Turning the ‘asylum lottery’ on its head
A critical reflection on ethnographies of refugee status determination processes

University of Siegen, Campus-Adolf-Reichwein-Straße, Room AR-IF 024

Organised by: Stephanie Schneider (Siegen) & Dr. Laura Affolter (Bern)

Thursday, 13th December 2018

12.30 – 13.00 Registration & Welcome

13.00 – 14.00 Keynote I: Morality and law in the context of asylum claims
(Prof. Anthony Good, University of Edinburgh)

14.00 – 18.00 Inside Discretion – Observations from the Field

Chair: Stephanie Schneider (Siegen)

14.00 – 14.30 Dr. Yuliya Kosyakova (Bamberg) & Prof. Dr. Herbert Brücker (Bamberg/Berlin)
Seeking asylum in Germany: Does human and social capital determine the outcome of asylum procedures?

14.30 – 15.00 Dr. John Campbell (London)
When ‘judicial discretion’ is an error of law

15.00 – 15.30 Victoria Reitter (Salzburg)
On the Production of Statelessness

15.30 – 16.00 Coffee Break

16.00 – 16.30 Prof. Ashley Terlouw (presenting) & Dr. Anita Böcker (both Nijmegen)
Mayors’ discretion in decisions about unlawfully present migrants

16.30 – 17.00 Prof. Dr. Matthias Otten (Köln)
Frictions and Fractures: Challenging the multi-professional and inter-institutional scope of social support for refugees with disabilities
17.00 – 18.00  Discussion

18.00 – 19.00  **Roundtable discussion: Reflecting on positionalities in RSD research**
Moderated by Stephanie Schneider (Siegen), Dr. Lisa Borrelli (Sierre) & Dr. Laura Affolter (Bern)

19.30  **Dinner at the Gartenhaus** (Auf den Hütten 12, Siegen)

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Friday, 14th December 2018

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<tr>
<td>09.00</td>
<td><strong>Keynote II:</strong> “This Video is to Help You”: Reflections on positionality and the persistence of inconsistencies in the making of an informational video about asylum appeals. (Prof. Nick Gill, University of Exeter)</td>
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<td>10.00</td>
<td><strong>The Contested Nature of Discretion</strong></td>
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<td><em>Chair: Dr. Lisa Borrelli (Sierre)</em></td>
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| 10.00  | – 10.30  Teresa Buchsel (Oxford)  
*De-Constructing Refugee Status Determination – An “ordinary” decision-making framework* |
| 10.30  | – 11.00  Dr. Cüneyt Gürer (Siegen)  
*Between Reality and Bureaucracy: Asylum Application and Individual Story Telling* |
| 11.00  | – 11.30  Coffee Break  
| 11.30  | – 12.00  Laura Scheinert (Exeter)  
*Assessing the Relationship between Written Judgements on Asylum, Asylum Laws and Extraneous Influences over Judicial Reasoning* |
| 12.00  | – 12.30  Dr. Lorenzo Vianelli (Luxemburg)  
*Discretion, Politics, and Categories in Refugee Status Determination: Preliminary Reflections from the Field* |
| 12.30  | – 13.30  Discussion  
| 13.30  | – 14.30  Lunch  |
14.30 – 16.00  Roundtable discussion on joint publication project: A critical reflection on the use of discretion as an analytical concept in RSD research?
Moderated by Stephanie Schneider (Siegen), Dr. Lisa Borrelli (Sierre) & Dr. Laura Affolter (Bern)

16.00  End of workshop

Keynote I: Morality and law in the context of asylum claims

*Prof. Anthony Good, University of Edinburgh*

The 1951 Refugee Convention arose in part out of a recognition of the special moral claims of refugees, as persons suffering persecution because of their beliefs or their ethnicity. Yet in asylum-granting countries, a countervailing moral panic focusing on ‘bogus asylum seekers’ has reached a peak during the past fifteen years. To what extent do the legal procedures for granting or withholding refugee status reflect either of these moral pressures, for example through the exercise of procedural and judicial discretion? More broadly, what are the links between asylum, law, and morality, and do these function differently in civil law régimes such as that of France, and in a common-law country like the UK?

