



THE NOT SO HUMANITARIAN DICHOTOMY BETWEEN REFUGEES AND ECONOMIC MIGRANTS

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ABSTRACT

This paper seeks to analyze through Nancy Fraser's justice recognition theory and a qualitative methodology approach the categorization within migration governance. Our objective is to understand how and why migration categories were created and are sustained until today in our international system. Also analyzed were the consequences of this categorization and how it represents an institutionalized dichotomy that sustains and perpetrates a meta-level discrimination and injustices against migrants. To do so, our paper is divided in three main parts: 1) An overview of concepts and categories in migration; 2) The paradox of categorization in migration; 3) A meta-level analysis of justice and migration. We sustain that this way of policy making should be revised in order to better guarantee human rights for migrants.

KEYWORDS: Migration. Human Rights. Justice. Recognition. Public Policies.

RESUMO

Com base na perspectiva da teoria de reconhecimento de Nancy Fraser e por meio de uma abordagem qualitativa, este trabalho visa analisar a categorização existente na governança para migrações. Busca compreender como e por que se criou várias categorias de migrantes e por que elas se mantêm até hoje no sistema internacional. Além disso, foram analisadas as consequências dessa tendência de categorização e como ela representa uma dicotomia institucionalizada capaz de sustentar e perpetuar um meta-nível de discriminação e injustiça contra migrantes. Para tanto, dividimos nosso trabalho em três partes: 1) uma visão geral dos conceitos e categorias de migrantes; 2) o paradoxo da categorização de migrantes; 3) uma análise meta-nível de justiça e migração. Sustentamos que a criação de políticas públicas pautadas em dicotomias deve ser revista para garantir direitos humanos para migrantes de forma mais efetiva.

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INTRODUCTION

Heading towards the second decade of the 21st century, the pillars of the Westphalia order are easily seen to be in advanced stages of demising, now more than ever.³ This may seem like a repetitive argument in Social Science discourse since the end of the Cold War, but it's not until we are able to finally imbibe this realization into our political actions that concrete resolutions to our global and transnational clashes will be possible scenarios. Only after we elaborate new frameworks of analysis of this complex community of states and people and address them with convergent praxis of engaged political action, should this repetitive discourse be set aside.

It appears the first half of this equation – new frameworks of analysis – has been well addressed by social scholars⁴. The second, however – a praxis of engaged political action – has taken a back-seat ride through memory lane of the past and has not yet set the wheel towards present day. Presidential campaigns acclaiming border walls and xenophobia driven speeches, atomic missile tests as means of power demonstration and threat, environmental laws and regimes being overseen by economic interests, the support of wars overseas combined with stricter migration policies, the rigid politics of sustaining the north/south dichotomy in international cooperation are all current and recurrent examples of a schizophrenic reality marked by Westphalian politics and interests scattered in a post-Westphalian system.

The fact is that the world has grown smaller (BAUMAN, 2001; GIDDENS, 1991; VIEIRA, 2012) and the Modern State's traditional sovereignty and capability to resolve transnational issues and multi-domestic demands is increasing inefficient in a world ever so more inserted in interdependent relations. The doors of globalization in all its realms (economic, social, political, cultural, environmental, etc.) have expanded and there is no nation state frontier strong enough to isolate itself from them – no matter how many walls are built.

So, what is the rationale of strengthening Modern State/Westphalian politics in a contemporary and post-Westphalian world? Post-Westphalian issues (such as global warming, porous borders and increased migration flows, social media, multi-governance and participation etc.) have come with uncertainty and complexity capable of questioning paradigms that have sustained the modern state system for centuries: nationalism, unlimited capitalist exploitation of social and environmental relations and liberal democracy.⁵

Our global migration crisis and the way States have addressed it is one of the most visual examples of the urgency to review surpassed frameworks and politics lingering in a new world (des)order. History has taught – although it seems we have not yet learned – that migration does not hold an indirect proportional equation with stricter border and immigration laws, nor does it disappear with xenophobia driven nationalism. Contrary to this way of thinking and action held by many developed countries in contemporary politics today, closed doors, invisibility of rights and extremism against

³ See, for instance, BANAI et al., 2014.

⁴ See MARTIN, 2014; BETTS, 2012; KOSER, 2007; MOSES, 2006; MOREIRA, 2008; JUBILUT, 2007.

