

3 The Idealised Subject of Freedom and the Refugee

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Introduction

As with terms such as ‘human rights’, ‘democracy’, and ‘equality’, the notion of ‘freedom’ has an emblematic character with highly normative overtones. The Universal Declaration of Human Rights (hereinafter referred to as “the Universal Declaration”) considers freedom both as a universal right and one of its founding principles (UN General Assembly, 1948). After the official abolition of slavery and the recognition of equal rights for women, the widely held assumption is that freedom is – at least formally – a universal entitlement belonging to every human being. The formal architecture of freedom seems consistent and inclusive, without logical tensions, anomalies, or otherness. Yet, once we turn our analytical focus to the perspectives of refugees, we realise immediately that this universalist thesis is not easily defensible. In this chapter, I argue that the universalist discourse of freedom is confined within the boundaries of the nation-state paradigm. This paradigm represents an exclusionary model for organising the world in the post-colonial era. As will be seen, refugeehood poses a serious challenge to the logic of the current nation-state model, which is premised on the colonial nexus of national citizenship, statehood, and territorial sovereignty.

This chapter begins by offering a critical overview of prevalent humanitarian approaches to the interrelation of refugeehood and freedom. The humanitarian approach represents a theoretical stance that, implicitly or explicitly, is built on the legal framework offered by the Refugee Convention (1951) and relating human rights instruments (hereinafter referred to as “the Conventional model”). The humanitarians conceptualise refugeehood in terms of a transitory, temporary, and exceptional status that should, ultimately, transform into citizenship, either by inclusion (naturalisation) or exclusion (repatriation). Correspondingly, they envision refugees as “victims of persecution” who should be granted protection on a temporary basis and under extraordinary circumstances. This humanitarian vantage point tends to reduce refugees to depoliticised victims whose biological life should be rescued by host countries and international aid organisations. It overlooks refugees’ political subjectivity and poses several limitations to understanding refugees’ practices and perceptions of freedom.

This chapter offers an alternative approach to rethinking the interrelation of freedom and refugeehood. By employing the notion of (non)-subjectivity, I elucidate that the meaning and significance of (un)freedom could not be reduced to static political categories or citizen-oriented conceptions. The central idea of this chapter is that refugeehood is a multi-faceted juridico-political condition that transgresses the hierarchical binaries of inclusion versus exclusion. For refugees, the meaning of freedom and unfreedom are intertwined and should be approached as a dynamic relationship characterising the state of (non)-subjectivity. As political (non)-subjects, refugees resist the exclusionary structures of unfreedom and enact their freedom and subjectivity in different phases of refugeehood.

Freedom and National Citizenship

The way the notion of ‘freedom’ has been framed within post-war human rights documents represents the prevalent tendency towards the juridico-political meaning of freedom in contemporary political discourse. In this regard, the Universal Declaration (1948) could be considered an exemplary model that provides clear insights into the formal enunciation of freedom. Let us, therefore, briefly examine how freedom has been articulated in this document. The term ‘freedom’ is almost excessively used in the Universal Declaration and appears more than 20 times in the document (UN General Assembly, 1948). This observation attests the importance of this political signifier in the post-war context.

The Universal Declaration makes two universality claims concerning the validity of freedom. First, freedom is asserted as a core political value that should be pursued and promoted in *every* nation globally (Morsink, 2009: 17–18). The framers of the Universal Declaration state that the “peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights [...] and have determined to promote social progress and better standards of life in larger freedom” (UN General Assembly, 1948: preamble; see also Brown, 2016: 19). The Universal Declaration also reiterates that all “[...] member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms” (UN General Assembly, 1948: preamble). Accordingly, freedom is considered a foundational political value, which serves as the precondition for the realisation of the rights that are formally declared (Morsink, 2009: 18). The Universal Declaration claims that common understanding of freedom is “of the greatest importance” and forms a prerequisite for the recognition and full realisation of “inalienable” human rights (Brown, 2016: 19; UN General Assembly, 1948: preamble).

The second universality claim of the Declaration relates to the *designation* of freedom in the sense of a universal and inalienable right (Brown, 2016: 19; Morsink, 2009: 17). According to the Universal Declaration, “all human beings are born free” and entitled to freedom, “without distinction of any kind, such

as race, colour, sex, language, religion, or other political or other opinion, national or social origin, property, birth or other status” (UN General Assembly, 1948: Arts. 1 & 2). The universal quantifier in the phrase “all human beings” implies that freedom is an entitlement belonging to every human individual. As such, the categorical domain of freedom contains ‘all members of the human family’ and does not exclude anyone who is recognised as human.

