat visar att liknande styrsystem har utvecklats i både länderna, men att deras innebörd har påverkats av nationella olikheter i invandringstraditioner, välfärdsmodeller och juridiska traditioner. I Kanada, som ett resultat av idén att invandring är central för ekonomin, blev de nya styrsystemen instrument för att upprätthålla en planerad tillväxt. Som en konsekvens av detta definieras flyktingar som *anpassningsbara* individer. I Sverige rotades istället flyktingar i en välfärdspolitisk kontext, där de blev föremål för en socialpolitisk inramning och definierade som *sårbara*.

Samtidigt som det finns skillnader, visar resultaten också hur styrsystemen institutionaliserats på liknande vis: genom att utmanas av asylsökande. Framväxten av migrationskontroll bottnar i en interaktiv relation mellan styrande och styrda. Många centrala reformer, som framväxten av den moderna asylprocessen, kan förstås som svar på att invandrare anländer och utmanar kontrollideal. Under 1980-talet, när antalet asylsökande ökade i båda länderna, institutionaliserades klassificeringssystemen. När föreställningen om en kontrollerad invandring utmanades av människor som föll utanför de byråkratiska förenklingar som kontrollen bygger på, bidrog detta till att förstärka det upplevda behovet av att styra migration genom sådana förenklingar. Det innebär att klassificeringen gick från att vara ett medel för att styra migrationen, till att bli ett mål i sig. Detta medförde ett skifte i synen på kontroll: från en idé om kontroll som synonymt med flexibilitet och att säkerställa politiska resultat, till att kontroll alltmer förstods som synonymt med precision och att standardisera procedurer för att bedöma människor i de växande klassificeringssystemen. Sedan tidigt 1990-tal har styrsystemen i både Sveriges och Kanadas migrationspolitik stabiliserats till en serie reformer av samma sak, om och om igen: att förkorta väntetider, effektivisera handläggning, minska kostnader, bestämma vem som är en riktig flykting och fastställa migranters identitet. Dessa kretsar alla kring försök att inordna migranter i administrativa styrsystem.

Avhandlingens visar hur skilda laguttolkningstraditioner påverkar det sätt som svenska och kanadensiska förvaltningsdomstolar bedömer liknande fall. Dessa resultat ifrågasätter en brett spridd hypotes att domstolar skyddar migranters rättigheter. I Sverige tolkar Migrationsöverdomstolen lagstiftning enligt en deduktiv modell som bottnar i att söka efter lagstiftarens intentioner. Detta gör att den svenska domstolen fungerar som en form av *mellanhand* mellan lagstiftaren och Migrationsverket, vilken spelar en nyckelroll i att uttolka och implementera svensk lagstiftning. I Sverige skyddar domstolen statens rätt att styra invandring, snarare än asylsökandes rättigheter. Den federala

kanadensiska domstolen tolkar istället lagstiftning enligt en induktiv modell och använder sig inte av förarbeten, utan tidigare domar. Domstolen är mer oberoende gentemot staten, och visar i viss mån större utsträckning på att skydda migranters rättigheter, samtidigt som den kännetecknas av mer variation i sin lagtillämpning. Medan den svenska domstolen söker principiella svar på migrationskontrollens utformning, består den kanadensiska domstolens arbete i en form av *tillsyn* över lagens tillämpning i enskilda ärenden.

Sammanfattningsvis pekar avhandlingens resultat på hur både ”flykting” och ”kontroll” är historiskt betingande begrepp som inte är stabila och neutrala utan tvärtom skiftar och görs över tid. Avhandlingen visar på hur klassificeringssystemens ständiga utveckling bottnar i en ambition att skilja mellan ”riktiga” och ”falska” flyktingar, och att denna strävan givit upphov till en accelererande differentiering när de administrativa formlerna har visat sig svåra att tillämpa på verkligheten. Denna differentiering har medfört en omfattande byråkratisk tillväxt, i syfte att etablera kapacitet för att på ett stabilt och förutsägbart sätt förvandla folk till fall. Men detta har ofta misslyckats.

De moderna styrsystemen för migration har institutionaliserats samtidigt som både det svenska och kanadensiska politiska livet genomgått stora förändringar. Det finns en tydlig stabilitet i skuggan av de skenbart stora förändringarna inom migrationspolitiken – även om nya försök på lösningar återkommande lanseras, har invandringspolitikens grundläggande problematisering befästs. Genom att visa på detta erbjuder avhandlingen en annan förståelse av migrationskontrollens framväxt än den dominerande. Avslutningsvis tecknar avhandlingen hur framtida forskning kan närma sig jämförelser av klassificeringssystem: genom att å ena sidan studera hur de är organiserade (centraliserade eller decentraliserade, samt aktiva eller passiva) och hur handläggningen av fall går till (flexibla och inriktade på vem som förtjänar en tjänst, eller precisa och inriktade på vem som passar in i regelverket).

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