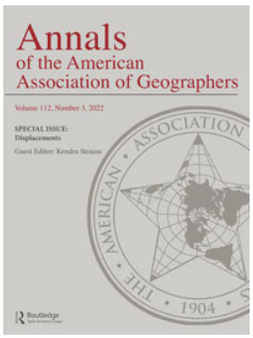

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Precarious (Dis)Placement: Temporality and the Legal Rewriting of Refugee Protection in Denmark

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This article addresses the legal reconfigurations of refuge and its consequences for people displaced by war and state violence. Within Western countries signatory to the 1951 Convention Relating to the Status of Refugees, refugee protection has traditionally served as a solution to conflict-induced displacement by offering a path to permanent residence and citizenship. Yet, in the wake of recent global "refugee crises," several countries have introduced new refugee protection statuses that only allow refugees to stay temporarily. In this article, I focus on one such intervention in Denmark introduced in the fall of 2014, which targets Syrian refugees. Through a feminist geo-legal analysis of this statute and surrounding policy documents, I illustrate how the Danish state has mobilized subtle legal interventions to transform the meaning and character of refugee protection. By differentially classifying groups of refugees according to new calculations of threat and risk, I show how these maneuverings work to deny refugees basic rights and make them subject to intimidation, surveillance, and deportation. I argue that this new statute functions as a legal mechanism of sociospatial b/ordering that produces a series of displacements and limits refugees' access to effective protection under the 1951 Convention. In doing so, I advance critical discussions on temporary protection status, displacement, and refuge. *Key Words: fear, law, legal geography, political geography, state power, Syrian refugees.*

This article examines the relationships between legal refugee protection and displacement. In the spring of 2020, Hanaa was summoned for an interview with the Danish Immigration Service (DIS) because it was reevaluating her need for protection. Hanaa is among the more than 900 Syrian refugees who are having their asylum cases reexamined and could potentially have their status revoked (Udlaendinge- og Integrationsministeriet 2020). After her husband was killed in 2014, Hanaa escaped Damascus and traveled to Denmark, where she applied for asylum in the early days of 2015. Ten months later, Hanaa obtained refugee protection according to §7.3 of the Danish Aliens Act, a status officially known as General Temporary Protection Status but that Syrians typically refer to as "7.3" or "لجوء انساني" (humanitarian asylum). This status provided Hanaa with a one-year (renewable) residence permit, which allowed her to access social services, health care, and employment and the ability to live with her three children and five grandchildren who had also obtained protection in Denmark. Yet, in February 2019 the Danish state deemed Damascus "safe" and argued that Syrians could now return there (Udlaendingestyrelsen 2019b). As a result, Hanaa and other Syrians now live with the threat of losing their protection status and potentially being returned to Syria, a country still at war.

Syrians' accounts of having their status revoked have sent ripples of fear and anxiety across Syrian communities in Denmark. Introduced in 2014, §7.3 enabled the Danish state to provide (temporary) protection to an increasing number of Syrian refugees, while ensuring that it could return this group of refugees to Syria once it was deemed safe to do so. As such, this legal status raises a number of questions about displacement and protection. On what legal grounds are some refugees deemed to be worthy of only temporary protection? How is legal precarity produced through legal interventions? How might law work to reproduce displacement rather than ameliorate it? By examining the intervention of §7.3, this article begins to answer some of these questions.

In this article, I situate §7.3 within Western states' increasing efforts to limit refugees' access to state protection (Coddington 2018) and erode the institution of asylum (Mountz 2020). Through a feminist

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geo-legal analysis (Brickell and Cuomo 2019) of §7.3, I carefully trace the legal maneuvers, tactics, and arguments that were used to establish and legitimate this protection status. My analysis reveals how the Danish government began to redraw the basis on which the need for refugee protection is determined by reclassifying fear and violence. I argue that §7.3 functions as a legal mechanism of sociospatial and temporal b/ordering that works through an intimate register, produces a series of displacements, and limits refugees' access to protection under the 1951 Convention Relating to the Status of Refugees and the amending 1967 Protocol (hereinafter "the 1951 Convention").

