

Power over asylum seekers: Bureaucratic administrations in charge of the asylum processes

From facing a border official to being granted the refugee status, asylum seekers go through many stages and any decisions made in local facilities or by officers at the borders will drastically affect their life path. For this reason, it remains interesting to question who has the right to decide upon the question of procedure and exert these professions. My suggestion is that the role of knowledge – or professional education in this case – could be underrated. This is the case as the aim of many of these field professions are seen as merely either executing orders, in the case of officers. This paper presents the concern of bureaucratic intermediaries of the asylum processes using Weberian bureaucracy and addressing some of the issues this might create in the context of asylum seeking.

Migration intermediaries

Migration mediation has received much attention from scholars, particularly of the field of political science, who have unravelled the topic by naming different types of intermediary actors in a variety of contexts (Findlay and McCollum, 2013, Žabko et al., 2018). Particularly the complex relations between migrants and intermediaries (Faist, 2014, Schapendonk, 2018) and the boundaries between the state and these intermediaries (Gammeltoft-Hansen and Nyberg Sørensen, 2013, Xiang, 2017). In these debates a route, path or channels are used as metaphors to describe these situations with the purpose of describing or analysing a certain structure, which shapes the flows of migration (Zhang, Q., Axelsson 2021). Kramer and Heindlmeier (2021) conducted for instance a comparative study on cases into the administration of social assistance rights in Germany, Austria and the Netherlands. They compiled a typology of different models, where they consider delegation and demonstrate through their study how bureaucratic design impact the stratification of social rights and benefits.

Their models - rightfully so – use Weberian bureaucratic rationality to understand such administrations. A written document or the fulfilment of formal procedure – the form – is a technique of ensuring a predictability and impartiality and so it is meant to ensure a coherent functioning of administration. This is to be further established with a division of labour through specialized offices. The gatekeepers of the system, or decision makers, rely on this form or formal procedure through documentation, meaning that once you have the paperwork you are able to predict what you expect. That is, the bureaucratic administration can work in

this way for the ones demanding something from the state. In terms of bureaucratic reliance, it can go both ways, for and against the citizen. To exert a right – and even a human right – one must go through this paperwork addressing it to the specialized authorities. In the case of migration, it could be that one gets to exert a right due to the agreements of the host country with their own, or due to resident permits and further documents previously issued to members of the family. Yet, the case of the study named above concerns mainly migrants from within the EU. That is, it is likely that they do have a level of familiarity with the bureaucratic authorities in place. However, in the case of third-country nationals for instance it is plausible to assume that the lack of such familiarity leads to greater difficulties when assembling the documents to exert certain rights. In the case of forced migration, for refugees and asylum seekers, claiming certain rights is even more urgent due to the vulnerable situation they are in. Not only but especially in extreme cases, the importance of a form seems absurd given the circumstances and the moral obligation the state has towards the person in need. Since throughout the migration process and the inability of navigating through this paperwork one might be denied the possibility to claim their rights under EU law, which could lawfully be claimed in the case for instance, if a certain date was met, if office hours that were missed could be met (see Brubaker, 1989: 160). Considering these situations, the price to pay for bureaucratic reliance is that officials would prioritize the formal procedure over moral rights (Davies, 2003). This is when the Weberian bureaucratic rationality creates a moral distance and Kafkaesque feelings of dehumanization (Huber and Munro, 2013). These situations generate experiences of fear, insecurity and alienation, as well as being at the mercy and powerless against anonymous and bureaucratic powers. A missing document, signature or unmet office hour can be a major delay or refusal of claims in the migration process, leading to unnecessary and absurd feelings of lack of escape, as well as guilt and inner despair.

In the EU the Amsterdam Treaty The person who enter Europe willing to apply for the status of refugee, is subject to the laws in place of the Common European Asylum System (CEAS), which can be said to have the task of both, categorizing whether the needs of the asylum seeker are legitimate and ensuring those needs are met through statuses within Europe. Although studies of the field social sciences take specific routes of forced migration to analyse how the different authorities respond to asylum seekers, this paper is much more concerned with the normative conflicts these processes might bring. In categorizing migrants in terms of statuses, it assures different types of migrants get different types of assistance.