⁵ See, among others, FALK, 2002; VALASKAKIS, 2010.

other cultures does not decrease migration flows in a meaningful way, but does increase tensions at Nation-State borders, lack of social integration, social conflicts and violence, vulnerabilities for people that migrate and human rights violations.

This order of discrimination and human rights gap (that we will address as a first order of discrimination) is widely discussed by many scholars. What we would like to argue here today, however, is that there is a second order of discrimination and violation of human rights that is in urgent need of understanding and reviewing.

We understand this second order of discrimination as a meta-level discrimination and violation of human rights. What characterizes this meta-level discrimination is that it is born within a Westphalian framework of analyses that creates an international migration regime structured upon fragile dichotomies. Therefore, the hybrid aspect of this second order of discrimination is that it begins upon a discourse of recognition of rights, while at the same time being a recognition of rights that depends on exclusion. This dichotomy structure establishes, through top-down determined categories, which group of people within the migration phenomena are more vulnerable and in need of protection, establishing an arbitrary division between forced and voluntary migrants.

By this categorization, an international migration regime was established, and certain human rights and migration rights were recognized to some migrant groups but not to all⁶. We must question our analysis framework that cloisters migration in a dichotomy/categorized driven way of thinking – an institutionalized dichotomy that sustains and perpetrates a meta-level discrimination/exclusion rooted in a modern Westphalian tendency of dividing, creating frontiers and differences. To do so, we divided our paper in three main parts: 1) An overview of concepts and categories in migration; 2) The paradox of categorization in migration; 3) A meta-level analysis of justice and migration.

1. AN OVERVIEW OF CONCEPTS AND CATEGORIES IN MIGRATION

The main justification on categorizing human mobility between borders is the fact that different scenarios provoke different causes of migration. Academically and within governmental and non-governmental political action, we have seen a basic categorization and consequent dichotomy established between voluntary migration and forced migration.

According to IOM (2004), voluntary migration is the act of individual free will, or spontaneity, to cross international borders. On the other hand, forced migration is considered involuntary, a forced decision to cross borders made by an individual to save their own life. In the study of these two major groups there are also subcategories. Within forced migration studies, migrants are framed in categories such as refugees, internally displaced persons, asylum seekers, “environmental refugees/environmental migrants” and victims of human trafficking and smuggling, for example.

⁶ Needless to say, that although this recognition is expressed through international regimes and laws, much is still needed to translate this theoretical recognition into concrete recognition. However, as stated above, this is a first order of violation of human rights problem and we propose to analyze the second order of violation of human rights at this moment.

When studying voluntary migration flows, framing is mainly established by labeling individuals as economic migrants. Labeling migration movements, however, is not as simple as it seems. On the contrary, through the past years, it has shown to be not only complex but unclear and limiting.

Within mass migration flows, for example, because of the Arab Spring in 2011 or the East Africa drought in 2011, or even the current mass migration crisis at the Mexican border with the United States, it is hard to define and separate which are voluntary migrants and which are forced migrants. Since categorization does exist, certain rights are determined to some migrants and not others, such as the principle of non-refoulement, which prohibits expulsion and return of asylum seekers to any territory where they are threatened, whether they are already formally considered to be refugees or not⁷. The same principle does not apply to other migrants, who are subject to arbitrary deportation.

The concept of the term refugee is very restricted. Of course, it is expected that while defining and categorizing, limitations and boundaries are created to maintain concepts and definitions. Nonetheless, Castles (2003) explains that the idea structured internationally by the 1951 Refugee Convention and 1967 Protocol of who can be considered a refugee is so specific that most forced migrants today do not fit in the realms of international law for refugees. According to the 1951 Refugee Convention, a refugee is “someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion”.

The United Nations High Commissioner for Refugees – UNHCR – released reports confirming that, by the end of 2019, we have witnessed the highest levels of displacement until today. Records show a total of 79.5 million people worldwide that have been forced to leave their homes (UNHCR, 2020). These people are considered to be forcibly displaced persons by the international community. Within these forcibly displaced people, 45.7 million are considered to be internally displaced people (UNHCR, 2020), because their involuntary displacement has occurred within their country of origin. 26 million are refugees under the 1951 Refugee Convention, of which half of them are under the age of 18 (UNHCR, 2020). Of this total 20.4 million are under the protection of UNHCR mandate, while 5.6 million are registered refugees in the Middle East under the care of the United Nations Relief and Works Agency for Palestine Refugees in the Near East – UNRWA⁸ (UNHCR, 2020).