Drawing on a larger study examining the changing nature of refugee protection in Europe, this article focuses specifically on the institution of §7.3 and the "micro-geopolitics" at work in law-making (Jepson 2012). In addition to analyzing the statute itself, I engage with legal and political documents related to §7.3, including press releases, legislative documents, parliamentary debates, national and international court cases, and country reports. These sources illuminate how law-making—a seemingly mundane practice of statecraft—is facilitated and contested by different actors (bureaucrats, politicians, legal experts, and nongovernmental organizations), who draft bills, write hearing statements, and participate in consultations, expert meetings, and readings of bills. Moreover, these actors mobilize discursive tactics, legal maneuvers, and preexisting material to enable legal change (Luibheid 2002; Gorman 2019a) that addresses a present issue and shapes an anticipated future that has yet to arrive (Coutin 2011). Thus, legal and political documents related to protection statuses—like §7.3—provide insights into the mundane operation of state power and how spatial and temporal boundaries of displacement, protection, and refuge are being redrawn.

The article proceeds as follows. I begin with a brief review of the scholarship on Western states' b/ordering practices. I then examine the creation of §7.3 through a focus on its substance and surrounding political legitimation. I then discuss its immediate consequences to Syrian refugees and the institution of asylum in Denmark more broadly. I conclude by reflecting on §7.3's key role in facilitating the "paradigm shift" in Danish asylum law (Tan 2021) where permanency of refugee protection has come under intense political scrutiny.

B/Ordering, Law, and Displacement

Western states have long sought to prevent people displaced by violence from reaching sovereign territory where they can make a claim to political asylum as provided by the 1951 Convention (Ehrkamp 2017). Scholars have documented the proliferation of border control and immigration enforcement across various scales and geographical sites (Mountz 2011; Bialasiewicz 2012; Burridge et al. 2017). Although these spatial practices have resulted in countless deaths of refugees (Williams and Mountz 2018), they have not prevented refugees from reaching sovereign territory where they can claim asylum. Those who do manage to enter Western countries are subjected to a range of state practices while waiting for their asylum cases to be processed (Conlon 2011). For instance, states govern refugees' lives through carceral institutions (O'Reilly 2018) and forced movements (Gill 2009), limiting refugees' access to justice (Burridge and Gill 2017).

The law and legal categories are integral to how states manage refugees and other migrants (Mountz 2010). Recently, feminist geographers have taken up Coleman's (2008) call to interrogate immigration law (Gorman 2017) and how law and b/order regimes are entangled (Maillet, Mountz, and Williams 2018). As part of these discussions, Gorman (2019b, 2021) situates legal interpretations and geopolitical maneuvers within asylum adjudication as sites of bordering through which states determine which bodies can access sovereign territory and rights. In a similar vein, Gilbert (2019) elaborates on how immigration law remakes territorial jurisdiction and is attached to bodies differentially (also see Gorman and Wilson 2021). Coleman and Kocher (2019) further draw attention to how racial discrepancies are embedded in immigration enforcement. This body of work illustrates the flexibility and contingencies of immigration law across space and scale and makes visible the gendered, classed, racialized, and geopolitical logics underpinning juridical border work.

Building on these insights, I take up Gorman's (2019b) call to "expose the internal logics of asylum law, in its many forms and continued evolution, to identify limits set on protection" (502). By analyzing the creation of §7.3, I show how the Danish government has limited refugees' access to legal protection as outlined by the 1951 Convention. Through a feminist geo-legal analysis, I illustrate how this was

achieved by redefining the parameters of credible fear and widening the purview of discretionary state power. This analytic lens foregrounds the intimate registers through which juridical border work takes place, makes visible the uneven effects of legal categories across social differences, and highlights how legal changes shape everyday life. In doing so, I extend critical discussions on temporary protection status (Bailey et al. 2002; Abrego and Lakhani 2015; Miyares et al. 2019).

