REFUGEE DETERMINATION:
POWER AND RESISTANCE IN SYSTEMS OF FOUCALDIAN POWER∗

Cynthia Hardy
Department of Management
University of Melbourne
Parkville, Victoria 3010, Australia

Email: chardy@unimelb.edu.au
Tel: 61-3-8344-3719
Fax: 61-3-8344-3731

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Abstract

This paper examines the dynamics of power in refugee determination systems in three countries. It challenges both the view that determination systems encompass rational decision-making processes and the “critical” view that sees determination procedures as an instrument of the state. It argues that if we use a Foucauldian analysis of power, we are better placed to understand how refugee systems work and to understand the implications for different actors in these systems.
Introduction

This paper explores refugee systems in three countries and the way in which individuals are determined to be refugees. It challenges the “official” story – that determination systems encompass rational decision-making processes in which information is collected, stored and analyzed to uncover an individual’s “true” status. It also challenges “critical” views that see determination procedures as an instrument of the state, used to erect national borders and protect sovereignty in ways that discriminate against large numbers of vulnerable individuals. Instead, it argues that refugee systems are more complex than either of these perspectives would suggest and, as such, require a more complex and sophisticated view of power. By applying a Foucauldian view of power to the process of refugee determination, we are better placed to understand how refugee systems work and to draw out some of the implications for the people affected by them.

This paper makes a number of contributions. First, it provides an understanding of a Foucauldian view of power and applies it to an empirical study. While theoretical discussions of Foucault’s work are not uncommon in the management and organizational literature, Alvesson (1996) notes that empirical studies of his work remain relatively rare. This study offers the opportunity to learn more about how to apply these theoretical concepts to an organizational setting by identifying key dimensions of Foucault’s work and translating them into a series of specific research questions. Second, this paper uses a Foucauldian perspective to identify some of the more practical implications of understanding power in this way for governments and refugees. Third, Foucauldian analyses have been criticized for being overly pessimistic regarding the prospects for agency and chances of bringing about change. This paper provides insight into some of the local ways in which actors can resist, albeit within limitations. It argues that more
empirical work of this nature is needed if we are to flesh out the prospects for resistance and move Foucauldian analyses beyond their current descriptive (and fatalistic) orientation.

The remainder of this paper proceeds as follows. First, four key themes derived from Foucault’s work are presented and a series of research questions are generated. Second, the reader is introduced to a study of refugee determination systems in the UK, Denmark and Canada. Third, the themes are used to explore power dynamics in the refugee determination systems. Finally some conclusions are drawn regarding the implications of this analysis.

A Foucauldian “Model” of Power

This paper starts with the premise that the work of Michel Foucault (e.g., Dreyfus & Rabinow, 1982; Foucault, 1972; 1979; 1980; 1982; 1984; Smart, 1985; Turner, 1990) is particularly helpful in understanding power in and around organizations (also see Alvesson, 1996; Alvesson & Willmott, 1992a,b; Clegg, 1989; Deetz, 1992a, b; Kerfoot & Knights, 1993; Knights, 1992; Knights & Morgan, 1991; Knights & Willmott, 1985; 1989). Foucault is associated with a view of power that is very different from both normative/managerial approaches and critical theorizing on power. This section discusses four particularly important aspects of his work on power: the idea that an individual can stand outside power and use it to achieve specific outcomes; the view that knowledge is inescapably linked to power; the relationship between power and identity; and the limitations to resistance.

Sovereign Power

Foucault challenges the concept of “sovereign” power. He repudiates the idea of an isolated agent who possesses a battery of power sources that can be mobilized to produce particular outcomes. Power is not a phenomenon of the consolidated domination by one individual,
group or class over others. Instead, it is embodied in a network of relations that captures everyone in its web, the advantaged and disadvantaged alike (Deetz, 1992a, b).

Power must be analyzed as something which circulates, or rather something which only functions in the form of a chain. It is never localized here or there, never in anybody’s hands, never appropriated as a commodity or piece of wealth. Power is employed and exercised through a net-like organization. And not only do individuals circulate between its threads; they are always in the position of simultaneously undergoing and exercising this power (Foucault, 1980, p. 98)

Rather than being possessed by individual actors, power is exercised through this network, disabling some actors and empowering others but not in a conscious, pre-determined way (Deetz, 1992a, b; Knights & Morgan, 1991). Even when actors have particular outcomes in mind, and act with the idea of achieving them, their ability to pull the necessary “strings” of power to bring them about is in doubt (Hoy, 1986; Parry & Morriss, 1975).

People know what they do; they frequently know why they do what they do; but what they don’t know is what they do does (Foucault quoted in Dreyfus & Rabinow, 1982, p. 187).

According to this view, power is no longer a convenient, manipulable, deterministic resource. This contrasts with approaches that view power as vested in scarce resources, critical contingencies or authority (e.g., Hickson et al., 1971; Pettigrew, 1973; Pfeffer & Salancik, 1974; Salancik & Pfeffer, 1974; Pfeffer, 1981; 1992; Astley & Sachdeva, 1984). It also challenges critical views of power, which attribute clear sources and strategies of domination to particular agents (Hardy & Leiba O’Sullivan, 1998). Instead, Foucault sees power residing in a complex
field of possible actions (Hoy, 1986) in which all actors operate and from which the prospects of escape are limited for dominant and subordinate groups alike.

**Power/Knowledge**

Foucault repudiated the idea that knowledge can be freed from the effects of power and considered to be “truth”.