Which perse would be efficient, but also very dangerous once we are talking of individuals,

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who experiencing extremely traumatic situations, having to fill forms and apply to have access to benefits repeatedly.

Weberian bureaucracy

The problems of modern bureaucracy portray well the conflict above, where bureaucratic administration aims to provide efficiency and predictability for individuals, but instead causes dehumanizing situations, as well as moral distancing. Vester (2009: 122) names, among other things, the following characteristics which, according to Weber, are to be regarded as typical of a modern bureaucracy: First, there are rules that distribute tasks and responsibilities, order duties and rights and regulate the powers of command in the organization. Second, there is an office hierarchy with a fixed system of subordinate and superordinate authority. Third, the administration of office provides for a strict separation of private and official matters (Wiechmann, 2016).

The bureaucracy as rule is an ideal type that can be more or less effective and purposeful but is not refuted by reality. Weber's model of bureaucracy does not pretend to be a reflection of reality. The advertising bureaucracy model is only a "purified version of reality" (Vester 2009: 123). This "adjusted" reality "(Vester 2009: 123) can be contrasted with the empirical reality that can be experienced and examined in real organizations to what extent they correspond to Weber's ideal type of bureaucracy. (cf. Vester 2009: 123)

Rationalization: Knowledge, impersonality and control

Within the areas that can be rationalized, Weber differentiates between "the methodological aid of a rational conceptual reconstruction and the process of social rationalization" and "disenchantment" (Entzauberung) (Wiechmann, 2016) . On the one hand, he regards rationalization as a scientific process: Rationality works in the sense of a methodical aid if events and actions can be traced back to subjectively rational causes and reasons. According to Weber, it is then also possible to jump over cultural borders and understand the systematics and rationality of foreign cultures (Wiechmann, 2016).

On the other hand, Max Weber sees rationalization as a social process, which for him is an immanent feature of social development and thus, he uses the term “disenchantment”. This “disenchantment”, also called “Occidental Rationalism” by Weber, describes the

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rationalization of areas of life that has only been achieved in north-western Europe and represents the most advanced type of society. Religions play a major role in this development towards the complete rationalization of life. It should be acknowledged that according to Weber religious convictions of salvation, these beliefs he mentions influence the individual immensely. Hence, religions tend to systematize their ethics and messages of salvation ever more. The major world religions translate a process corresponding to the advertising type formation into reality and rationalize society. Processes of rationalization such as the ones presented by Weber’s person of profession (Berufsmensch) in Protestant Ethic, are meant to lead to three aspects, also seen in bureaucratic administration concerning migration intermediaries (Wiechmann, 2016). That is knowledge, which aims to lead to rational action, impersonality, as objectification of the self. And lastly, control over social and material life. In terms of knowledge, it is plausible to assume that some knowledge is required for decision making and when prioritizing rationality even more so as the agent ought to analyse upon the possible consequences of that action. This is due to the causal feature of actions aiming towards rationality and ever more so in systems which are intertwined, as well as structured of different connected elements, such as bureaucratic administrations.

Rationalization entails objectification (Versachlichung), that is persons are put into lists and categorizations. He uses the example of workers, who are categorized without further non economic or labour related considerations. In terms of control, Weber's view of rationalization, what prevails is the increasing control of social and material life. The computable and disciplined control of humans is according to him a result of the strict self discipline and self-control of the Puritan ethic, or what Weber called "innerweltliche Askese." Here Weber again sees the irony of the birth of modern individual citizens with inviolable rights as part of the rational and disciplined spirit, which is increasingly permeating all aspects of social life.

Using his own dichotomy, the formal procedural rationality (Zweckrationalität) that Western rationalization tends towards, does not necessarily coincide with the substantive value

rationality (Wertrationalität). On the one hand, the precise computability and predictability in the social environment brought about by formal rationalization, which greatly enhances individual freedom by helping individuals understand and navigate complex networks of practices and institutions to achieve certain tasks. On the other hand, when the individual is reduced to a "gear in a machine" or trapped in an "iron cage" of efficiency, they feel

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powerless and perhaps even in debt towards the bureaucratic administration, which might have a moral obligation towards them.

