

To Date or To Marry: That is the Question

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Jim Hathaway's appeal to date rather than marry proposes a separation of the study of convention refugees from that of others who are being

forcefully displaced; a separation that we find disappointing and problematic. His determination to prevent the marriage of two sets of potential lovers—forced migrants and convention refugees as well as internally displaced persons (IDPs) and refugees in flight from war—suggests a puritanical differentiation of identities that belies the potential of a supportive union.

The first problem is with definitions themselves. Squeezed into one category of refugees, Hathaway confuses two very different categories: convention refugees who, in flight from persecution, cross a border to claim refugee status, and humanitarian refugees who flee across a border because of war and conflict in their homeland. Thus, when Hathaway contrasts refugees with the internally displaced, the emphasis and central defining characteristic is crossing an international border. According to Hathaway, refugees are always victims of discrimination, are always at risk, and are always under the protection of the international community. This assessment simply ignores any distinction between convention and humanitarian refugees: it might fit the former on most occasions, the latter on relatively few. Whereas these unlikes (convention and humanitarian refugees) are made likes, possible likes (IDPs and refugees) never have anything in common according to Hathaway.

Hathaway's overwhelming concern is with convention refugees. But convention refugees who flee persecution and are entitled to claim *non-refoulement* are but a very small portion of the general class of refugees. The overwhelming majority of refugees in refugee camps have fled from violent conflict, not (only) because they were targets of individual persecution because of race, religious belief or ethnic membership, though sometimes the categories overlap. Further, Hathaway would have readers believe that the convention categorization was eternal and essential when, prior to the passage of the Convention—worded in such a way because of the particularities of the Cold War—refugees were viewed as by-products of nation-state building. There is no essential definition of a 'refugee'. A refugee definition is a product of history, social and political circumstances. In that process, the convention definition served the interests of the West, in battle with Communism, as the West defined refugees in terms of individuals targeted for persecution; Communist countries persecuted individuals on political grounds.

What is more, Hathaway's radical contrast between IDPs and refugees ignores the recent real-world shift. The international community currently claims a moral and even legal responsibility for potential victims of genocide and ethnic cleansing who are internally displaced, thus eschewing Hathaway's Westphalian realist paradigm. It is difficult to argue that there is only one way of organizing our studies, particularly when that one system of categorization has a direct impact not only on how areas of state responsibility are studied, but also on how moral responsibilities are construed and how they evolve in practice.

For Hathaway, mis-categorization risks jeopardizing the 'critical set of rights which ensure their relative autonomy' and his argument takes the following form:

1. Scholars have a responsibility to conceive of their research in a way that does not deny recognition of the specificity of the refugee's circumstances;
2. Uniting the category of refugees within the larger category of the study of forced migrants risks ignoring the specificity of the sub-category of convention refugees (which Hathaway equates with all refugees);
3. Therefore, the category of refugee should not be included within the category of forced migrant.

Should institutional scholarship be organized under the category of forced migration or is it better for some researchers to focus exclusively on refugees or even one class of refugees? First, all scholars have a responsibility to attend to the specificities of any subject that is part of their study. Nothing follows from this truism concerning how that category should be organized for research (or institutional) purposes to ensure that the specificity not be ignored. Second, no evidence is presented—though other arguments are offered—that the inclusion of convention refugees under the larger category of forced migrants poses risks to scholarship focused specifically on convention refugees.

In pushing for privileging the rights and individual paradigm, Hathaway confuses a discipline with a problem area. Neither forced migration nor refugee studies are disciplines. Nor will the emphasis on one or the other affect acquiring real disciplinary expertise. Forced migration and refugees are problems to be tackled from the perspective of different disciplines and failure to attend to some aspects of the problem area may arise because those aspects are not part of the concerns of the researcher.

Hathaway comes at this discussion from the perspective of the lawyer, with the international legal status of 'refugee' as central to his thesis. However, the international legal status of refugees does not unite the field of either refugee or forced migration studies but divides it. For only a small percentage of refugees are *in the strictest sense* protected by *legal* strictures against *non-refoulement*: those fleeing because of a well-founded fear of persecution. However, the condemnation of forced return has been extended to all refugees generally and not just to those protected by the Convention. The almost one million civilians (IDPs) forced out of their homes in northern Uganda by two decades of conflict who have been in camps in fear of their lives from the Lords Resistance Army, for example, have a lot in common with most refugees. In fact they may have more in common with most refugees than convention refugees generally have with humanitarian refugees, both in terms of the legal protection available to them and the international approach. Insisting on viewing refugees, when we study them, exclusively through the legal paradigm of convention refugees may be a disservice to both humanitarian refugees and internally displaced persons.