[T]ruth isn’t outside power, or lacking in power ... truth isn’t the reward of free spirits, the child of protracted solitude, nor the privilege of those who have succeeded in liberating themselves. Truth is a thing of this world: it is produced only by virtue of multiple forms of constraint. And it induces regular effects of power. Each society has its regime of truth, its “general” politics of truth ...

(Foucault, 1980, p. 131).

Knowledge acquired from “logical” reasoning cannot exist independently of the individual identities that produced it, or the broader network of power relations in which it was produced (Flax, 1987). Instead, what we take to be true are those discourses which a society “accepts and makes function as true” through “mechanisms and instances which enable one to distinguish true and false statements”; techniques and procedures that accord “value in the acquisition of truth”; and “the status of those who are charged with saying what counts as true” (Foucault, 1980, p. 131).

In this regard, Foucault’s work differs sharply from critical theorists, who believe that one can escape regimes of power through knowledge (Mumby, 1992). Accordingly, by critically revealing structures of domination, emancipation becomes possible as subordinate groups escape the power to which they have been subjected and set up new structures that are free from power (e.g., Freire, 1992). Foucault’s work, however, suggests that, with knowledge only comes more
power. Consequently, salvation and emancipation do not lie in attempts to discover a “genuine” order that does not exist (Hassard, 1993).

The Subject

Foucault was particularly interested in revealing how human beings are made subjects and the processes by which the individual is rendered knowable (Knights, 1992; Knights & Morgan, 1991; Knights & Willmott, 1989).

The human subject is not a “given” but produced historically, that is, constituted through correlative elements of power and knowledge (Townley, 1993, p. 522).

He casts doubt on the existence of a stable, coherent self (Flax, 1987). People do not exhibit personal characteristics; rather they perform them for and in a particular time and place, as Goffman (1959) pointed out some years ago. However, we must be careful not to assume that these performances speak for themselves, regardless of who witnesses them. Instead we should consider identity to be “a continuous process of narration where both the narrator and audience formulate, edit, applaud and refuse various elements of the constantly-produced narrative” (Czarniawska-Joerges, 1996, p. 160). Power thus constructs the subject by weaving knowledge and power into “a coercive structure” which “forces the individual back on himself and ties him to his own identity in a constraining way” (Foucault quoted in Alcoff, 1988, p. 415).

Foucault’s work suggests a radical rethinking of our relation to the subject (Hassard, 1993), challenging the widely accepted view that assumes that the individual subject exists in an essential, objective sense; as well as views which, while recognizing that subjects are socially produced, attribute considerable agency to them (Ashley, 1990). Foucault’s work also highlights that, in constituting the subject, power is productive, and not only repressive. In producing identity, power transforms “individuals into subjects who secure their sense of what it is to be
worthy and competent human beings” (Knights & Morgan, 1991, p. 269). In other words, positive experiences are derived from power relations, something which critical conceptualizations of power tend to ignore.

**Resistance**

Foucault illuminates the limitations of resistance to power, which is the result of a number of factors. First, the positive side of power, which gives meaning to the subject, leads to the reproduction rather than the transformation of power relations (Knights & Morgan, 1991; Knights & Willmott, 1989). Resistance and emancipation have a price to pay – the positive effects of power, as experienced in the individual’s sense of him or herself, have to be repudiated as part of any emancipatory process. A critical questioning of one’s beliefs may “estrange the individual from the tradition that has formed his or her subjectivity” (Alvesson & Willmott, 1992a, p. 447). Second, the pervasiveness of power relations makes them difficult to resist. Prevailing discourses are experienced as reality, which makes alternative discourses difficult to conceive of, let alone enact (Ashley, 1990). As a result, resistance often serves to reinforce the existing systems of power rather than overthrow them (Clegg, 1989; Knights & Morgan, 1991; Knights & Willmott, 1989).

Consequently, the prospects for the transformational liberation or revolution anticipated by many critical theorists are limited (Sawicki, 1991). The inability to escape power effects, the existence of productive aspects of power, and the costs of emancipation add up to the “pessimistic” view which many associate with Foucault (e.g., Ashley, 1990; Cooper & Burrell, 1988; Said, 1986; Walzer, 1986; White, 1986), although others writers disagree, arguing that resistance is always possible in Foucault’s conceptualization (see Smart, 1985; Turner, 1990) since any situation inevitably embodies tensions between power and resistance (Sawicki, 1991).
At the risk of considerable simplification, Foucault’s contributions to our understanding of power can be summarized in terms of four key components. While a complex body of theory has been reduced in order to apply it to an empirical situation (cf. Alvesson, 1996), each of these components helps to generate a particular question that can be used to direct the study of refugee systems. First, if there is no sovereignty, what role does the government play in controlling the refugee system? Second, if knowledge cannot be separated from the effects of power, how does the system determine who (and who is not) a refugee? Third, if power produces the subject, what are the effects of “being” a refugee? Finally, if the prospects of resistance are limited, how do refugees resist the system? Before considering these questions in the context of refugee determination, the following section will introduce the empirical setting.