UNHCR (2020) also confirm that there are millions of stateless people worldwide. These people have been denied a nationality by the governments of the Nation State where they are born and therefore, are denied citizenship and access to basic rights. Many are forced to leave their location, only to find their rights also to be denied by other countries who do not recognize rights to stateless people and do not facilitate the process of nationalization.

According to Hammarberg (2008) a stateless person is an individual who is not considered to be a national by any State under their domestic law. Some of these people

⁷ See HATHAWAY, 2005, p.300 ff.

⁸ UNRWA was set up in 1949 to care for displaced Palestinians.

are refugees and other are migrants, but none of them are recognized as citizens. Therefore, it is possible to be a stateless person and a refugee, a stateless person and a migrant, or just a stateless person.

Besides these categories, the international community also created the concept of asylum seekers. These are people that cross borders and solicitate the refugee status in a foreign country. Each country has their own administrative process of analyzing who should be granted the refugee status and who does not reach the requirements to be considered a refugee. The duration of this process varies from country to country and can take over six months, even years for a response. Due to this considerable time lapse, asylum seekers in some countries – Brazil being an example – are granted the necessary documents to work formal jobs, study and even receive government social aid.

Some categories created are not as official as others. The term environmental refugee⁹ or climate migrants gained considerable spotlight in the international community as a response to climate change and recurrent environmental disasters. Although widely used by international media and social media, the term is not officially recognized by the United Nations as a technical term or status or is it coherent with the 1951 Refugee Convention.¹⁰ Notwithstanding, UNHCR has expanded its people of concern to help protect and assist migrant flows due to environmental causes. Studies worldwide have drawn attention to country disappearance in the near future due to floods, desertification and rising sea levels. Bangladesh and Maldives are examples. Also, environmental disasters that have already occurred, like the Haiti earthquake of 2010, reinforce the need to better address the issue not only by guaranteeing human rights to these migrants, but also establish governance and resilience programs international and nationally.

Besides forced migration, the international regime for migration also includes voluntary migration. Voluntary migration is a broad term that covers a varied group of people that emigrate for labor (labor migration), academic purposes and professional motivation (forming a brain drain movement) and economic migrants. Within voluntary migration, one of the main discussions is whether to consider an economic migrant a forced migrant or voluntary migrant. Economic motivations can range from income or salary motivations to social inequality, poverty and famine. Needless to say, that this wide range of causes can fluctuate this specific category as forced or voluntary migration depending on the migrants' individual background. This being so, categorizing a major group of economic migrants as voluntary migrants is unsatisfactory and misleading.

The International Organization for Migration (IOM) defines economic migrants as follows:

A person leaving his/her habitual place of residence to settle outside his/her country of origin in order to improve his/her quality of life. This term may be used to distinguish from refugees fleeing persecution, and is also used to refer to persons attempting to enter a country without legal permission and/or by using asylum procedures without bona fide cause. It also applies to

⁹ See MYERS, 1997.

¹⁰ According to MCNAMARA (2007), "an absence of policy on environmental refugees has been reproduced by discursive politics at the United Nations".

persons settling outside their country of origin for the duration of an agricultural season, appropriately called seasonal workers. See also frontier worker, migrant worker, poverty migrant, seasonal worker (IOM, 2004).

From the definition above, it is possible to notice the term economic migrant as opposed to refugee and associated with poverty and illegal migrants. On the other hand, migration due to famine and development projects are set under IOM's definition of forced migration:

General term used to describe a migratory movement in which an element of coercion exists, including threats to life and livelihood, whether arising from natural or man-made causes (e.g. movements of refugees and internally displaced persons as well as people displaced by natural or environmental disasters, chemical or nuclear disasters, famine, or development projects). See also internally displaced persons, refugee (IOM, 2004).

Notice that migration due to poverty and migration due to famine are put in different groups, even though they tend to coexist in the same context. Categorizing migration encounters many gray areas and has been, through the years, a top-bottom implementation. In attempt to surpass the dichotomy between voluntary and forced migration, Richmond (2002), appeals to terms such as proactive and reactive migration. He suggests that proactive migration is mainly consisted of economically motivated movements of people. Despite this, Richmond makes a critical remark to distinction attempts:

In fact, there is no clear-cut distinction between 'proactive' and 'reactive' migrants but, rather, a continuum between those who have some freedom of choice whether, when and where to move, and those who are impelled by circumstances beyond their control (RICHMOND, 1993, apud RICHMOND, 2002).