Eroding Protection: The Emergence of 7.3

On 19 September 2014, the Danish government announced that it would soon present a bill that would address the "explosive increase" of refugees arriving in Denmark. In a press release, the government explained:

> The number of asylum seekers in Denmark has in a short time increased tremendously and is now at a historical high level. … In the beginning of the year there was a decrease in the number of asylum seekers, but in recent months an explosive increase has occurred. In August alone, 1135 asylum seekers came from Syria. (Justitsministeriet 2014, translation by author)

Minister of Social Affairs Manu Sureen elaborated that this extraordinary "flow of refugees" created challenges for the government and mayors across the country. Minister of Justice Karen Haekkerup further argued that the Danish asylum system was outdated and incapable of managing this unprecedented situation. Framing (Syrian) refugees as a threat to the welfare state, the Danish government asserted the need for legal change.

Two months later, Mette Frederiksen, newly appointed Minister of Justice, presented Bill 72 (Lovforslag nr. L 72) to serve this role. She explained that although the government sought to honor its international obligations toward refugees, Denmark did not have the capacity to offer protection to all refugees in need (Folketinget 2014b). Bill 72<TŁ therefore proposed to implement a new subsection (§7.3) to the Danish Aliens Act. Previously, the Act included two refugee protection categories: §7.1 and §7.2. Whereas §7.1 (Convention Status) provides protection to persons who qualify as refugees according to the 1951 Convention, §7.2 (Protection Status) provides protection to people who qualify for protection according to the European Convention on Human Rights. Section 7.2 specifies that:

> A residence permit will be granted to an alien upon application if the alien risks the death penalty or being subjected to torture or inhuman or degrading treatment or punishment if returning to his country of origin. (Udlaendingeloven 2014, translation by author)

Introducing §7.3, the Danish government did not replace or rewrite §7.1 and §7.2. Rather, the government sought to create a new protection category by adding the following subsection to the act:

> Where the risk of a death penalty or being subjected to torture or inhuman or degrading treatment or punishment *originates from* a particularly grave situation in the alien's country of origin characterised by random violence and assaults on civilians, a residence permit will be granted upon application for *the purpose of a temporary stay*. (italics added)

On the face of it, §7.3 appears limited in scope and almost identical to §7.2. Yet, as I explore next, a close reading of the documents accompanying §7.3 makes visible the geo-legal rationale underpinning this status and its far-reaching repercussions for refugees in Denmark.

Redefining Fear

Fear of persecution is the raison d'être of refugee protection, but states' determination of what counts as a credible fear is highly (geo)political. As feminist scholars have shown, states politicize some fears (Ashutosh and Mountz 2012), while dismissing others as simply "private" or too "general" to warrant protection (Gorman 2021). Here, I trace how the Danish government took aim at the calculus of fear in its crafting of §7.3, which in turn widened the purview of discretionary state power.

In documents concerning §7.3, the government repeatedly argued for the need to distinguish between an individual fear of persecution and a general threat of violence. It stated that some refugees who claimed asylum in Denmark did so because they came from areas where atrocities against civilians were committed as a result of war and violent conflict (Folketinget 2014a). Yet, the government further claimed that these persons' need for protection was not based on an individual fear of persecution

but rather on a general threat of violence. Although the government never explicitly defined the parameters of "this group" with any precision, it repeatedly references its existence, citing the war in Syria and Syrian refugees as examples. Hereinafter, I refer to this group as refugees facing a general threat.

The government conceded that according to Article 3 of the European Convention on Human Rights and precedent setting decisions at the European Court of Human Rights, Denmark was obligated to provide protection to refugees facing a general threat, because there was real risk that they would face inhumane treatment or punishment if they were to return to their country of origin (Folketinget 2014a). The government, however, claimed that the Danish Aliens Act did not have a specific status for refugees facing a general threat. Up to this point, Denmark had granted protection to Syrians at risk of inhuman or degrading treatment according to §7.2. Yet, in the explanatory memorandum of Bill 72, the government cited a 2002 amendment to §7.2 as a precedent. It argued that §7.2 was a status to be reserved for refugees who faced an individual threat of inhuman treatment or punishment, rather than a general one. On this basis, the government claimed that there was a need for a new protection status specifically designed for refugees facing a so-called general threat.