Refugee Determination Procedures in Three Countries

The 1948 United Nations (UN) Universal Declaration of Human Rights asserts that everyone has “the right to seek and enjoy in other countries asylum from persecution”. Refugees have left their own country because of “a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.” A small number of the 18 million or so refugees world-wide claim asylum in Western Europe and North American countries. As they do so, they encounter the refugee determination systems that will determine their status i.e., decide whether they are refugees and whether they will be granted asylum. This policy domain (Laumann & Knoke, 1987) encompasses the formation and implementation of policies and practices that relate to the rights of individuals to claim asylum, the procedures whereby claimants are awarded asylum, and the conditions under which asylum is awarded. It encompasses a variety of different organizations, including government, nongovernment organizations (NGOs), and refugee organizations, as well as the courts, the
media and the public (also see Hardy, 1994). This paper draws on a study of refugee
determination systems in the UK, Denmark, and Canada carried out in the early 1990s. This
section describes the methodology used to carry out this study. It then describes the formal
procedures used by “decision-makers” to “determine” whether individuals were refugees. The
description emphasizes a logic, a rationality and a degree of objectivity which, as will be
discussed later, do not necessarily exist.

**Methodology**

The study relies on in-depth, semi-structured interviews and archival or secondary data.
A variety of methodologies have been used to study similar systems or domains (Nathan &
Mitroff, 1991), but a qualitative methodology (e.g., Gray, 1989; Westley & Vredenburg, 1991) is
considered particularly appropriate in order to: “understand the distribution of power, conflicts
and concerns of interest, the dynamics of their interaction” (Brown, 1980, p. 201). Eighty-six
interviews (in English apart from translation in two cases in Denmark) were carried out with
civil servants, politicians, NGO officials, and refugees (table 1) between 1990 and 1995. The
semi-structured, tape-recorded interviews lasted between one and three hours. Anonymity was
guaranteed to all interviewees.

– Table 1 near here –

Documentary and archival evidence included government statistics, annual reports and
minutes from annual meetings from refugee councils and other organizations; a variety of
published documentation; Hansard reports of parliamentary speeches in the UK and Canada; and
newspaper articles. It was collected in a variety of ways. Individual interviewees often provided
internal reports; government departments and agencies provided public documentation and
statistics; the British and Danish Refugee Councils and the European Consulting Group on
Refugees & Exiles (ECRE) publish a variety of reports and materials on refugees; the British Refugee Council has a library with a diverse set of holdings, including all British newspaper articles featuring refugees; another library is in Oxford, attached to Queen Elizabeth House, which runs a refugee studies program; and newspaper articles and Hansard speeches in Canada and the UK were analyzed.

**Refugee Determination Systems**

All three countries have legislation, policies and procedures that specify the process whereby an individual is determined to be a refugee. The exact procedures that were in place during 1990-1994 varied according to the country, as described below.

**The UK**

The rights and status of the refugee in the early 1990s were legally defined in the UK as a result of the 1993 Asylum Bill. Individuals could apply for asylum on arrival, through an immigration officer or, when in the country, to the Immigration Department, part of the Home Office. Officers in the Asylum Division (another department in the Home Office) reviewed asylum applications and made individual determination decisions. If the individual asylum-seeker did not have legal representation, he or she was referred to the Refugee Legal Center, an NGO that assigned a caseworker. No special arrangements were made for asylum-seekers while they awaited their determination decision, but they did qualify for some housing and welfare benefits.

The asylum officer could decide to award refugee status or *exceptional leave to remain*, which allowed the individual to stay in the country, but under different conditions than a refugee. Refugees were admitted for four years during which time they could apply for family members to join them, and after which they could apply for permanent residence. The exceptional leave
category usually admitted individuals for one year, followed by two three-year terms. Individuals could apply for family reunification only after four years and for permanent residence after seven years. (For more details on the UK refugee system, see Amnesty International, 1991; British Refugee Council, *The Refugee Advisor’s Handbook*; Joly, 1990; Joly & Cohen, 1989).

**Denmark**

The Danish refugee determination system during this period was the result of the 1983 *Aliens Act*. The request for asylum was made to the border police, following which the asylum-seeker was admitted and placed in the care of the Danish Red Cross, which ran the Sandholm registration center on behalf of the Directorate of Aliens (part of the Ministry of Justice). After about two weeks at the registration center, the asylum-seeker was transferred to one of over sixty Red Cross centers across the country where they were housed to await the completion of the determination process. Asylum-seekers received food, clothing and an allowance but were not allowed to work.

The determination process started with registration in the Sandholm center, when the asylum-seeker completed a questionnaire for the Directorate for Aliens. If officials from the Directorate believed the case to be “well founded,” it was passed to the Refugee Board for a decision. The Refugee Board was an independent tribunal of part-time members, chaired by a judge and consisting of two members appointed by the Danish Refugee Council (a NGO), as well as one member from each of the ministries of Justice, Social Affairs and Foreign Affairs. The Refugee Board appointed a lawyer if necessary, and conducted a hearing at which both lawyer and asylum-seeker were usually present. Following a successful decision, asylum-seekers were awarded refugee status, becoming permanent residents whose family could then join them. (For more information on the Danish refugee system, see Danish Red Cross, *Asylum Work of the*
Danish Red Cross; Danish Red Cross, Welcome to the Danish Red Cross; Danish Refugee Council, 1989; 1990; Kormendi, 1988; Steen, 1993).

Canada

The system in Canada dated from the 1988 Refugee Reform Bill, which was introduced to speed up applications and to provide an oral hearing, following a ruling of the Supreme Court that accorded all refugees the right to an oral hearing. In 1989, the Immigration and Refugee Board – an independent body, although its members were appointed by the Cabinet – was set up to determine requests for asylum lodged at either ports of entry or from within the country. The initial system consisted of two hearings, since condensed into one, where two members of the Refugee Board determined the status of the asylum-seeker. The refugee was entitled to legal aid and legal representation during the hearing.