In this sense, economic migration isn't necessarily a form of voluntary migration, but would normally be characterized as a form of proactive migration. Refugee, on the other hand, is a form of reactive migration. Therefore, migration does not constitute a simple phenomenon with easily determined categories. Thus, Koser (2007) suggests, and we agree, that categorization is an instrumental process that simplifies reality, whilst also obscuring it. The fact is that forced/voluntary, reactive/proactive migrations are invariably two sides of the same coin and, in being so, compels us address such paradox.

2. THE PARADOX OF CATEGORIZATION IN MIGRATION

Over the years, what we have witnessed since an international regime for migration has emerged is an overlook of an international regime for migrants through a *lato sensu* lens and a highlight of an international regime for refugees. Now, before we further address this issue, it is important to make clear our critique here. There is no intent of undervaluing the international regime for refugees, even less so of underestimating the importance of defending refugee rights and sensitizing others of their highly dangerous and vulnerable reality.

The main point of this meta-level discrimination analysis is to reveal and bring awareness to its existence. That is, to point out that the migrant community has been

divided into so many different categories, that receive different guarantees and approaches of rights, even though the defined differences between these categories are much more of a technical/political creation than a social reality.

Therefore, the so considered “forced” migrants on one side and “voluntary” migrants on the other (such as refugees and economic migrants, respectively), should have recognized, by law, the same rights, since most of their social realities/vulnerabilities, mainly when already in the receiving country, little differ from one another – that is when they differ at all. Furthermore, if differences of integration do exist, these differences do not stand out to a degree that sustains a dichotomy of categories nor comparison of meritorious of rights – based on the interpretation/understanding of whom is considered to be more vulnerable than the other, or who is fleeing unwillingly. This interpretation/understanding is that of policy makers. Policy makers, however, in this case, are outsiders that do not directly participate or know the situation that led to the migration flow in the first place.

Since it was institutionalized in a post-World War II context – a time of considerable migration flows and preoccupation with European refugees (CASTLES, 2003) and a great deal of attention given to humanitarian issues as a result of the war’s devastations – an international regime for refugees gained strong international appeal. This being in such a way, that it can be said that the refugee issue won a certain prestige that lacks voluntary migration. Due to its characteristic of urgency and its clear evidence of human rights violation, the international community focused attention to European refugees, the UN system created an arm for refugee protection through UNHCR and the refuge phenomenon received a strong humanitarian discourse which stands until today.¹¹

This can easily be seen by comparing the amount of countries that ratified the 1951 Convention Relating to the Status of Refugees, the 1967 Protocol, and the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (UNTC, 2020a; UNTC, 2020b; UNTC, 2020c).

The categorization of migrants in different groups creates gaps in the guarantee, protection and promotion of migrants’ rights including those of refugees. While not every migrant is a refugee, every refugee is a migrant. Both migrant and refugee face difficulties finding jobs in such a matter that employment is one of the biggest barriers encounter while in a host country (PACÍFICO; MENDONÇA, 2010). This being so, both refugees and migrants are vulnerable and potential targets for labor exploitation. Therefore, the non-ratification of the UN Convention for the Protection of the Rights of All Migrant Workers and Members of their Families is an unsustainable contradiction for any country that seeks to guarantee refugee rights by, among other things, ratifying the 1951 Convention and 1967 Protocol regarding the Status of Refugee’s.

Tables 1 and 2 below illustrate how States treat refugees and migrant differently, since not necessarily if a State ratifies the 1951 convention and/or 1967 Protocol, will it also ratify the 1990 Convention for the Protection of the Rights of All Migrant Workers and Members of their Families. This seems to be a global trend since, on one hand, we have 145 countries that ratified the 1951 Convention; 146 that ratified the 1967 Protocol;

¹¹ For an account of the evolution of the refugee rights regime, see HATHAWAY, 2005, pp.75-153.

and only 47 countries that ratified the 1990 Convention, none of these being high income countries (UNTC, 2020a; UNTC, 2020b; UNTC, 2020c).

