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Legality, Rights and the Lived Experience of Protection: Refugee Settlement in the U.S. and Germany

Empirically we see a variation in responses of states and communities to the settlement of refugees who enter spontaneously in the United States and Germany. While some localities are welcoming, others have placed legal restrictions on the settlement of asylum seekers in their communities. In this paper, I explore the relationship between legality, as the formal status of being lawful or unlawfully present in the state and the constitutional understandings of rights that contributes to settlement of asylum seekers in a locality. Through a constitutional ethnography, I examine the different constitutional logics as a way of “illuminating complex interrelationships among political, legal, historical, social, economic, and cultural elements” (Scheppelle, 2004) that legitimize or limit the local settlement of asylum seekers in Germany and the United States. My interest is in gaining a better understanding of how these differences might inform our theoretical understanding of the *mechanisms* through which governance is accomplished and the *strategies* through which governance is attempted, experienced, resisted and revised, taken in historical depth and cultural context (Scheppelle, 2004). Ultimately, the goal is to have a better understanding of the influence of constitutional norms and values as they are translated and reinvented in local contexts as key elements of a model community for refugees and immigrants.

In 2016 Germany had 745,545 asylum applicants out of which 695,733 were processed in the First instance and, out of these, 433,921 had a positive decision for a rate of 62.4% and 256,136 granted refugee status for a rate of 36.8%. Another 6,223 cases were granted refugee status on appeal (BAMF, Asylum Statistics December 2016, 2). In comparison, the United States received 125,160 affirmative asylum applications in 2016 with 223,433 cases pending by the end of the year, showing the backlog in the system. During 2016, 11,111 cases were approved and the average monthly approval rate for the cases processed was 44% (USCIS Asylum Workload 2016 Statistics). While these numbers indicate that less than half of all people who cross the border spontaneously into the Germany or the U.S. are granted asylum, they tell us little about the lived experience of the asylum seeker pending asylum status and

the settlement and integration that goes on in spite of the legality of one's asylum status in a country. Whether or not a person is ultimately granted asylum status, there are a myriad of other rights that contribute to a person's settlement in a host country. Access to a social support network, education and language instruction, employment, religious community are important aspects of settlement and integration in a county that, often times, have little to do with one's formal status in a country. This work examines how localities operationalize their own understandings of the constitutional order to create or limit pathways to settlement.