Within the human rights discourse, these universality claims give shape to the formal structure of freedom. However, this universalist structure is built upon a conflictual juridico-political foundation. Despite the apparent universalisation of the idea of freedom, the juridico-political meaning of this political signifier is confined by the boundaries of national citizenship, statehood, and territorial sovereignty. Historically, the appearance of the notion of freedom, in the sense of a central normative value, goes hand in hand with the rise of the nation-state in the post-colonial world. As Balibar, Wallerstein, Anderson, and others maintain, the nation-state model is the prevailing mode of political organisation of society in the last few centuries (Anderson, 2016: 40–43; Balibar & Wallerstein, 1991: 87; Isin, 2002: 232–33). On the one hand, the gradual emergence of this model was the by-product of the internal collapse of colonial empires and the rise of new nation-states. On the other hand, the disintegration of colonial empires (caused by decolonisation and independence movements) gave rise to the globalisation of the nation-state paradigm. Both historical processes resulted in the idea that society should be organised by a sovereign state that represents and unifies a nation within a clearly bounded territory and highly secured borders (Agamben, 1998: 76, 2000; Balibar, 2016: 33–34; Balibar & Wallerstein, 1991: 91).

According to Douzinas and Balibar, the glorification of the modern concept of national citizenship gives rise to the double process of inclusion and exclusion. In the first place, it amounts to the inclusion of citizens in the domain of membership and their recognition as the main “beneficiary of rights” and freedoms (Balibar 2016: 16; Douzinas, 2019: 95). Yet, citizenship is not an unbounded juridico-political status to which every human being is entitled. The actual meaning and limits of this status are contextually determined and depend on social and historical conditions. As Losurdo observes, in the modern era, while free states were celebrating and enjoying their freedom and democratic citizenship, practices such as indigenous genocide, forceful assimilation, slavery, patriarchal rule, ethnic cleansing, and violent colonisations reached their apex (2014: 323–44; see also Douzinas, 2019: 64). Moreover, the equation of political membership with citizenship implies the exclusion of all non-citizens from the domain of humanity. This process turns freedom – instead of a universal right – into an exclusive status and binary marker that classifies the social world into two opposite poles: citizens versus non-citizens. This hierarchical division has, for centuries, prevented (fugitive) slaves, women, subjects of colonised territories, and present-day refugees from the domain of formal freedom and political membership (Bourke, 2013: 240; Douzinas, 2019: 95–96; Hesse, 2014; Isin, 2002: 3–4).

The Anomaly of the Paradigm

Despite the predominance of the nation-state paradigm, there are an increasing number of people around the globe who do not fit into this model. Statistical data and forecasts concerning the number of refugees and displaced people suggest that the global refugee population has doubled since 2011 (UNHCR, 2022b). In this sense, statelessness and refugeehood could be understood as an emerging crisis that probes and dismantles the idealised image of the human reflected in the concept of national citizenship (Balibar, 2016: 79–81). But what happens once a human being becomes a refugee? As Arendt and others make clear, the construction of modern nation-states concurs, historically, with the neo-colonial projects of nation-building and humanitarian conquests, large-scale processes of denationalisation and forced displacement. These processes made millions of people in the world refugee and stateless, which are epitomised by outlawing Jews, Roma and Sinti, Armenians, Palestinians, Indians, the Rohingya, and many other European and non-European nationals over the last few decades (Arendt, [1951]1973: 278–81; Douzinas, 2019: 97–8; Gündoğdu, 2015: 107).

Confronted with the subsequent practices of genocide and massacre, the Refugee Convention (1951) was designed as a legal instrument to prevent these atrocious phenomena (UN General Assembly, 1951). The Refugee Convention defines refugees as individuals who have a “well-founded fear of persecution” because of five specified grounds, i.e., race, religion, nationality, membership of a particular social group and political opinion (UN General Assembly, 1951: Art. 1). There are several international instruments relating to refugees (including the 1967 Protocol) that recognise their status and ascribe a minimum set of rights to them (UN General Assembly, 1967).¹ However, all these international instruments share a common underlying assumption: being refugee is a temporary and exceptional status, which should, at some point, transform into the status of citizenship. This viewpoint has, explicitly, been formulated by Sadako Ogata² in the *travaux préparatoires* concerning the intentions and scope of the Refugee Convention. As Ogata puts it,

until an appropriate durable solution is found for them, and refugees cease to be refugees either through voluntary repatriation or legal integration (naturalization) in their new home country, it is necessary for them to be treated in accordance with internationally recognized basic minimum standards.

(UNHCR, 1990: 4)

To preserve the formal unity of nationality and political membership, refugeehood has been viewed as an ‘abnormal’ and transitory juridico-political condition that should not “be regarded permanent” (UNHCR, 1990: 246). In doing so, the legal processes of *repatriation* (to the country of origin) and *naturalisation* (in the host country) are widely recognised and put into force (Ibid).

Still, the exponential growth of refugee population worldwide, radically, challenges this double mechanism. As of 2022, over 100 million people have fled their habitual place of residence due to failure of nation-states, institutional violence, humanitarian interventions, and international wars on terror. A significant number of these refugees spend their entire life in extended exile or protracted refugee situations. Millions of children are born into permanent statelessness and many of them spend their entire childhoods in refugee camps (Hyndman & Giles, 2018; Parekh, 2020: 5; UNHCR, 2022a: 20).