TABLE 1 – LATIN AMERICAN AND CARIBBEAN COUNTRIES THAT HAVE RATIFIED, ACCEDED OR SUCCEEDED TO THE 1951 CONVENTION, THE 1967 PROTOCOL AND THE 1990 CONVENTION FOR THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES.

Latin American and Caribbean countries	1951 Convention Relating to the Status of Refugees	1967 Protocol Relating to the Status of Refugees	1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
South America			
Argentina	1961	1967	2007
Bolivia	1982	1982	2000
Brazil	1960	1972	-
Chile	1972	1972	2005
Colombia	1961	1980	1995
Ecuador	1955	1969	2002
Paraguay	1970	1970	2008
Peru	1964	1983	2005
Suriname	1978	1978	-
Uruguay	1970	1970	2001
Venezuela	-	1986	2016
Central America and Mexico			
Belize	1990	1990	2001
Costa Rica	1978	1978	-
El Salvador	1983	1983	2003
Guatemala	1983	1983	2003
Honduras	1992	1992	2005
Mexico	2000	2000	1999
Nicaragua	1980	1980	2005
Panama	1978	1978	-
Caribbean Countries			
Antigua and Barbuda	1995	1995	-
Bahamas	1993	1993	-
Dominica	1994	1994	-
Dominican Republic	1978	1978	-
Haiti	1984	1984	-
Jamaica	1964	1980	2008
Sanit Kitts and Nevis	2002	-	-
Saint Vincent and the Grenadines	1993	2003	2010
Trinidad and Tobago	2000	2000	-
Total	27	27	17

Source: our elaboration with information from UNTC, 2020a; UNTC, 2020b; UNTC, 2020c

TABLE 2 – HIGH INCOME COUNTRIES THAT HAVE RATIFIED, ACCEDED OR SUCCEEDED TO THE 1951 CONVENTION, THE 1967 PROTOCOL AND THE 1990 CONVENTION FOR THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES.

High Income Countries	1951 Convention Relating to the Status of Refugees	1967 Protocol Relating to the Status of Refugees	1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
Australia	1954	1973	-
Canada	1969	1969	-
France	1954	1971	-
Germany	1953	1969	-
Italy	1954	1972	-
Japan	1981	1982	-
Netherlands	1956	1968	-
Spain	1978	1978	-
Sweden	1954	1967	-
Switzerland	1955	1968	-
United Kingdom	1954	1968	-
United States of America	-	1968	-
Total	11	12	0

Source: our elaboration with information from UNTC, 2020a; UNTC, 2020b; UNTC, 2020c.

Therefore, a more critical analysis will reveal that the international regime for refugees has more than a humanitarian side to it; it also has an ideological and political frame that sustained and continues to sustain itself. European refugees post-World War II were mainly those that fled the communist regime to capitalist countries. Therefore, accepting these refugees was (amongst other things) an ideological act used to delegitimize the Soviet bloc (CONLEY, 1993; HATHAWAY, 1993; MATAS, 1993 apud MOREIRA, 2008).

Although this ideological aspect that helped sustain a certain prestige and international concern towards refugees has dissipated, the international regime for refugees is still politically driven. The 1951 Refugee Convention concentrates in the existence of persecution practiced by the State. This central factor embraced by the legal, international, definition of a refugee was an attempt to protect people persecuted by the Nazi regime (KOSER, 2007; LOESCHER; MILNER, 2011), but that did not receive their rightful protection from their State nor from the international community during World War II (MARTIN, 2014)

This fact does not withstand the humanitarian discourse that is a key factor for human rights for refugees. On the contrary, humanitarian concerns were fundamental for the establishment of an international regime that protects human rights for forcibly displaced persons, especially refugees.

But the political side to the regime must be analyzed to achieve the understanding of differences between an international regime for migrants and an international regime for refugees and to question why and if these differences are sustainable today.

At the state level, refuge and migration are political phenomena which, through the categorization of different forms of human mobility, suffer State arbitrariness.

In this sense, the humanitarian aspect and discourse involved in the establishment of an international regime for refugees was vital for the protection of their human rights and safeness, but, on the other hand, a political and ideological angular stone also enabled the international attention given to the refugee issue. This humanitarian issue was a political preoccupation and challenge that needed to be addressed to maintain the structure of the international system of States. Keely argues that “the refugee regime is designed to protect the international system of states that is threatened when states fail to fulfill their proper roles” (1996, p.1057 apud MARTIN, 2014, p.82).