Like the UK, and unlike Denmark, asylum-seekers awaiting decisions in Canada did not enter any centralized reception program. They were, however, eligible for various support from provincial and federal welfare programs. Once determined to be refugees, they could apply for landed immigrant status, which accorded them the same rights as any other immigrant, including the right to apply for Canadian citizenship after three years residency. (For more details on the determination system see Auditor General’s Report, 1990; Immigration and Refugee Board, 1988; Matas 1989; Young, 1989).

Power and Refugee Systems

In this section, Foucauldian insights are used to reveal the complex processes whereby refugees are determined and answer the research questions identified earlier.
Sovereign Power: Does the Government Control the System?

Given that only the state has the legal authority to determine who and who is not a refugee (Cohen, 1994), does it use this power to control the outcomes of the refugee determination process? The government agenda is generally considered to emphasize controlling refugee production flows, as evidenced by the research literature (e.g., Cohen, 1994), observations from participants (Rudge, 1989), and quotations from interviewees in this study. Government officials in all three countries emphasized the importance of control. For example, a senior Canadian immigration official pointed out that the government aimed at restricting entry:

[Otherwise] how could you explain the fact that between 1969 and 1980, we put visa requirements on three dozen countries, many of which were trouble spots, places in turmoil? It clearly wasn’t a policy to encourage people to come to Canada and claim refugee status.

A UK counterpart echoed the importance of deterrence:

Every so often, the pressure groups would make the point that: shouldn’t every asylum-seeker have the right of appeal and that sort of thing. Basically, the government’s response was “No”. We don’t want to do that sort of thing because the more you give asylum-seekers procedural advantages over non-asylum immigration categories, the more you’ll draw them in.

Danish civil servants indicated a similar preoccupation:

They [asylum-seekers] are not all cheating but they are not all telling the truth either. What would you do if you knew the barriers? Would you tell the truth, or would you give it a little nudge to get around them? I would. But you can’t judge
people and say they are good or bad. They are all sorts and it’s my job to
distinguish them... My fear is that the public will think we’ve lost control.

It would appear, then, that government officials have a relatively clear agenda regarding
the control of refugee production, and they possess formal authority as well as access to many
critical resources. But does the government’s access to material and ideological sources of power
guarantee success? Despite possessing considerably more resources as well as legal and policy-
making authority compared to NGOs (never mind individual refugees), the experience of
government actors in controlling refugee determination is one of frustration rather than of
successfully implemented policies. This situation is due to the existence of a myriad of factors
outside its control, as well as an ongoing struggle among other actors in the system.

First, the international flow of asylum-seekers is beyond the ability of any single
government to control. It is influenced by events in distant countries, such as war, famine and
political upheaval. Public and media reactions also have a major impact and they are often
unpredictable. Public opinions have ranged from wholehearted support for refugees as in the
large-scale sponsorship of Vietnamese “boat people” in the late 1970s, to violent opposition to
refugees as in the recent firebomb attacks on refugee hostels in Germany. Media coverage may
show features on families fleeing the horrors of war and persecution one day, and headlines
alleging that groups of refugees are fraudulently obtaining social welfare payments the next.
Another source of unpredictability concerns the courts – given the complexity of international
law, legal decisions can change policies and practices dramatically. In other words, within the
complex, global, political and economic context that produces the movement of displaced
persons, an individual government is no longer sovereign if, indeed, it ever was.
Second, the refugee production process is the site of a struggle between governments, wanting to erect barriers to entry, and NGOs and refugees, wanting to tear them down. For example, in Canada, the NGO lobby has been particularly influential on legislation.

The [Canadian] legislation was influenced by the NGO lobby. Public servants always acted in good faith and have tried to do the right thing but the substance of the protection [for refugees] are the result of the influence of the NGOs, although what we offer still isn’t enough for some people (senior civil servant).

In the UK, there is an ongoing struggle involving government, NGOs and refugee-based organization. The refugee community in the UK is particularly active, despite limited resources and support (Majika, 1991; Salinas et al., 1987) and the existence of a confrontational government (Hardy & Phillips, 1998). In Denmark (Steen, 1993), there is a struggle between the Danish Refugee Council, the main NGO dealing with refugees, and the government.

We are not afraid of the Danish Refugee Council and they are certainly not afraid of us .... our views might differ, of course. It would be strange if they didn’t. They are an NGO and they are supposed to fight for refugees and help them. We are supposed to administer the legislation (civil servant).

In summary, refugee determination systems are characterized by complex power dynamics, which no single actor – not even the government – can successfully control, regardless of their attempts to do so.
Power/Knowledge: Does the System Determine who is a Refugee?

Those responsible for determination decisions tend to present themselves as discoverers of “truth”. These individuals feel it is their job to “prove” whether the individual is or is not a refugee, as illustrated by the following statement from a UK asylum officer.

If someone asks for asylum, we decide whether they conform to the definition. If they don’t we will consider whether there are other reasons they should be allowed to stay.

The matter-of-fact way in which these decision-makers expressed their role hides the ambiguous nature of the information on which they rely: they were allocating individuals a status on the basis of limited information about countries most had never visited, about which the “facts” were unclear and, often, contradictory.

Two important sources of information came from the government’s foreign or external affairs department and from Amnesty International: organizations with vastly different agendas. Consequently, the information often clashed. Different decision-makers dealt with the contradictions in different ways. Compare the two statements below: the first indicates a UK asylum officer with a relatively critical view of information from the UK’s Foreign Office; the second asylum officer is more trusting of the Foreign Office.