Humanitarian Approach

The global emergence of refugeehood throws the nation-state paradigm into an all-encompassing crisis on a practical and theoretical level. This crisis is being echoed in inflationary usage of hyperbolic metaphors in Western media, and everyday political discourse, such as ‘refugee crisis’, ‘humanitarian catastrophe’, ‘mass movements of migrants’, ‘human floods from the Global South’ threatening national borders, and so on (see, for instance, European Commission, 2017; Georgiou & Zaborowski, 2017). On their part, political theorists attempt to analyse and articulate a response to this emerging political phenomenon. In mainstream political discourse (especially among liberals and neo-republicans), the humanitarian approach has played an influential role in the way refugeehood is being depicted and understood.

The humanitarian approach represents a theoretical stance that, implicitly or explicitly, builds on the conceptual model offered by the Refugee Convention and relating human rights instruments. In this framework, refugees are often portrayed as vulnerable “victims of persecution” who are “temporarily” in need of “humanitarian” and “charitable” assistance from “host” countries and international aid organisations (Miller & Straehle, 2021: 21; UN General Assembly, 1951: Arts. 31 & 33). The term ‘persecution’ is directly associated with life-threatening unfreedom in the sense of extreme forms of coercion or domination (Hathaway, 2021a; Hathaway & Foster, 2014: 179). On this interpretation, persecution is almost synonymous with a condition that liberal and neo-republican theorists call unfreedom.³

The humanitarian approach is less concerned with refugees’ political subjectivity and conceptualises them as victims of persecution who should be given protection on a temporary basis. The main point of disagreement among humanitarian political theorists revolves around the dichotomy of inclusion versus exclusion. The central question is whether and to what extent refugees are to be considered as formal right-holders (subject of freedom) and whether and to what extent receiving states have duties towards these (would-be) subjects (Blake, 2013; Carens, 2015: 278; Kukathas, 2017; Miller, 2016: 51–57).

First, to establish whether the human refugee qualifies for ‘inclusion in the domain of freedom’ (admission), refugeehood is, conceptually, distinguished from citizenship as well as from other types of migration (Carens, 2015: 192–224; Miller, 2017: 767). According to the Refugee Convention, refugeehood is an

exceptional form of human displacement, which derives its legitimacy from a “well-founded fear of persecution”. This fear of persecution should be substantiated by “objective” and “subjective” grounds (Hathaway & Hicks, 2005: 510–514). The Refugee Convention does not define how states are to determine whether individual applicants meet the refugee definition. As such, the receiving state is the only institution that is authorised to determine and recognise whether refugees’ fear of persecution is valid (Hyndman & Giles, 2018: 2; UNHCR, 2019: 19, 2021). Those persons whose “fear of persecution” is recognised as “well-founded” could be granted a set of minimum rights or freedoms. It should, however, be noted that these rights and freedoms are categorically different from citizenship rights. As Miller contends, the scope of refugees’ rights and freedoms depends on the hospitality of the receiving state whose priority is to protect the interest of its own nationals (Miller, 2016: 160, 2017). As a general rule, refugees are prevented from participating in the realm of politics and related processes, such as executive, legislative, or judicial bodies. Other civil rights which apply to refugees could “be withheld on grounds of their lack of nationality during national emergencies” (Hathaway, 2021a: 174).

To gain access to the political domain, the refugee needs to go through the legal process of ‘naturalisation’, which is the act of investing an alien with the status of a national in the receiving state (Carens, 2015: 47–48). Put another way, the refugee should acquire citizenship to take part in the political body as a fully recognised subject of freedom. The process of naturalisation is dependent on the degree of generosity of the receiving state and is codified by its special legislative directives (UNHCR, 1990: 246–48). In contrast to the universalist premise of the Universal Declaration, the (political) freedom of the (former) refugee (who becomes a ‘naturalised citizen’) is not immediate, inalienable, or manifest. Rather, this freedom is mediated by the generous intervention of the receiving state and derives from *natural* entitlements of freeborn citizens, i.e., those who possess freedom by birth (see also Carens, 2015: 21).

Second, although the state has exclusive authority to process refugee claims and establish asylum procedures at its own discretion, it has no direct or absolute obligation to open its borders and grant refugee status to all (potential) asylum seekers in question (Miller, 2013).⁴ Asylum-seekers whose refugee claim (i.e., their well-founded fear of persecution) is not recognised, have no legal *ground* for residence and could, legitimately, be expelled and repatriated (Miller, 2016: 91–93). Repatriation is an internationally accepted mechanism to return rejected asylum-seekers to their country of origin (Hathaway, 2005; see also Carens, 2015: 208). As the etymological root of this term suggests, repatriation is the act of relocating the rejected and unrecognised fugitives to their own patria, i.e., the political territory where their (male) ancestors are born. In this sense, repatriation is another expression of the myth of territorial origin (nativity). A foreigner whose “fear of persecution” is not recognised has, by definition, no ground to stand upon; she has no legitimate legal *status*. The only option available for the politically *groundless* person is to be relocated to one’s own natural territory. In this interpretation, repatriation is the legal counterpart

of naturalisation and characterises the mythical nexus of nation, state, and territory (Agamben, 1998, 2000; Agier, 2017: 34).