Hathaway further argues that legal status is the best organizing construct for social science. For some purposes, the legal status of persons may be most relevant even for some social scientists. However, for Max Weber in his pioneering studies of the migration of agricultural labourers, for example, what was of most interest was their economic status and their social standing, an interest that produced research results that allowed Arthur Ruppin to devise successful modes of settling agricultural workers in new situations eschewing the 'plantation model'. The legal status of the migrants in these studies was irrelevant.

The differentiation of convention and humanitarian refugees as well as IDPs and refugees within the larger class of forced migrants is both sensible and reflective of reality, but has no meaning in determining how all research and inquiry ought to be constructed or organized institutionally. If for some research purposes, convention refugees are included within a larger class of forced migrants, this does not mean they will be treated identically to all other forced migrants with no attention to their differential characteristics. However, for some specific research purposes those differential characteristics may be irrelevant, or less relevant than other common characteristics.

Ignoring the differentiation between convention refugees and humanitarian refugees while insisting on a radical differentiation between refugees and other forced migrants, is reinforced by giving intellectual and moral priority to convention refugees which is part of a larger conceit, namely that convention refugees evince a greater degree of autonomy. They are 'real, live human beings who dare to take their fates into their own hands' (Hathaway above)—as if humanitarian refugees have not taken their fate into their own hands. The fate of convention refugees depends more on international and domestically legislated protection and hordes of solicitors and quasi-legal advocates and assessors than is the case of other refugees. In that sense, the fate of a convention refugee lies *less* in his or her own hands than the fate of an illegal migrant who crosses a border and rests everything on his or her wit and cunning. Since governments impose immigration penalties and provide immigration and refugee opportunities, the refugee asylum system is far less a self-operationalizing one than the system in place for those who move illegally across borders.

The implication and even explicit message of Hathaway's article is that only convention refugees fall within the mandate of the international community to provide protection. Admittedly, convention refugees are assigned greater legal protection than humanitarian refugees, but this does not mean that only convention refugees 'deserve protection' or are 'guaranteed' surrogate protection of the international community, but only that such a refugee can legally make claims on states that a non-convention refugee cannot make. In current customary law there has been an attempt to clarify some guarantees to those within borders—namely that they cannot be subject to genocide without legal and even perhaps military repercussions. One ought to and can protect potential victims of genocide, though the 'ought' and the

'can' will have different expressions and may be weaker expressions than those accorded convention refugees.

Finally, whether or not Hathaway is correct in his criticism that the 'social commitments (of the first refugee researchers) often outweighed their scholarly acumen,' his claim that the original refugee studies movement was too focused on refugee rights and insufficiently attentive to broader systemic questions is historically false. If one dates refugee studies back to Hannah Arendt, then the central focus was on the broadest issues of membership rights and not just refugee rights in relation to different types of political regime. However, if one is concerned with refugee studies *as a movement* that began in the late seventies and early eighties, Oxford's Refugee Studies Centre founder, Barbara Harrell-Bond's work was on refugee camps and the argument that they were in effect benign prisons. She was not concerned with individual rights, but with systemic social structures dealing with mass flight. The original work of what became the Centre of Refugee Studies in Toronto was on Indochinese refugees, primarily on resettlement and sponsorship issues, and not on rights. In these two leading centres of the refugee movement, the focus *initially* was *not* on convention refugees or their claims.

Hathaway also argues that, 'The evolution of "refugee studies" into "forced migration studies" coincided with, and was largely the result of, the exponential growth of scholarly interest in *internal* displacement.' Castles (2004) offers a very different interpretation. He argues that the interest in forced migration and concern at the arrival of migrants at one's border have waxed and waned over the last century and a half and that the current concern with forced migration has multiple causes and several different and sometimes contradictory agendas. Whether Castles' analysis is correct or not, it avoids the simplistic reductionism of Hathaway.

In conclusion, Hathaway's effort to make the issue of refugee rights the central focus of refugee studies could appear to be a conceptual distortion that supports his own research interests but disregards the intellectual concerns and priorities of others. There is no need to prevent marriages between those who are openly in love and between those who avoid such commitments but marry in spite of their professed desire to remain single. For some and in some situations, to pursue research within a larger context may be most appropriate. In other cases, a narrow focused study of convention refugees may be in order. There is no need or reason to impose an overarching intellectual format for such research. The argument for dating would seem to be really a wily strategy to prevent marriages from taking place or succeeding where true unions are beneficial and appropriate.

CASTLES, S. (2004) 'Confronting the Realities of Forced Migration,' Refugee Studies Centre, Oxford, May.