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EXPLORING CONCEPTIONS OF LEGALITY AND THE MEANING OF ASYLUM LAW IN JOHANNESBURG

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A research report submitted to the Faculty of Humanities, University of the Witwatersrand
in partial fulfillment of the requirement for the degree of
Masters of Arts in Forced Migration Studies.

Johannesburg, February 2009

Like, socially and to one another to say we have the laws that will help the society grow-up together. Like, like, the norms in the society, you know? Just commonsense of say, "Love one another." Something of that nature. Just make sure you don't break other people's rights. So, I think the law is an instruction that helps people live better.

- Andy

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DECLARATION

I declare that this research report is my own unaided work. It is submitted for the degree of Master of Arts in Forced Migration Studies at the University of the Witwatersrand, Johannesburg. It has not been submitted for any previous degree or examination at any other university.



Kara Michelle Scheiden

February 15, 2009

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LIST OF ACRONYMS

DHA	Department of Home Affairs
FMSP	Forced Migration Studies Programme
ID	Identity Document
OAU	Organization of African Unity
RRO	Refugee Reception Office
RSA	Republic of South Africa
TA	Traditional Authority
UN	United Nations
Wits	University of the Witwatersrand

ABSTRACT

This study examines Malawian asylum-seekers' conceptions of legality and examines their decisions to lodge an application for asylum in South Africa. Framing the research question, data collected by the Forced Migration Studies Program at the University of Witwatersrand suggest that although the Refugees Act of 1998 and the Regulations of 2000 are designed to protect all asylum-seekers, there are limitations to the tangible gains of asylum-seeker status. With significant opportunity-cost barriers associated with accessing the Refugee Reception Offices and limited return on the investment of time and resources, this research project explores migrants' explanations of their motivation to engage with the state's asylum apparatus.

Fifteen semi-structured, in-depth interviews with individuals and two group interviews were conducted at the Crown Mines Refugee Reception Office in Johannesburg. Throughout the interviews, respondents were asked questions regarding their upbringing, experiences in Malawi, motivations for relocating to South Africa and understanding of law, specifically as it relates to asylum.

While respondents indicated that instrumental gains factored into their decisions to apply for asylum, findings present a spectrum of legality that incorporates several layers of legal motivation. Further, while this report reveals that individuals' conceptions of legality may exhibit a degree of flexibility due to current situations, it also entails an analysis of key factors influencing the development of one's legal consciousness. Additionally, this study suggests that many asylum-seekers believe they are applying for a status for which they are qualified for and entitled to in accordance with their own understandings of immigration law.

CHAPTER ONE: INTRODUCTION

1.1 Overview

Emerging as a beacon of hope and promise with the end of apartheid in 1994, South Africa established itself as a prime destination for migrants from throughout the world (Bhamjee et al 2005; Cote et al 2007; Landau 2004). Establishing a commitment to human rights, the government signed onto multiple international agreements with United Nations to protect its residents[1] from violations of rights and uphold their dignity. With recognition of its history as a refugee producing country during apartheid, South Africa developed a rich piece of legislation for the protection of refugees, the Refugees Act of 1998 (n.130 of 1998). The Refugees Act of 1998 broadly defines the term 'refugee' and delineates appropriate procedure for applying and adjudicating claims. Additionally, the asylum system is open to any who would like to apply; the legislation provides for lengthy measures of protection and access to social services (Cote et al 2007). The Refugees Act of 1998 and the Regulations of 2000, "created a legal and institutional framework for the reception, status determination and protection of asylum seekers, as well as setting out the rights of those who are granted refugee status through the process" (Vigneswaran et al 2008b, pg. 1).

Data collected at the South African national borders and Refugee Reception Offices (RRO) has documented obstacles and limitations in accessing asylum (Cote et al 2007). Asylum-seekers face challenges while attempting to lodge asylum claims, and the obligation to renew asylum-seeker permits several times throughout the year requires a significant time commitment (Bhamjee et al 2005; Cote et al 2007). Obtaining a permit entails a substantial opportunity cost, and there may be a limited return on the sacrifices as the legal benefits of the permit are not always upheld

[1] 'Residents' indicates that according to the South African constitution, "South Africa belongs to all who reside within."

(Araia 2008; Bhamjee 2005). Although individuals may qualify under the national definition of 'refugee,' it is unlikely due to the relative political stability in Malawi that large numbers of applicants would meet legal criteria. Still, Malawians comprised the second largest group of applicants in 2006, and their claims are regularly rejected in adjudication (Bhamjee et al 2005). With consideration of the abuses within the asylum system and limited instrumental gains afforded with the asylum-seeker permit, Malawian migrants' decisions to apply for asylum, presumably with little substantiation for their claims under the legal refugee definition, is a puzzle.

Grounded in socio-legal literature particularly focused on immigration, construction of 'illegality,' and negotiation of states' immigration apparatuses, I hope to challenge common assumption that non-*bona fide* asylum-seekers' abuse the asylum system to legalize stays as an economic migrants by presenting an alternative understanding of 'refugee' (Vigneswaran 2008a). Derived from these theories, my focus is on Malawian migrants and their conceptualizations of legality and legitimacy in relation to asylum. The meaning of law spans beyond the words on pages, and is produced throughout various strata of society (Santos 1987). In the context of South Africa, immigration law is embodied by the state agents in the Refugee Reception Offices, enforced by local police, enacted by xenophobic vigilantes in townships, and engaged by the asylum-seekers themselves (Araia et al 2008a). The layering of interpretation and meaning combined with unconscious or intentional maneuvering sets the stage for an exciting exploration into "law and policy from below" through the eyes of asylum-seekers (Polzer 2007, pg. 22).