Third and subsequently, the legal relationship between asylum-seekers and host countries is conditioned by the principle of territorial sovereignty. Following this principle, states are bound to respect human rights only when subjects physically come under their sovereignty and jurisdiction. As long as the refugee has not entered the territory of a particular nation-state, she has no legal basis to submit a valid refugee claim. Nonetheless, nation-states (potential duty-bearers) have no binding obligation to open their borders and provide access to their territory, in order to facilitate or admit refugee claims (Agier, 2017: 152; Spijkerboer, 2017). The principle of national sovereignty legitimates the exclusive right to exercise discretionary control over admissions (Blake, 2013; Miller, 2016: 160).⁵ This principle has wide-ranging political consequences, especially, in wealthy Western nation-states. In the present-day political context, the state's exercise of sovereignty has led to very sophisticated and rigid border regimes, extravagant obsession with border management, and exorbitant investments in extraterritorial border control. These bordering practices unmask the concealed image of the ideal human (the citizen) that underlies the universalist discourse of human rights (Agier, 2017: 5–12; Mezzadra & Neilson, 2013: 279; Spijkerboer, 2017).

The main discussion between political theorists – whose theories implicitly or explicitly are based on humanitarian conceptions of refugeehood – centres on the state's discretionary power to exclude, its legitimacy, and moral limits. At one end of the spectrum, cosmopolitan scholars have argued for open borders and criticised the state's discretionary power and exclusionary practices of border control and corresponding policies (see, for instance, Abizadeh, 2012; Carens, 2015: 278; Kukathas, 2017). For example, as Carens argues, socio-economic advantages are distributed unequally and unfairly throughout history, dividing the world into rich and poor nation-states. Closed borders cause morally unfounded inequality (Carens, 2015: 226). On this view, citizenship of rich states is a privilege and resembles aristocratic prerogatives in the Middle Ages. For Carens, global inequality brings about the moral obligation, especially for rich nation-states, to promote freedom of movement and implement inclusive and compassionate border policies (2015: 227; see also Chamberlain, 2021).

At the other end of the spectrum, nationalist scholars have challenged this position and argued for unilateral border control. The main argument, here, relates to the protection of territorial sovereignty, national interests, and social cohesion (see, for instance, Blake, 2013; Miller, 2016, 2017). In the hierarchy of state's duties and obligations, the state has an immediate obligation (“perfect duty” to use neo-Kantian terminology) towards their own nationals and should prioritise their rights and interests (Miller, 2017). To fulfil this duty and given the fact that the high number of newcomers might lead to social disruption and lack of financial and public resources, the receiving state is morally legitimated to take restrictive measures to prevent refugees from entering its territory (Blake, 2013; Ekins, 2021; Miller, 2016: 74). As Miller argues, migration control

should not be conceived as a *coercive* measure, as it is meant to “*prevent* those denied entry from carrying out their life-projects” (Miller, 2017: 768). Migration control is a *preventive* measure to filter migration flows and to distinguish irregular economic migrants from those who have a well-founded ground for leaving their country of residence (Ekins, 2021). On this view, the rationale behind strong border control is to protect national interests, to safeguard state sovereignty, and to alleviate “a perception of cultural threat and a sense that their home is under invasion on the part of members of the receiving society” (Miller, 2016: 160).

Despite diverging moral standards, both nationalist and cosmopolitan perspectives are framed within the double mechanism of naturalisation and repatriation. Both viewpoints refer to a single assumption. On the one hand, the human refugee (the alien) should be included and rendered *natural*. Through the hospitable mediation of the state’s discretionary power, one stops being a fugitive and will, possibly, be granted citizenship (see Carens, 2015: 45–55). The naturalised fugitive is regarded *as if* she were a freeborn member of the society. On the other hand, the human refugee is territorially excluded from national frontiers or legitimately repatriated to her country of origin (Ekins, 2021; Miller, 2016, 2017). Border control and repatriation aim to convert refugees into national citizens of their own patria. In doing so, exclusion and bordering practices amount to a reverse form of naturalisation.

The Arendtian Critique

Within the humanitarian framework, it is not the *human* of human rights that substantiates our freedom. Freedom is only relevant for those who are already defined and recognised as full political subjects. It is one’s bond with native territory and the persona of national citizenship that allows us to participate in the realm of freedom. In this way, the prevalent human rights regime reinforces the gap between man and citizen and often leaves refugees without guarantees (Douzinas, 2019: 64). National citizenship is a modern persona that is put on the face of the ‘universal free human being’. This persona is arbitrarily and forcefully equated with political subjectivity and membership (Balibar, 2016: 73). Once cut off from the political community, the condition of the human being transforms into an abnormality, representing victimhood, redundancy, and powerlessness (Bauman, 2004; Mezzadra, 2020, Squire et al., 2021).