The government's distinction between individual threat of violence and general fear served to justify the need for a new protection status, rather than outrightly dismissing a particular group of refugees as has happened in other countries (Gorman 2021). Indeed, this distinction was a political and self-serving tool of legal reasoning. Yet, read through a feminist geo-legal lens, we further see how the government intervened in the intimacy–geopolitical relation (Pain and Staeheli 2014) between individuals and (state) violence. That is, the government reclassified the violence of war—such as bombings, sniper attacks, and mortar fire—as a general form of violence rather than an individual one. The government argued that a given threat that "*originates* from a particularly grave situation in the alien's country of origin characterised by random violence and assaults on civilians" can pertain to any and all who originate from a particular place and is, thus, not necessarily an individual form of violence. Through this reasoning, it "de-individualized" (Gorman 2021, 221) particular forms of violence and framed refugees' relation to "general" violence as not being sufficiently personal (i.e., intimate) to warrant state protection under §7.1 or §7.2.

This reclassification of fear and violence widened the purview of discretionary state power. With Bill 72, the government established that being displaced from a particular place due to war alone was no longer sufficient grounds for demonstrating "individual" fear. Something additional would be required; otherwise, the person would obtain protection according to §7.3. Moreover, to demonstrate individual fear, refugees have to provide evidence—in the form of testimony, state documents, medical records, or bodily scars—of their intimate relationship to violence. Yet, discretionary power operates unevenly across social differences such as age, gender, class, nationality, and political subjectivity. For example, a thirty-five-year-old Syrian man is almost automatically granted protection according to §7.1 because he, as a Syrian man between the ages of eighteen and forty-five is subject to "خدمة العلم الإلزامية" ("compulsory service of the flag," or military service) under the Assad regime, a risk that is officially recognized. This man merely has to provide evidence of his age, gender, and nationality to be eligible for state protection, which is fairly easy to document and difficult for the state to contest. Alternatively, a Syrian woman (of any age) or a man over the age of forty-five who has lost their home and family members to military assaults would find it more difficult to have their fears of violence recognized as individual fear.

Resonating with feminist geographers' theorization of fear (Pain and Smith 2008; Pain 2009), we see how the government's reworking of fear politicizes some subjects' fears while erasing those of others (Christian, Dowler, and Cuomo 2016). Furthermore, this reworking took place through intervening in the intimacy–geopolitical relation between refugees and (state) violence. Next, I examine how this reclassification of fear facilitated the creation of a new legal subject defined as temporary, thereby enhancing the state's control over how long a refugee can stay in Denmark.

Producing a Temporary Legal Subject

Mobilizing an understanding of war as an exceptional phenomenon with a bounded temporality, the government argued that refugees facing a general

threat required protection on a temporary rather than permanent basis. The rationale here was that the wars, which prompted these refugees to seek protection, would eventually come to an end (or become less violent). The government argued that these refugees' need for protection was temporary in nature and they ought to return when this (allegedly) inevitable shift materializes. Bill 72 embedded this temporary nature by proposing that §7.3 explicitly states that this status is granted with "the purpose of a temporary stay" and grants its recipients a one-year (renewable) residence permit.

Furthermore, although recognizing that there was no legal precedent for revoking refugees' protection statuses in Denmark, the government claimed that refugee protection was never intended to be a permanent solution to displacement and that existing law indeed enabled the state to withdraw protection. The government referenced §19 of the Danish Aliens Act stating:

> A temporary residence permit can be withdrawn if the conditions under which the residence permit was granted have changed in such a way that the refugee no longer risks persecution. (Folketinget 2014a, 10, translated by author)

In effect, the institution of §7.3 divided the total population of refugee applicants into two differentiated subcategories: Those with an individual fear were granted status "with the purpose of permanent stay," whereas those with a general threat were granted status "with the purpose of temporary stay"; that is, they were subject to subsequent return (forcible or "voluntary") to their origin country. Through this division, the government enshrined the classification of two kinds of legal refugee subjects differentiated by the temporality of their legal statuses. Not incidentally, these arguments about the need to reconsider the duration of refugee protection were made in relation to the war in Syria, which has displaced millions of people and at the time had (and continues to have) no foreseeable end.