I think we sometimes have to accept that the Foreign Office is driven by a different imperative to us. Nigeria would be a case where we’ve had a lot of British interests and the Foreign Office job description is to promote those interests, which would not be served by accepting high-level dissidents. Knowing that is one way to close the information gap.
It is a problem when Amnesty has one slant and the Foreign Office has another. Uganda is an example – the Foreign Office insists that Uganda is perfectly safe and Amnesty will insist that it’s not. We submit Amnesty’s information to the Foreign Office and say “Come on, comment on that: we’ve got a problem here.” Uganda is the biggest problem like that.... The problem is that Amnesty has a bias for showing the worst while I like to think the Foreign Office is objective and hasn’t got an interest either way.

In Denmark similar contradictions were to be found concerning members of the government and of the Danish Refugee Council, who both participate in determination decisions. [Staff] will try to get that information through the Foreign Service, Amnesty International, the International Red Cross, the Danish Refugee Council, UNHCR – many sources..... We don’t have a policy that Amnesty International is wrong and the government sources are always right. We try and get a balanced picture. Of course we know that there might be inclinations on the part of private agencies to look at things in a certain way and then we have to balance the picture and, if we can’t, we have to make a choice. We don’t come into this thinking that the Foreign Service is always right. We get a lot of immigrant groups who send us information and it may be helpful in certain respects, but of course it may be colored by their way of looking at things. So, it may not be the objective truth.... the Danish Foreign Service is one of our primary sources, as it is in most countries, because they are stationed out there. They should be able to give us the information. They should be negative eh... not negative [interviewee corrects himself], neutral because they are neither for nor against aliens (civil servant).
We get information from the Foreign Ministry but we don’t use it because we don’t believe it. Well that’s not quite true but we are very critical of the information from the foreign minister (member of the Danish Refugee Council).

These statements show that the information on which decisions are based is neither objective nor unambiguous.

The inconsistent procedures used to process this ambiguous information increase the arbitrariness of the determination process. In Canada, interviewees pointed to how individual decision-makers interpreted the available information.

Some are quite blatant about whether they are for or against claims; others are influenced by whom they are sitting with; others listen to the evidence (Refugee Board employee).

In the UK, the Asylum Division had grown rapidly from a small unit, with less than 100 civil servants, to some 500 employees in less than two years. During its early years, training had been limited leading to ad hoc decision making, as explained by an asylum officer:

There was very little training when [we were] small. I was given a few things to read and told to get on with it. It was very ad hoc. Some sources of country information were given to me and it was a question of learning on the job.

Training increased as the unit grew, but concerns with consistency remained. As one asylum officer said: “what worries me is whether my staff are doing the same things as everyone else.”

The result was:

We’re making up the rules as we go along, making mistakes and learning from them as we go along. The people here haven’t been in the civil service two years,
let alone the Home Office, let alone in Asylum. We’ve got a brand-new division, brand-new rules that are constantly changing and brand-new staff (civil servant).

These factors led to the ironic situation that, only because of a large back-log of asylum claims, did decision-makers feel that they has sufficient hindsight to make decisions.

By the time we deal with them, we have quite a good historical perspective of the incident involved. Ironically, it’s an advantage we’re so far behind. If we were bang up to date, I can imagine it would be difficult. By the time we get to it, it [the situation in the country from which the asylum-seeker has fled] is well documented (asylum officer).

Note, however, that the asylum-seekers themselves would not have had such information when they fled from their country because of the confusion and uncertainty that accompany the political and economic upheavals which give rise to the displacement of individuals.

Clearly, then, the status of “knowledge “ is problematic in the refugee system. Not much is known about conditions in the countries from which a refugee fled; the information that did exist was often contradictory; and the way it was processed was inconsistent. Consequently, knowledge concerning who and who is not a refugee is somewhat arbitrary. It is impossible to “prove” whether an asylum-seeker had genuine fears of persecution when he or she left their country – what exactly the situation was at the time, what the individual knew of it, and how the individual interpreted the information are unknowable. Determination procedures, no matter how sophisticated, cannot uncover the “truth”. Neither rational-analysis nor politics adequately describes this situation. The determination system was not a rational decision process that conveyed the truth about individual claims, nor was it a process effectively manipulated by those in and with power to further their agenda at the expense of that of refugees. Instead, it
represented one of the techniques discussed by Foucault (1980) that enable individuals to distinguish between “true” and “false” information.

The Refugee Subject: What are the Effects of “Being” a Refugee?

As Laclau & Mouffe (1987) have pointed out, entities have meaning only to the extent that they are part of a system of relations with other entities. These relations – or discourses – are the result of social construction. It is not to say that without discourse, there is no existence. People would still exist without the refugee determination system, but we would not know them as refugees, asylum-seekers, immigrants, or even bogus refugees or migrants – they would exist as entities but not as beings. Consequently, the refugee subject is a product of the processes of determination that lead to his or her classification, as well as the broader discourses that impinge on and overlap with refugee discourse (Hardy & Phillips, 1999; Phillips & Hardy, 1997).