Refugeehood represents a normal by-product of the postcolonial world order and embodies the counter-history of nation-states whose internal borders, walls, and external fortifications are, growingly, being militarised and reinforced (Khosravi, 2010: 2–4; De Genova, 2017: 24; Mezzadra & Neilson, 2013: 145; Squire et al., 2021). Refugeehood is a juridico-political condition that is radically different from citizenship. The human condition of the refugee demonstrates the real and irreducible non-identity of citizenship and the fact of being born human. It embodies an anomalous juridico-political condition situated between the double mechanisms of exclusion and inclusion.

Directly after the adoption of the Universal Declaration, Arendt was one of the first theorists who observed and critically examined this anomaly. According to Arendt, it is too simplistic and misguided to conceive refugeehood as a transitory or temporary state applying to exceptional circumstances. On the contrary, the mass flight of refugees should be regarded as a normalised consequence of exclusionary structures of the nation-state model. As she goes on to argue, abstract human rights do not provide any ground for humans to be free in the political sense. In fact, the protection, recognition, and expression of freedom (and rights) only make sense within the boundaries of the political community (Arendt, [1951]1973: 176; see also Benhabib, 2018: 103–105; Gündoğdu, 2015: 37).

According to Arendt, freedom is socially instituted and is premised on the notion of political membership. As long as a human being is not recognised as a (full) member of a political community, it would be misguided to, meaningfully, speak of her right to freedom. Being part of the body politic is the precondition for human freedom and participation in the public domain (Arendt, 1960: 28). This precondition is famously formulated as the “right to have rights”, which denotes the right of every individual to belong “to some kind of organised community” (Arendt, [1951]1973: 297–98). Arendt’s critical diagnosis highlights several institutional boundaries and exclusionary structures that prevent refugees from being a formal subject of freedom.

First, in modern nation-states, the relationship between rights and duties is a symmetrical one. For something to be a (citizens’) right, one needs to have a duty-bearer (i.e., the state) that could serve as the protector and guarantor of such rights. This state–citizen relationship defines the domain of rights and freedoms. By the same token, for something to be a *human* right, one needs to have a corresponding institution (‘a world government’) that could protect and guarantee this universal right (Arendt, [1951]1973: 298; see also Hamacher, 2014; Menke, 2007). As Arendt puts it, even “the best-intentioned humanitarian attempts to obtain new declarations of human rights from international organizations” should recognise that the existence of this global institution would contradict the defining elements of the current world order, which is organised based on the principles of state sovereignty and national citizenship (Arendt, [1951]1973: 298; see also Hamacher, 2014; Hayden & Saunders, 2019).

Second, to be able to assert one’s freedom in a politically meaningful way, one needs “to live in a framework where one is judged by one’s actions and opinions” in the first place (Arendt, [1951]1973: 296). In other words, one needs to be a participant in the public domain, which is the political manifestation of “the right to have rights”. However, refugees and stateless people (*heimatlosen*) lack this foundational right. They have, *de jure* or *de facto*, lost their political membership (Arendt, [1951]1973; Balibar, 2016; Smith & Zhang, 2019: 132). According to Arendt, this loss exposes refugees to a state of rightlessness and unfreedom. Without guaranteeing the “right to have rights”, it would, therefore, be non-sensical or even contradictory to consider refugees as subjects of freedom in the political sense (Arendt, [1951]1973: 296; Gündoğdu, 2015: 28).

Third, the Arendtian analysis sheds light on one of the key characteristics of refugees' experience of unfreedom (placelessness). In the existential sense, the refugee is someone who lacks a place in the human world. Refugeehood and statelessness go hand in hand with "loss of home", "loss of government protection" and loss of the entire social texture that embodies our "distinct place in the world" (Arendt, [1951]1973: 296). The refugee has lost her access to the public life that makes her opinions significant, and her action and speech effectively heard (Arendt, [1951]1973: 297–98; Benhabib & Nathwani, 2021: 123; Gündoğdu, 2015: 22). In extreme cases, "loss of polity" could expose refugees to situations (exemplified in "concentration-camp life") in which the very "possibility of fighting for freedom" is non-existent (Arendt, [1951]1973: 297–98).