Keynote II: “This Video is to Help You”: Reflections on positionality and the persistence of inconsistencies in the making of an informational video about asylum appeals.

*Prof. Nick Gill, University of Exeter*

On November 27th 2018 the first video setting out in detail who is involved in asylum appeals in the UK, what an appellant can expect and what their rights are will be launched in English, with 14 other versions to follow in various languages. The rationale for the video – that judges are inconsistent in providing information to appellants about hearings - is set out in a series of recent studies and reports from both academics and charities (see Gill et al, 2017; Asylum Aid, 2017; JUSTICE, 2018). Quite why it has taken so long for a video such as this to be produced is an important question related to how inaccessible and bureaucratic the asylum system in the UK has become in recent years. One newspaper recently reported that the ‘immigration rules’ of the United Kingdom have almost doubled in length since 2010, to almost 375,000 words [1]. But rather than
focusing on the unmet need of asylum seekers for vital information to help them navigate the thicket of legal rules related to immigration, this paper instead addresses the process of the production of the video, in order to shed light on the nature of inconsistencies in immigration systems, their intractability, and the issues of positionality and power that accompany attempts to ‘rectify’ or ‘alleviate’ them.

In so doing the paper treats the video as a window onto a bigger set of questions and dilemmas that is facing Europe, and in particular Europe’s asylum determination system, in the wake of the increase and subsequent decline in the number of asylum applications from 2015 to the present and the ensuing, challenging politics of asylum that this has entailed. Outcomes have long been recognised as high variable, but processes of asylum determination also vary. To speak of a ‘common’ asylum system in Europe runs the risk of deflecting attention from the marked discrepancies not just in asylum decisions across and within countries, but also in the means by which those decisions are reached: some countries use video-linking for instance, some have administrative not judicial appeals, some appeals are suspensive, some are simply ‘on paper’, some in public oral hearings. What is more, there are at least three further forms of discretion that lie outside the formal legal frame that focuses either on outcomes, or on these codified elements of procedure (for a discussion see Gill and Good, 2018).

First there are those subtle forms of discretion that merge with judicial behaviour, such as judicial body language and the heuristics they employ – both of which may be at least partly unconscious. Second there are influential forms of discretionary behaviour undertaken by non-judicial figures as various chapters in Gill and Good's forthcoming edited volume illustrate, including the attentiveness and professionalism of interpreters (Dahlvik), the arrangement of chairs and computer screens by ushers (Gibb), the mood of the archivist who may or may not grant you access to her records (Sorgoni), the advice – sound or otherwise – that you hear in the camp before entering the court (Sørgoni and Whyte) and the confessions of superiors during training exercises that license or prohibit particular conduct among decision makers (Schneider). Third, there are forms of discretion associated with the process of research and efforts to redress or alleviate the inequities of the system.
The existence of multiple opportunities for discretion raises various further questions. Why is it that we see plenty of instances of consistency in approach despite the opportunities for discretion that exist? In other words, what guides or governs discretionary conduct in asylum systems; what patterns it (Gill, 2009, Affolter et al)? Furthermore, to what extent is it important and desirable to attempt to make the use of such discretion uniform? In other words, to what extent should we prioritize consistency over variety in asylum determination? Is local justice and localized legal culture a problem? And finally (which is the question that the present paper addresses, as set out by the organizers of the workshop), what habits of thought, what power imbalances, what exclusions and blind-spots are common both to the systems of asylum determination that we are critiquing and the attempts that we use or recommend – like the informational video – to address their inadequacies.

In exploring this latter question, this paper will discuss the influence of positionality and considerations of power that are inherent in making a video of this sort, the dilemmas of production that mirror those of legal deliberation, and the political-economic considerations that are common to both the problems of asylum determination and its ‘remedies’. In so doing the discretion of the researcher, and some of their inconsistencies, will be cast into relief.