Claiming legal and moral rights

The positions of many important legal rights writers are difficult to determine, because they are not always directly mentioned. For example, Hohfeld (1919) restricted his discussion entirely to legal rights without mentioning moral rights. However, as far as the legitimacy of practical reasoning is concerned, legal rights must be based on moral rights.

Feinberg for instance, points out that we do not always possess a right when we possess a claim. Since here we analyze bureaucratic administrations, it makes sense to think of rights in terms of claiming rights, as we are to address the fact that asylum seekers are to send applications and fill forms in order to claim a status of neediness, so they have their granted. We could engage in the particular "channels" named in the first section of this paper, however as the aim is to address the normative issues formality might bring, it is plausible to think of one claims rights legally. Feinberg differentiates between several types of claiming, however particularly relevant for the topic of bureaucracy is his view of a claim as *something to be asserted* – or *something to make a claim to* based on a right. If someone makes a claim to something, this means for Feinberg to demand something owed based on an alleged right, and here he means legal right, but here these could potentially be the case for a moral right. The individual with a claim demands something, as a good or action based on a corresponding legal right, which in turn ideally derived from a moral right. And this claiming can only be done by someone who already has this right. In such a case, a title (understood in the sense of a legal document) is often presented, such as a receipt or invoice. In the case of migration, the documents already prescribed to the individual to receive social benefits for instance or even in the case of access to shelter, health or education or any legal document in the country which proves the legal status of the migrant (Munk, 2015). To assert a claim to something

based on a right (certainly not only but also) means to carry out a legal act with direct legal consequences: Thus, asserting the claim to something can itself have an effect normatively. Feinberg therefore also addresses the performative meaning of asserting it or actually “making claim to”. This according to him is essential for the concept of law. Yet however how this operates it needs a form or document, to relate to the legal right.

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Moral distance between document and need

Even if paperwork is required to claim rights, it is likely that intermediaries specialized in only in one part of the process of asylum seeking, frame an asylum seeker’s experience and do not pay much attention their life path, how these documents could alter their life path, as well as the state’s moral obligation towards people in need. Claiming a right in this case, means applying for asylum. Already term ‘applicant’, in today’s market economy implies that there’s competitive market and a wide variety of people for the institution to choose from. The demand for asylum in Europe for instance is high and the process requires paperwork, as well as justifying why you are to claim the right to asylum. Therefore, it seems rather likely that the individual would perceive this as a competitive market. Since the perceived power of the intermediaries of the process and the perceived competition and powerlessness towards bureaucratic administration can be very present in that situation, it could be that the moral obligation of the state to protect people in need may be neglected by both parties. What is the reason of the entire bureaucratic administration, may become secondary once experiencing the application process. Even if legal scholars, such as Feinberg might use “claiming a right”, it is conceivable that this experience might be felt, as if one is applying for a job rather than claiming a right. It is also to be noted that in the case of asylum it is a human right as well, which makes the matter more urgent, as well as a stronger link to perceive this right as a moral right.

The rational, controlling and impersonal Weberian bureaucracy described here is obviously a worst-case scenario of bureaucratic processes in migration. Not all asylum seekers would get such experience or not every officer in this process is a Weberian *Berufsmensch*, apathetic and unaware of the moral obligations the state has towards individuals in need. Rather it is drawing attention to the fact that objectification (*Verdinglichung*), impersonality and other characteristics of Weberian bureaucracy can be aggravated in a process, where the culture of

each party is different, the individual is not familiar with the process and this process might appear as or truly be competitive. Moral obligations towards asylum seekers are less likely to be acknowledged. However, it is perhaps simply too much to ask from the staff of these bureaucratic administrations, that they understand people's life stories or their needs and do not grow some distance to the 'applicant's' needs and sufferings. Rationality or knowledge, not in Weberian terms of functioning rationality (Zweckrationalität) where one simply wishes to know enough to judge whether the asylum seeker is eligible for asylum, but in terms of education could have the opposite effect. Professional education on the current events that

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affect the migration flow, as well as a notion of the cultures, political situations that changed an applicant's life, could be essential to bring a 'missing document' closer to the moral reality of what the 'missing document' is supposed to represent.

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