Notably, Arendt's critique expresses the tension between the formal universalisation of freedom and the exclusionary structures of the nation-state model. Moreover, she offers important insights into institutional practices, legal constraints, and existential conditions that characterise refugees' unfreedom. Yet, despite her illuminating critique of formal human rights, Arendt gives a binary twist to the question of freedom. As Rancière observes, the Arendtian position is grounded on a sharp distinction between the domain of freedom and the domain of unfreedom and rightlessness. By the same token, refugees' lack of political community throws them into an existential domain that is free (devoid) of freedom (Rancière, 2010: 67; Schaap, 2011). By overemphasising structural limitations of the nation-state paradigm and internal paradoxes of abstract human rights, this criticism remains state-oriented and citizen-centric. It primarily limits its analytical focus to institutional mechanisms that amount to refugees' unfreedom. For the same reason, the Arendtian approach pays little attention to multifaceted dimensions of refugeehood and heterogenous practices of freedom, collective struggles, and lived experiences by which refugees exercise their agency and claim a place in the world.

Freedom and (Non)-subjectivity

As several critical scholars observe, state-oriented and citizen-centric reconstructions⁶ of freedom privilege a particular notion of citizenship, which is historically shaped by exclusionary boundaries of race, gender, and nationality (Hesse, 2014; Mezzadra, 2004, 2020; Rancière, 2010; Roberts, 2015). As Bar-nor Hesse contends, hegemonic reconstructions of universal freedom (represented by liberal and neo-republican conceptions) are rooted in a colonial-racial distinction between "white citizen freedom and non-white, non-citizen unfreedom where the latter's realization of freedom can only be derived from the being and meaning of freedom as whiteness" (2014: 229). By the same token, these theoretical reconstructions disregard the political significance of freedom for political figures who were, historically, excluded from the domain of citizenship and political membership, including fugitive slaves, the colonised, non-citizens, and present-day refugees.

But can refugees be the subject of freedom without reducing or transforming their condition to a transitory and abnormal state? As we saw, the humanitarian framework gives a negative answer to this question. For humanitarians, refugees' degrees of rights and freedoms are derivative and conditioned by their formal inclusion in the domain of national citizenship. Refugees depend on the hospitality of receiving states, which do not have an unconditional obligation to offer access to their territory. This approach leaves no space for any political intervention other than moralised humanitarian policies supporting victims of persecution with food or shelter. This humanitarian vantage point generates a new identity for refugees and reduces them to absolute victims whose biological life should be rescued (Agier, 2010: 44; Ranci re, 2010: 191; Squire et al., 2021).

As Malkki and others suggest, the concept of 'refugee' has increasingly become synonymous with fear, trauma, and victimhood (Ehrkamp et al., 2019: 117; Malkki, 1995a, 1995b; Squire et al., 2021: 25–27). Instead of addressing the root causes that amount to refugeehood, such as failure of post-colonial projects of nation-building, humanitarian interventions, international wars on terror, and emergence of ecological and economic crises, the humanitarian framework locates the *refugee problem* in the atomised bodies and minds of individuals (Agier, 2017: 151; Douzinas, 2007: 58–59, 2019: 65; Malkki, 1995a: 8). The refugee is perceived as a depoliticised person without a stable status allowing her to experience the world as the subject of freedom.

According to Mezzadra, the humanitarian image of the victim defies refugees' agency and underplays "the dense fabric of subjective attempts, efforts, tensions, needs, desires, and claims" that constitute their everyday experiences and struggles (2020: 434). Therefore, the figure of the refugee can, by no means, be reduced to derivative, transitory conditions implying social death and victimhood. Nor does refugeehood personify a dehumanised being whose existence is reduced to rightlessness. In fact, the figure of the refugee is the very expression of a deep-rooted juridico-political conflict, which unmasks and unsettles the idealised persona of the *human* in human rights. It characterises the crisis of the present-day political paradigm, which is based on colonial hierarchies between national citizens versus non-citizens and refugees.

Refugeehood is a juridico-political position that transgresses the binaries of inclusion versus exclusion and rightlessness versus citizenship. The refugee is neither included nor excluded. She is both an excluded alien as well as a rightful claimant of rights and freedoms. On the one hand, refugees are subjected to oppression, institutional violence, and bordering practices. On the other, they exercise their subjectivity and freedom through courageous and purposeful acts of flight and border crossing (Mezzadra, 2004, 2018, 2020; Tazzioli, 2021). While the refugee could be subjected to exclusionary measures, she is also the ultimate subject of resistance against acts of border-making (Celikates, 2019; Mezzadra, 2018; Tazzioli et al., 2018). In this way, refugees place themselves inside and outside of the conflictual domain of politics. They are both the subject *and* the non-subject of freedom.

To articulate this ambiguous juridico-political condition, I employ the term *(non)-subjectivity*. The notion of (non)-subjectivity represents the perspective of political figures who enact, articulate, and experience freedom by transgressing the exclusionary limits of politics and citizenship. It signifies a mode of being in which universal freedom is (structurally) denied or violated, while it is being articulated, practiced, and enacted by those who are excluded, i.e., the (non)-subjects. Correspondingly, a *political (non)-subject* is defined as someone who is formally not a bearer of freedom, yet capable of experiencing and enacting freedom in her own particular way.