There is, then, no autonomous subject: a refugee only exists in so far as he or she is “named” and recognized by others. To illustrate this process and its arbitrary nature, consider the different situations of Ghanaian asylum-seekers in the UK and in Canada. In the UK, Ghanaians were viewed with suspicion, as an asylum officer explained:

Our cases divide quite neatly into East and West Africa. In East Africa our presumption has been towards letting people stay because, in fact, for a long time it was physically impossible to remove people... With Somalia, Ethiopia and, to an increasing extent, the Sudan, over the last 18 months there has been a presumption to grant leave to stay. West Africa, because the movement has been in the other direction – military regimes moving towards democracy – there’s a stronger presumption of refusal.... I’m not saying we pick up a Somalian case and say “Yes” and a Ghanaian case and say “No” because we have to look at each
case individually but it’s sometimes hard to avoid doing that because experience shows that’s what usually happens.... The average immigration officer would look very closely at any Ghanaian who came and claimed asylum... and I wouldn’t say we hold a lot of [Ghanaian refugee] organizations in high regard.

This contrasts sharply with Canada, where acceptance rates of Ghanaian asylum-seekers increased from less than 7 percent in 1987-8 to over 30 percent in 1990-1 (according to figures from the immigration department), and where Ghanaians and civil servants worked together.

[The Ghanaians] have their own correspondence with the minister’s office in Ottawa. They’ve made a number of representations to immigration officials. They have their own contacts. They constantly talk to people at the documentation center, which advises board members on the conditions in their country. One of the last country profiles on Ghana was full of mistakes, which they corrected. So they really developed credibility (member of a NGO).

Consequently, the Canadian determination system was more likely to produce Ghanaian refugees than the UK system.

Different decisions regarding who is, and who is not, a refugee produce different experiences for individuals whose identities are constructed as a result. Consider also the example of those individuals who are produced as refugees in Canada and Denmark, compared with the UK. In Canada the attainment of refugee status quickly leads to immigrant status with the right to be joined by family members and, after three years, Canadian citizenship.

I think that’s one of the best things about our system – [that] you are not a special category [but qualify for landed immigrant status]. You are as much a Canadian as any other immigrant and qualify for citizenship (member of NGO).
Similarly, the Danish determination system allows those individuals it produces as refugees to apply for permanent residency, which accords them the same rights as Danish citizens and allows their families to join them. In the UK, however, refugees may not secure permanent residency for four years and citizenship until much later. Some individuals are admitted to the UK as “quasi-refugees” under the category known as *exceptional leave to remain*. These individuals’ identities are particularly precarious since they are usually initially admitted for only one year, followed by two more three-year terms, before they can apply for permanent residency, and they may not apply for family reunification for four years.

Thus the production of the subject is an ongoing process (Callon, 1986; Freire, 1992; Laclau & Mouffe, 1987) that does not stop with the outcome of the determination decision, but continues as refugees settle in their adopted country, as illustrated below.

The question is: “When do you stop being a refugee?” For some people, you are a refugee all your life. For most of us, that is true. Even when we settle, there is so much loss, which is irreplaceable, that leaves a big hole in our lives. You are always looking back but you can’t go back. So, you hope your children will be the ones who are Canadians in the proper sense of the word (former refugee).

While this discussion focuses on the identity of refugees, it is important to note that all individuals in the system were produced by it as much as they contributed to it. For example, civil servants responsible for determination decisions differentiated themselves from their counterparts in immigration. They saw themselves as “helping” people while immigration officials were responsible for “keeping people out” of the country. These different identities related to the role each played in the refugee system, the responsibilities they had, the information they received, the uniform they wore or did not wear, etc. The system of power
relations that comprises the refugee system thus produces the individual subjects who inhabit it, of which the refugee is a particularly transparent illustration. Identity is fragile and not completely controlled by the individual who “possesses” it. It is constructed as it passes through the nodal point (Laclau & Mouffe, 1987) or obligatory passage point (Callon, 1986) that constitutes the refugee determination system.

A self does not amount to much, but no self is an island; each exists in a fabric of relations that is now more complex and mobile than ever before. Young or old, man or woman, rich or poor, a person is always located at “nodal points” or specific communication circuits, however tiny these may be (Lyotard, 1984, p. 15).

The Limits of Resistance: How do Refugees Resist?

If refugee systems are so precarious and yet so “invasive” in their effects on individual refugees especially, how might those refugees fight the practices and processes that render them so vulnerable? Clearly, the prospects for resistance are limited. The idea that we can eliminate the refugee determination system, that the world will stop producing refugees, or that refugees can transform the existing discourses of sovereignty, racism and paternalism embedded in prevailing systems of determination and settlement, appears fanciful. What might be achieved, however, are local struggles as in the example of Ghanaian refugees in Canada, who carried out a number of actions in their bid to increase acceptance rates of Ghanaian asylum-seekers.

First, the Ghanaians provided information to the government on matters concerning the political situation in Ghana and on the validity of Ghanaian claims for asylum.

In the initial stages [interactions with government officials] were full of resentment but it was part of a long-term strategy. People take time to accept new
ideas. Also being black from a third world country meant they had certain stereotypes. But we kept on and we succeeded in organizing a series of cultural meetings with the [Canadian] Immigration and Refugee Board and our community to highlight certain cultural differences. From there it evolved on its own and we had a good relationship especially under the previous administration... Initially the [Board’s] Documentation Center tried to dispute our facts but now I think they accept them.

Second, they helped individual Ghanaians secure refugee status through education, information, organization and support. For example, they ran mock panel hearings to coach Ghanaian asylum-seekers in handling the determination hearing. Third, they contributed to media coverage of Ghanaian refugees and tried to create a favorable public image of Ghanaians. Fourth, they worked with other, more established NGOs, all of which served to increase acceptance rates.