This being so, the international regime for refugees is built upon an international appeal for solidarity and protection of humanity, as well as a vital interest for the nation State to maintain the international system of states by diminishing anything that can defy its function.

Besides the political and ideological aspects that form the way states address the migratory issue, Tables 1 and 2 also illustrate the geo-economic bias involved in state ratification of international conventions that seek to protect migrant and refugee rights. Table 2 shows the disproportional reality of high income countries that haven't ratified the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, despite having ratified the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees.

On the other hand, Table 1 shows that most Latin American and Caribbean countries – low and medium income countries – have adhered to both conventions and the protocol. The geo-economic aspect is clarified not only by analyzing the context through a north-south lens which identifies intense migration flows from south low-income countries to north high-income countries but also through a historical perception.

Going back to the origins of the 1951 Refugee Convention, it is clear to see that this international instrument was created to resolve a humanitarian issue of a European post-war scenario (JUBILUT, 2007; KOSER, 2007; MARTIN, 2014). The 1967 Protocol was later established to broaden this aspect of the 1951 Convention, which would now address refugees beyond Europe. Despite this initiative, many migrants were left out of this structural international protection being formed – mainly voluntary migrants, as we continue to see today, but also forced migrants from different regions of the world that did not fight under the restricted determined causes of refuge due to persecution for reasons of race, religion, nationality, membership of a particular social group, or political opinion.

Consequently, regional conventions were created to protect refugees that were forced to flee because of violence and human rights violations, such as the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa and the 1984 Cartagena Declaration on Refugees. These two instruments kept the definition of the term refugee created by the 1951 Convention, while expanding its reach to

address local and regional needs. The OAU Convention recognized the following understanding:

The term "refugee" shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.

The 1984 Cartagena Declaration adopted the following definition:

in addition to containing the elements of the 1951 Convention and the 1967 Protocol, includes among refugees persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.

On the other hand, the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families was established after a decade of intense south-north migration flows, fleeing not a post-war scenario, but intra-domestic violence and economic crisis where migrants would cross borders also in search for a better life, but their motivation didn't originate from persecution or fear of persecution, but from economic causes such as poverty and hunger.

Despite the situation of danger and urgency that characterizes refuge and therefore requires an international regime of protection, we must question and analyze the effects of an arbitrary and unequal treatment between different migrant categories. After all, a refugee and an economic migrant can encounter the same difficulties and barriers and face the same vulnerabilities when crossing borders and when inserted in the receiving country. Also, it is unclear to see the dividing line between forced migration due to persecution, internal conflicts, violence and violation of human rights on one hand, and "voluntary" migration due to poverty and hunger, since the later is also a context of survival. Also, Sen (2000) sustains that poverty and hunger are strongly correlated with and overlap conflicts and/or authoritarian regimes. Thus, poverty and hunger are directly connected and consequences of phenomena that force people to migrate, consequentially making them "forced" or "reactive" migrant nonetheless

Of course, there is voluntary migration for economic reasons were the migrant isn't leaving behind a situation of vulnerability and violence, but this isn't always the case. The fact is that, if the term refugee is limited, the term economic migrant is maybe too broad, concentrating different people from different context and motivation behind their migration flow.

Thus, a State that is internationally committed to guarantying refugee rights but does not establish the same politics and policies for protecting the rights of other categories of migrants is disseminating contradictory politics and policies. Furthermore, these states are maintaining dichotomies that discriminate ones in order to protect others.

Global migration governance has many deficiencies such as its incapacity to create a well-structured regime in comparison with other regimes such as for international finance (MARTIN, 2014). Also, global migration governance, as we have seen, is mainly

a system of international law for refugees, leaving out many other groups of people in need of international protection since their own country does not provide for their basic needs.

According to Martin (2014), the governance for refugees is the most coherent amongst other types of migration and is also the most ratified by the majority of States in the international system (alongside, most recently, treaties regarding human trafficking and smuggling). Loescher and Milner (2011) argue in the same direction as Martin by affirming that the international regime for refugees differs from other migrant regimes.