Historically, the conflictual articulation of freedom by (non)-subjects could be attested by practices of marronage through which fugitive slaves articulated and exercised their freedom (Hesse, 2014; Roberts, 2015). It is also manifested in the emancipatory interventions by which revolutionary women (such as Olympe de Gouges) called the formal limits of freedom into question and opened its semantics for new interpretations (Bourke, 2013: 136; Rancière, 2010: 57). For these (non)-subjects, freedom is not a pre-given right or status that one could obtain through consensual processes. On the contrary, for those who are excluded from the formal domain of political membership, freedom does not collapse into a static entitlement or right which is either granted or denied. The meaning and significance of freedom take shape in a conflictual domain which “opens up a dispute” about what this signifier means and how it should be exercised (Rancière, 2010: 68). For (non)-subjects, freedom is the product of practices, lived experiences, and struggles by which they appear on the political scene and reclaim an equal place in the human world. Freedom manifests itself in the act of flight and border crossing, resistance against structures of exclusion (e.g., slavery, racism, patriarchy, and colonialism), and a performative call for equality.

Refugees’ (Non)-subjectivity

This point of departure invites us to inquire into the significance of freedom from the perspective of (non)-subjects. Let us, therefore, rearticulate the question of freedom: can the refugee be the (non)-subject of freedom without reducing her position to one of the sides of the pole, the rightless versus the citizen? To prepare a provisional answer to this question, I shall confine myself to the legal characterisation of the term ‘refugee’ as defined by the Refugee Convention. For the purpose of this study, I leave, therefore, the experiential dimensions of refugeehood out of account and do not explore heterogeneous practices and perceptions by which refugees give meaning to freedom and unfreedom.⁷

According to the Refugee Convention, a human being becomes a refugee when she flees her homeland *because of* her well-founded fear of persecution (UN General Assembly, 1951: art. 1). The refugee escapes from a situation in which the universal right to freedom is violated. This violation stems from refugees’ *otherness* and membership in a *particular* race, religion, nationality,

social group, or political conviction. In her homeland (or the country of her habitual residence), the refugee is subjected to coercion or domination and is facing life-threatening circumstances that are imposed upon her by the state or state-like actors (Goodwin-Gill, 2014: 39). Following this Conventional definition, the spatio-temporal modality of refugeehood could be divided into three intertwined conditions: a) The *pre-flight* condition that characterises the state of persecution (past), b) the condition of *flight*, which represents the physical movement of the refugee from her homeland (present), and c) the *post-flight* condition which represents the indeterminate position of the refugee in the receiving state (future). These entwined conditions constitute the meaning of refugeehood and give shape to the dynamic relationship between refugees' freedom and unfreedom.

Pre-flight condition (past): The pre-flight condition denotes the moment of persecution and the original cause for refugees' escape (Andrade, 2021: 318; Goodwin-Gill, 2014: 39). The *pre-flight* condition could be interpreted as an exemplary case for unfreedom, both in the liberal and republican sense. This condition is marked by coercion and domination and the violation of the universal right to freedom. As we have seen, this violation stems from the *otherness* of the citizen for reasons of membership in a particular social group. It bears, however, noting that the coerced (unfree) citizen is, in the strict sense, not yet to be considered a refugee. In accordance with the Conventional definition, the persecuted person becomes a refugee once she physically flees from the territory of persecution (Foster & Lambert, 2019: 37; UN General Assembly, 1951). It is the act of escape and (irregular) migratory movement, which transforms the persecuted person into a refugee. For this evident reason, the refugee could not equivocally be located in the domain of (liberal or neo-republican) unfreedom.

Flight (present): Refugeehood derives its significance from the purposeful act of flight. The condition of flight represents physical escape from the condition of coercion or domination. In and through the act of flight, the refugee *frees* herself from persecution and becomes the subject of freedom in an ambiguous manner. The act of flight transfers the human refugee to a different domain, both in the spatial and legal sense. From this point of view, modern refugeehood shows family resemblances with the condition of fugitive slaves and abolitionist practices of flight and border crossing (Mezzadra, 2020; Roberts, 2015: 170).

The condition of flight signifies the active negation of persecution, coercion, and domination. The refugee is exercising and experiencing her freedom by negating the state of persecution. Refugees' freedom is expressed in the dynamic process of flight. Flight signifies courageous practices of escape, desertion, and border crossing by which (non)-subjects negate the exclusionary determinations of borders and political structures of unfreedom. Moreover, it denotes a purposeful migratory movement in and through which (non)-subjects exercise their subjectivity and claim a place of refuge in the world (Hardt & Mezzadra, 2020; Mezzadra, 2020; Squire et al., 2021).