In reasoning that some refugees are deserving only of temporary status, the government began to argue for a general ontological reconfiguration of refugee protection. The government asserted that it no longer considered refugee protection to be permanent in any fundamental sense. Rather, the protection it offers is conditional, predicated on ongoing geopolitical conditions of war, violence, and instability. For the first time, the government argued explicitly that a person's protection status can and should be revoked once the need for protection is no longer there. Moreover, as I show next, §7.3 represents the opening salvo of the Danish government's attack on refugee protection per se, producing new vectors of displacement.

Multiplying Displacement

Section 7.3 provides recipients with a one-year (renewable) residence permit and thus ostensibly "solves" refugees' displacement. That is, it provides recipients with a legal status through which they are inserted into the national order, albeit temporarily. If we understand displacement, however, as "an experience of being removed from what are conceived of as the temporal rhythms of ordinary life" (Ramsay 2019, 97), we see how displacement can continue long after refugees have obtained legal protection status (Tang 2015; Ramsay 2019; Pull et al. 2020). Here, I show that §7.3 plays a key role in producing displacement in refuge.

Section §7.3 isolates family members from one another because it suspends recipients' right to family reunification.[1] This suspension creates a condition of what I here term *protracted separation* where family members find it difficult to provide care and maintain intimate ties across borders. Family ties are unsettled and in some cases the family unit as such is literally destroyed. The suspension of family reunification represents a form of displacement, because it prevents parents from fully caring for their children and each other and thus fragments the ties that constitute the everyday fabric of life itself for many refugees and their loved ones.

Section §7.3 also precludes the right to free higher education in Denmark that other protection statuses have historically offered.[2] Although the economic barriers posed by forms of b/ordering are well-covered (Hyndman 2000), §7.3 displaces some refugees from other refugees and newcomers under the pretense that their impending return to their places of origin disqualifies them from access to the resources that might enable their upward mobility. In other words, it categorizes them as uniquely undeserving of the resources that might otherwise connect them to the Danish education system, labor market, and society.

Finally, because §7.3 provides a protection status that is irreducibly temporary, its recipients, like

Hanaa, live with the fear that their status can be revoked at any time. This fear is frequently leveraged by the Danish state in governing those subject to §7.3. As mentioned earlier, in 2019 DIS deemed Damascus as "safe" based on findings from a country report. DIS has begun to revoke the statuses of §7.3 refugees and threatened some with deportation.[3] Granting Syrians protection according to §7.3 exposes them to being displaced from the lives they have established in Denmark and forcibly "returned" to places where little of what they left remains.

These three vectors of displacement pertain exclusively to recipients of §7.3, but §7.3 enacts displacement in a broader way. Critical migration scholars increasingly draw attention to a paradoxical situation of how asylum remains in force in national and international laws yet is being subverted through a complex web of b/ordering and bureaucratic interventions (Coddington 2018; Mountz 2020). Section §7.3 is an example of a legal avenue through which this is taking place in Denmark. It has worked to effectively turn temporary protection into the default status quo for many Syrians, particularly Syrian women (43 percent) and accompanied children (37 percent; Udlaendinge- og Integrationsministeriet 2018). Displaying the percentage of Syrian refugees who received protection under the three different protection statuses between 2015 and 2018, Table 1 documents the inversion of the type of refugee protection statuses granted to Syrians.

In 2015, 73 percent of the Syrians who made a claim to asylum in Denmark were granted protection according to §7.1 (Convention Status), and only 15 percent were granted protection according to §7.3. By 2018, these two numbers were roughly reversed. Although §7.3 offers legal protection to Syrians, it does not "solve" their displacement in any meaningful sense. Rather, it serves the function of upholding Denmark's commitment to the conventions while cementing an underlying condition of displacement as the prevailing state of everyday life for §7.3 recipients.

Table 1. Distribution of protection status for Syrian refugees

Protection status	2015	2016	2017	2018
Total number of Syrians granted protection	5,763	5,257	1,030	536
§7.1: Convention Status	73%	58%	34%	28%
§7.2: Protection Status	12%	1%	3%	1%
§7.3: General Temporary Protection Status	15%	41%	63%	71%

Source: Data from Udlaendingestyrelsen (2019a).