[In 1987] Ghanaians had an acceptance of 4 per cent and at some point they started deporting them ... because the people taking the decisions don’t know the situation, so we started to document it and got [Ghanaian] volunteers to follow claimants through the system, go to hearings with them, explain the system to and their rights to them and, at the same time, help them document their situation....

[The Ghanaians also] developed credibility to the point where they now are working on a collegial basis with [civil servants] (member of an NGO).

By understanding the system, these Ghanaians were in a position to exercise power through it – in the form of a local struggle – and to derive some advantages from doing so. What is clear, though, is that their resistance did not mean an escape from the prevailing power relations, so much as an ability to exercise power through them. They learned how to work
through the system by “educating” Canadian officials and decision-makers regarding the “true” situation in Ghana. A Ghanaian involved in this strategy explains:

I thought these [refugee] groups should organize, to do the research and get the documentation, and convince the government, or whoever does the refugees’ determination, of the real situation which is driving people to this country. That way they couldn’t accuse us of being bogus or queue jumpers.... The Canadian government and the NGOs think that as far as Africa is concerned, Somalia is the only refugee producing country. They can only see refugee-producing countries where there is open warfare and people are killing themselves.

By contrast, Ghanaian asylum-seekers in the UK did not work through the system. In fact, they were seen as trying to circumvent it through fraudulent claims. As a result, they were unsuccessful even though they would have had access to the same information on the political situation in Ghana as their counterparts in Canada. In fact, Ghanaians in Canada obtained information from senior level dissidents who had fled to the UK. In other words, it appears that Canadian officials listened to Ghanaians because they exercised their power through the refugee determination system, while UK officials opposed them because they did not.

The example of the Ghanaians in Canada represents an example of Foucauldian resistance, where they helped to create “knowledge” and disperse it through the determination system. In this way they were able to contribute to the production of their own identity i.e., as refugees from Ghana who were in the process of becoming Canadians. So, for example, the name of the Ghanaian Refugee Union was subsequently changed to the Ghanaian Canadian Association and opened to all Ghanaians, not just recent refugees.
What are we going to do as an association, as a cultural group to portray ourselves, to show Canadians that we have something to offer the community (Ghanaian refugee).

Slowly, a new identity was produced by working through, rather than against, the system. Formerly, most of the members were refugee claimants. Now they have been accepted and are landed immigrants…. The new ones feel they have some sort of inferiority complex when they come into contact with officials. So we, the ones who have more experience operate on a par with these people, we can teach them what to do. Many parents are not educated and are semi-literate. They don’t know how to operate in Canadian society and we have to teach them. We are also concentrating on the multi-cultural aspects of Canada and understanding the ethnocentrism of Canada. Then we have to locate ourselves within this multicultural context because we often hear people identify themselves as an Irish Canadian, a Greek Canadian. This is what we are looking forward to. We are also saying, you don’t have to be a refugee to participate in this organization.

As Foucault has pointed out: “Freedom does not basically lie in discovering or being able to determine who we are but in rebelling against those ways in which we are already defined, categorized and classified” (quoted in Sawicki, 1991, p. 27).

The fruits of such resistance are not, however, necessarily an improvement (Hoy 1986; Sawicki, 1991), and they involve a number of costs. First, while the Ghanaians in Canada felt they derived some advantages from the outcome of their struggle, they also experienced disadvantages by having to visibly assimilate into the host society to increase their credibility. Hence the price of resistance was a cultural loss. Second, while the outcome of this struggle
might have benefited the Ghanaians, who is to say whether the attitude of Canadian or UK officials was “better” when examined from the perspective of the larger society with its racial tensions, finite social welfare support, and foreign policies.

Conclusions and Discussion

This paper uses Foucauldian insights to analyze the production of refugees in three different countries. In so doing, it shows the complexity of refugee determination as a result of the limits of sovereign power; the link between power and knowledge in systems that are frequently presented as neutral and objective; the production of the subject at the nexus of this complex web of power relations; and the nature of local resistance. Foucault’s work is generally recognized for being complex and, while this analysis cannot capture all the nuances of his work, it has identified four key dimensions that can form the basis of a Foucauldian framework, and which might be applied – relatively easily – to empirical settings. Table 2 summarizes these four dimensions in the context of this study.

— Table 2 near here —

The question that remains is: what does such an analysis mean for actors in those systems? What does this analysis mean for government? It depends somewhat on what governments are trying to achieve. We have suggested that governments are primarily in the business of defending sovereignty, erecting barriers to entry and reducing the number of asylum-seekers. If this is the case, the lack of sovereign power is particularly relevant here. The analysis points out the futility of attempts to control the flow of asylum seekers in any practical way. This raises important questions for policy – why invest so much in a system that cannot work in the way in which it is intended? Clearly, governments may be more interested in managing public opinion than they are in managing the entry of refugees. In this regard, the determination process
does act as a useful technique for establishing the “truth” regarding a refugee’s status. But
despite appearances to the contrary, it is a discursive fiction and, as such, constructs a reality
rather than reveals it and alternative knowledge about refugees might also claim the status of
truth, with changes in the techniques used to establish it. Broader thinking on this matter might
open up refugee systems to alternative, less oppressive ways of operating (or equally, it has to be
said, to more oppressive uses of disciplinary power).