Post-flight condition (future): In the receiving countries, the refugee becomes a non-citizen residing in a foreign territory (Hathaway, 2021b: 171–72; UN General Assembly, 1951). Therefore, she could not be regarded as a subject of freedom in the neo-republican or Arendtian sense. Despite the physical escape, the fear of persecution remains a vital factor in the way refugees are framed in the host countries. This *fear* is the only legitimate cause for the refugee to seek asylum in the receiving state (Chetail, 2021: 205–206). In addition, the temporariness of refugee status and its causal link with fear of persecution makes her dependent on the hospitality and benevolence of the receiving states. In other words, although the refugee has freed herself from the condition of coercion, she is in need of the (benevolent) interference of the host country without which her temporary place of refuge could not be guaranteed. In fact, the non-interference of the host country leads to the abandonment and rejection of the person who is seeking refuge (see also Bauman, 2004: 76; Squire et al., 2021).

In their post-flight condition, the juridico-political instability of refugee status exposes many refugees to processes of victimisation, alienation, and institutional abandonment and unfreedom. However, refugees develop various counterstrategies and emancipatory practices by which they negate these conditions and reclaim their subjectivity and freedom. In fact, the meaning of freedom becomes intelligible and experienceable in interactions, collective struggles, and interpersonal encounters by which refugees unsettle processes of alienation, victimisation, and abandonment. As several critical scholars point out, these acts of freedom are manifested in refugees' everyday demands for equal treatment, struggles for the sake of justice, as well as collective acts of desertion and civil disobedience (Celikates, 2019; Mezzadra, 2004, 2020; Squire et al., 2021: 188–89). Evidently, under these dynamic circumstances, the meaning of freedom could not be defined and designated by way of static and state-oriented distinctions between inclusion versus exclusion, citizenship versus rightlessness.

Conclusion

As we have seen, citizen-centric and state-oriented theories of freedom disregard the dynamic nature of the question of freedom for (non)-subjects whose liberatory experiences are manifested in flight, movement, and creative resistance against acts of border-making. These theories are rooted in colonial-racial constructions of state–citizen relationship, which, historically, excluded fugitive slaves, the colonised, and non-citizens from the domain of citizenship, freedom, and political subjectivity. Correspondingly, these static interpretations marginalise the perspective of refugees (and other people on the move) whose practices and projects of freedom take shape by transgressing the boundaries of state–citizen relationships.

In different spatio-temporal phases of refugeehood, freedom and unfreedom act as two decisive factors and give shape to a dynamic relationship. Conventionally speaking, the origin of refugeehood consists in the violation of the

universal (formal) right to freedom by state or state-like actors. This violation stems from the persecution (i.e., coercion or domination) of the human being in question in her habitual place of residence. However, the persecuted person should not, simply, be conflated with refugees. The persecuted person becomes a refugee by fleeing from the state of unfreedom. Flight encompasses practices of escape, border crossing, and physical movement by which refugees negate the state of unfreedom in their pre-flight condition.

Consequently, refugeehood could not (even in its Conventional sense) be explained by distinctions between exclusion versus inclusion, national citizenship versus rightlessness. Instead, refugees should be regarded as political (non)-subjects who call the formal limits of freedom into question. As political (non)-subjects, refugees interfere in the hierarchies of citizens versus non-citizens, subjects versus non-subjects. They disentangle freedom from its colonial-racial boundaries and, as a result, unlock its semantic field for new interpretations and signifying practices. Viewed from the perspective of refugees, freedom is not a totalising experience or static state, which one enjoys in the absence of coercive or dominating factors, nor is it reducible to negative entitlements or guarantees granted by the state to its citizens. On the one hand, freedom manifests itself in the active negation of the state of unfreedom (persecution or abandonment). On the other hand, freedom is enacted in the creative process of movement and border crossing by which refugees claim an equal place of refuge in the world. Therefore, refugees' freedom is, first and foremost, expressed in the act of flight and border crossing, resistance against acts of border making, struggles for justice and equality, and other emancipatory signifying practices by which they claim an equal place in the world.

Notes

- 1 Protocol relating to the Status of Refugees (1967).
- 2 Sakago Ogata was the head of the United Nations High Commissioner for Refugees (UNHCR) from 1991 to 2000.
- 3 For a discussion of liberal and neo-republican conceptions of freedom, see Berlin ([1958] 2008), Kramer (2008), Nasiri (2022) or Pettit (2016).
- 4 To be recognised as (Convention) refugees, asylum seekers undergo sophisticated migration procedures, hearings, and bureaucratic regulations that are put into force by receiving countries in view of their priorities and domestic interests.
- 5 The principle of national sovereignty, apart from its historical dimension, is incorporated in Article 2 of the Charter of the United Nations (drafted 1941, entered into force 1945).
- 6 These are 'reconstructions' as they are formulated in view of classical/ancient interpretations of freedom. Many of these theories revive certain republican/democratic discussions on freedom (e.g., neo-republican reconstructions). Or, they are developed as a critical response to those (e.g., liberal reconstructions).
- 7 It should, however, be noted that this Conventional definition is too narrow and too reductionistic to account for mass flight of refugees in the 21st century. Refugees' motivations for flight are shaped by various social, political, economic, and environmental factors and cannot be reduced to this framework (see also Agier, 2010; Crawley & Skleparis, 2018; Squire et al., 2021).

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