Conclusion

The institution of asylum is being killed (Mountz 2020) in various ways, some spectacular and others more mundane. Whereas legal decisions like U.S. President Donald Trump's Muslim ban and the Danish state's practice of seizing refugees' valuables often are framed as exceptional and formative moments therein, a feminist geo-legal analysis of §7.3 illustrates the equally insidious but far less visible ways in which asylum is being eroded through everyday statecraft. It is a killing of asylum through a thousand legal cuts, happening slowly—over several years and across multiple legislative decisions—as policy- and lawmakers incrementally reconfigure the legal standing of fear, threat, and legal subjecthood. A feminist analytic crucially locates the minor and the micro as key sites and scales where the (intimate) work of geopolitics is done.

More specifically, a feminist geo-legal analysis of how §7.3 was rationalized offers insights into how states like Denmark quietly (re)negotiate their obligations to international conventions not simply by a failure to live up to its dictates. It does so through targeted and subtle legal interventions that deprive increasing numbers of refugees of access to permanent protection but also chips away at the very ontology of refugee protection as permanent in the first place. Moreover, the fact that §7.1 remains on the books continues to perform the (increasingly false) presumption that Convention Status is, in principle, available to refugees. A feminist reading of §7.3 shows how signatory states use temporary protection as a strategy to circumvent international human rights obligations (Bastaki 2018) legally.

Yet, §7.3 also represents a formative legal precedent on which the reimagination of refugee protection in Danish policy circles and public culture is taking place. As an evaluation of §7.3 was being carried out in the parliamentary year of 2017–2018, the government suggested that there was a need for a so-called paradigm shift in Danish asylum and refugee policy. At the center of this shift was the government's goal of making refugee protection a temporary solution to displacement rather than a path to

permanent residency. This self-described paradigm shift was codified in law on 21 February 2019, when the Danish Parliament passed Bill 140 (Folketinget 2019). This bill included a series of amendments to the Danish Aliens Act, the Danish Integration Act, and the Danish Repatriation Act, as it normalized the idea of refugee protection as temporary. Most importants, it instituted the principle of temporary protection for all refugees, because all protection statuses now state that a residence permit is granted with "the purpose of a temporary stay." Furthermore, the bill renamed protected refugees' social benefits—*integrationsydelser* (integration allowance) became *hjemsendelsesydelser* (return allowance)—and municipal case workers are now obligated to inform refugees about the possibilities for repatriation at each meeting. Finally, DIS only renews a person's protection status if not doing so constitutes a clear violation of Denmark's obligations under international law. In short, the supposed "exception" has become the rule.

Although this article has focused on one legal protection status and the microlegal maneuvers at work in lawmaking within one nation-state, the institution of §7.3 should not be understood as exceptional or isolated. A range of other states, including the United States, Mexico, Turkey, Germany, Sweden, and Belgium, have introduced similar temporary protection statuses (Bailey et al. 2002; Bastaki 2018; Belliveau and Ferguson 2021) for Syrians and other refugees. Austria has even considered following Denmark's initiative of revoking Syrian refugees' protection statuses (Berlingske 2021). It is important, however, to situate these interventions not simply as logical or inevitable responses to recent refugee "crises" or as efforts to "securitize" state borders. Rather, following other critical scholars, I argue that we need to understand contemporary border regimes, including refugee (temporary) protection, as part of the long and interconnected histories of empire, race-making, and border policing across different sites, scales, and temporalities (Mayblin 2018; El-Enany 2020; Danewid 2021). The specific arguments and reasoning mobilized by politicians and lawmakers to institute §7.3 might be novel in some ways, but the techniques used and the structures they serve are anything but. Moreover, law has long served as a tool through which states have sought to control and exclude refugees and other migrants (Kanstroom 2010; Axster et al. 2021), relying on racial hierarchies of deservingness (Mayblin 2018) and reinscribing an imperial order of things (Danewid 2021).

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Notes

1. When §7.3 was first instituted, this suspension period was one year, but in February 2016 it was extended to three years.
2. This has since changed. From July 2020, all refugees no matter their status have the right to free higher education.
3. At the moment, the Danish state cannot deport Syrians to Syria because it does not have a deportation agreement with the Assad regime in Syria. Yet, the threat of losing one's status has compelled a number of my informants to leave Denmark and seek refuge elsewhere.

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