Thus, international governance regarding refugees is more structured and followed by States, while international governance for migrants is lacking adherence. This illustrates how categorization is a political phenomenon motivated by interests other than humanitarian values. After all, if States maintain a discourse of protecting refugee human rights – a discourse that is not always followed by effective policies, but exists nonetheless – why not do the same for economic migrants?

3. A META-LEVEL ANALYSIS OF JUSTICE AND MIGRATION

As we have seen so far, there is an order of discrimination, that can be considered a meta-level discrimination and violation of human rights, when different categories of migration is created and sustained. What characterizes this meta-level discrimination is that it is born within a Westphalian framework of analyses that creates an international migration regime structured upon fragile dichotomies.

This meta-level discrimination begins upon a discourse of recognition of rights, while at the same time being a recognition of rights that depends on exclusion – a dichotomy structure that establishes, through top-down determined categories, which group of people fall in specific categories of migrations – forced or voluntary. The categorization occurs through a top-down structure and in many ways creates injustices.

Nancy Fraser addresses meta-level injustices (FRASER, 2009) while questioning the traditional Westphalian framework. According to Fraser (2009), the Nation-State encounters transnational social demands in a globalized world. Therefore, social phenomena, social problems and challenges can no longer be solved within a state alone but should be seen through a transnational approach. Fraser (2009), then, proposes to look at justice through two orders. The first order would be the traditional order of justice. In this order, theories of justice by recognition or redistribution create normative approaches to understanding what justice is and what can be done to guarantee it. The second order would be what she considers a meta-level analysis of justice. Through this meta-level analysis, the questions that are asked are “who” is included/excluded from public policies created to promote justice and guarantee rights and “how” should they participate in these policies. This meta-level analysis seeks to consider how public policies are created and implemented. If they come solely from a top-down approach, then justice can be compromised.

Fraser (2009) then proposes a new framework of analysis so justice theories can shift from a Keynesian-Westphalian frame to a post-Westphalian democratic theory of social justice. She also raises an important question: how can justice be guaranteed if

the structure behind policy making isn't democratic *per se*? The same nature of this question can be brought to what we have explored here with migration. How can we guarantee justice through human rights for migrants if the Westphalian dichotomy that leads to categorization creates injustices?

We must reconsider the dichotomies established in migration. As we have seen throughout this paper, categorizing migrants is not a clear task. In fact, in many cases, distinction seems to be a more theoretical process than a reality itself. Whether we focus on forced versus voluntary migrants or pro-active versus reactive migration, human rights violations, violence and integration barriers are a reality that do not distinguish between an economic migrant or refugee. Therefore, policy making should not be structured upon different categories that are created, but on human dignity, safety, life prospective and human rights that migrants seek.

The backgrounds that lead to migration might consist of different motivations and pillars between a refugee and economic migrant, for example, one may come from a context of civil war and the other from a context of extreme poverty. On the other hand, however, these different backgrounds can have common ground on the consequences they provoke in a person's life that compel them to flee to another country. Both war and extreme poverty create or emerge from an ambience of human rights violation, economic constraint, violence, lack of dignified living conditions, etc.

Despite this reality, what we have seen in dichotomies within migration is an established exclusion of some migrants from integrative public policies because they do not fight a certain migrational category created decades ago. Migrants that flee their homes due to human rights violations, extreme poverty and systemic violence, but because they do not face direct persecution, the non-refoulement principle isn't applied to them and therefore they are forced to go back.

These dichotomies should be revised, and the categorization of migrants should be seen for what it really stands for: a theoretical wall of division unfit for the contemporary globalized world we live in today. Only after this recognition will we be able to begin to address first and second order of injustices – pointed out by Fraser (2009) against migrants and create better framework of analysis that support human rights public policy building.

FINAL CONSIDERATIONS

As said in the beginning of this paper, global migration crisis is one of the most visual examples of the urgency to review surpassed frameworks and politics in a new world (des)order. Our global migration governance is built upon categorization, dichotomies and separating migrants in different labeled boxes to see those who have rights and those who should be forcedly sent back to their homes.

Not only does this analysis framework and policy basis generate injustices, but it comes from a context that no longer reflects our post-modern globalized world. In other words, this institutionalized dichotomy sustains and perpetrates a meta-level discrimination against migrants and is unable to address our global migration crisis. What this categorization process has been doing is obscuring reality, whilst maintaining geopolitical interests in the forefront of migration policy.

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