The matter of power/knowledge also raises implications for the internal processes of
refugee determination, whereby government employees assess a particular claim for asylum.
Again, the precarious status of “facts” has implications for the training of these employees.
Given that caseworkers often define their own identity in contrast to immigration officers –
working for the refugees rather than simply trying to keep them out – they may find ways of
reinforcing that identity if they are trained to tolerate ambiguity in information, rather than
simply being trained to expect and seek convergence. In this way, they are more likely to
understand the socially constructed nature of “truth” and the constructive effects of using
particular knowledge and, in so doing, have a more finely grained appreciation of their work.

What does this analysis mean for refugees? The construction of the subject shows that,
while refugee status is a precarious category to occupy, there are nonetheless distinct advantages
in submitting to the exercise and discipline of power relations in the refugee domain, and being
granted refuge in a safe haven. Given the impossibility of overturning the system, this represents
some small solace to those individuals seeking asylum.

The discussion of resistance shows that there are ways to exercise power through the
system and, in particular, by creating new knowledge and new identities. The dubious status of
“facts” about refugee-producing countries and the contradictory nature of different sources of
knowledge provide an opportunity for refugees to create new knowledge about their situation, as the Ghanaians in Canada did. In doing so, they were able to influence the conventional wisdom about Ghana and their eligibility for refuge. In addition, there appears to be scope for constructing new identities that are afforded some protection within the system. This extends not just to claiming the identity of “genuine” asylum seekers but also in terms of claiming “expert” status in terms of knowing both about the conditions that produce refugees and the determination system that receives them. In addition, an identity that is “integrated” and bridges the original society and the new society seems helpful to refugees. At the same time, it is clear that, while constructing new knowledge and adopting new identities affords refugees some advantages, it is not without some personal cost and helps to reinforce the system that defines them.

This form of empirical work offers an insight into the nature of Foucauldian power and, in particular, the nature of local resistance. It shows how the “powerless” might exercise power and, in so doing, change their circumstances, even if there is limited prospect for transforming a particular situation. We suggest that, only by conducting more empirical research, can we learn more about resistance and, in so doing, challenge the pessimistic nature of Foucault’s work. So far, the debate about whether Foucault’s work offers any hope for change remains largely theoretical. Some writers (e.g., Said, 1986; Walzer, 1986; White, 1986) dispute whether Foucault has anything useful to say in this regard. Other writers disagree (e.g., Smart, 1985; Turner, 1990) even, apparently, Foucault himself.

It seems to me that the real political task in a society such as ours is to critique the working of institutions which appear to be both neutral and independent, to criticise them in such a manner that the political violence which has always
exercised itself obscurely through them will be unmasked so that one can fight them (Foucault quoted in Alvesson & Willmott, 1992a: 445).

However, we have little idea about what, exactly, it means to “fight” without resorting to further empirical studies. This study points to the importance of the construction of identity and knowledge in this process. Given the increasing interest in postmodern views of these concepts and the increasing body of literature applying them to organization studies and other disciplines, there is considerable theoretical sustenance for further exploration of these issues.

The interest in Foucault’s work has stalled somewhat in recent years, largely because of its complexity in applying it to practical situations and its lack of prospects for change and agency (Phillips & Hardy, 2002). One response is to abandon a Foucauldian approach and move on to other theories, which many frustrated researchers have undoubtedly done. A second is to critique and, often, reject it. In fact, a body of theory has grown up in a variety of disciplines as these critics debate with Foucault’s advocates the merits of his approach. However, to a great extent these debates have produced a stalemate – with neither side conceding to the other. A third way is for researchers to build theories of resistance and change from the ground up, by using empirical examples that incorporate Foucauldian insights, as well as other theories such as postmodern conceptualizations of identity and knowledge, which are gaining greater coverage in theories of management and administration. By using empirical examples in this manner, we may find a way out of the impasse.
<table>
<thead>
<tr>
<th></th>
<th>UK</th>
<th>Canada</th>
<th>Denmark</th>
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<tbody>
<tr>
<td>Government</td>
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<tr>
<td>Total</td>
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<td>32</td>
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Table 2: Power in Refugee Determination Systems

<table>
<thead>
<tr>
<th>Category</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sovereign power in the refugee determination system</td>
<td>The government attempts to control refugee determination but the complex networks of relationships involved, while harboring possibilities for action, limit the likelihood of achieving intentions.</td>
</tr>
<tr>
<td>Power/Knowledge in the refugee determination system</td>
<td>The knowledge on which refugee determination systems rest is arbitrary; these systems represent a set of techniques for according certain knowledge the status of “truth.”</td>
</tr>
<tr>
<td>The subject in the refugee determination system</td>
<td>The “refugee” as subject exists only as a category recognized by determination (and other) systems; this identity has productive and positive, as well as negative, aspects.</td>
</tr>
<tr>
<td>Resistance in the refugee determination system</td>
<td>Overturning refugee determination systems is unlikely but groups can exercise power through them; these local struggles may improve the experiences of some although they cannot be automatically considered to be “progress.”</td>
</tr>
</tbody>
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Biographical Note

Cynthia Hardy has been Professor of Management in the Department of Management at the University of Melbourne since 1988. Before then she was a professor in the Faculty of Management at McGill University in Canada. Her research interests focus on organizational discourse theory and critical studies of power and politics in organizations, especially with regard to inter-organizational collaboration and strategy making. She has written over 60 journal articles and book chapters, and published twelve books and edited volumes, including the *Handbook of Organization Studies*, published by Sage, which won the 1997 George R. Terry Book Award at the Academy of Management.
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