This research evaluates migrants' understanding of and relationship to the law. Further, this study uncovers the considerations that motivate migrants to seek asylum in the Republic of South Africa and their conceptions of legality. While tenuous legal situations appear to impact

respondents' determination to lodge applications for asylum, I also examine the role of various influential experiences that appear instrumental in the development of respondents' legal orientation while growing-up in Malawi.

1.2 Aims of Study

In this exploratory study, the primary objective was to investigate the meaning of asylum law for applicants in the Refugee Reception Office in Johannesburg. With thorough research documenting the hardships of the process, the limited tangible gains from the asylum-seeker permit, and the likelihood of rejection during the adjudication of the claim, I strove to explore the intrinsic benefits of receiving recognition of legitimacy from the state through asylum-seeker status. My intent was to understand how migrants conceptualize "legality", described as "a socially constructed phenomenon both a precondition for and product of social action," by Silbey and Ewick in relation to the asylum process (Ewick 1998, pg. 34). Legality in this context is the way in which those under the law understand and engage with the social construct. By conducting in-depth interviews and employing discourse analysis, I aimed to evaluate how this legal consciousness[2] and sense of legality related to applicants' decisions to engage with the South African asylum system (Coutin 1995; Coutin 1998; Ewick 1998; Merry 1992). Crossing international borders, it was uncertain whether a national legal system would gain or lose credibility in migrants' understandings of the inner-workings of legality, and I hoped to tease out migrants' sentiments towards with the laws in South Africa. Additionally, I aimed to investigate migrants' negotiation of their newfound status of "other" and their decisions to either

[2] Silbey states, "The term 'legal consciousness' is used in this literature to refer to these values and meanings (culturally accepted and produced through legal discourse), specifically ways people make sense of law and legal institutions, that is, the understandings that give meaning to experiences and actions," (Silbey 1992, pg. 45). Engle-Merry describes "legal consciousness" as "the ways ordinary people understand the legal system and their rights to use it," (Merry 1992, pg. 361). Adapting these two definitions, I will refer to 'legal consciousness' as the way people understand law, the legal system and their relationship to it.

accept or navigate this label in their new context (Calavita 1998, pg. 532). As opposed to exclusively categorizing migrants' legal consciousnesses, the study was designed to present a spectrum of legality that influences the behaviors of migrants' within the law and particularly in entering the asylum system.

1.3 Rationale

Movements within socio-legal studies have had limited overlap between the veins of research. While studies on the conceptualizations of legality have frequently been set in America, socio-legal studies in post-colonial Africa have focused on pluralism and customary law (Moore 1986). This study was designed to test the theories of legal consciousness provided by Ewick and Silbey, Sarat, Merry and Coutin in socio-legal scholarship in the context of post-colonialism in which weak democratic states maintain control. This endeavor denoted a shift from the structural level of analysis in post-colonial sociological studies to the individual level of analysis in conceptualizing legality and legitimacy, and in turn, engaging with and transforming the law.

Although Coutin's work richly developed the legal conceptualization of the sanctuary providers and migrants, this study sought to distinguish itself by focusing on understanding the primary actors: asylum-seekers. Coutin describes the arguments for the *bona-fide* nature of Central Americans' asylum claims; whereas, there is insubstantial evidence to legitimize the content of the Malawian asylum-seekers' claims *en masse* under the international and national legal definitions of "refugee," (Bhamjee et al 2005; Cote et al 2007). These strong differences provide insight into the conceptualization and place of law in a transnational, post-colonial setting. Furthermore, in undertaking this research I aimed to further contribute to the body of literature on forced migration and refugee law by challenging a common assumption that non-*bona fide* asylum applicants are lodging fraudulent claims and exploiting the system for purely

instrumental, economic gains (Vigneswaran 2008a). This project explored the nature of conceptualizing foreign law as well as the agency and power of migrants in constructing their individual migration experiences.

1.4 Contributions of the Study

This study aims to incorporate a broad range of socio-legal theories in a post-colonial context of migration. Building upon the robust body of literature available in the field of socio-legal studies, it is my intention for this study to contribute to fields of immigration, public policy and transnationalism (Silbey and Sarat 1987). Merry argues that "national and international contexts are increasingly important in developing theoretical understandings of local situations, particularly as research demonstrates how the law of the nation-state and even international regulations have penetrated and shaped local social arenas… Transnational processes are becoming increasingly important in theorizing about the nature of local legal phenomena," (Merry 1992, pg. 357). Grasping the meaning and application of law, as a multifaceted construction in society, is bound to understanding the legal consciousness of those for whom it is meant to govern (Santos 1987).

Susan Silbey and Austin Sarat claim, "legal institutions cannot be understood without seeing the entire social environment, (Silbey and Sarat 1987, pg. 165). Exploring the legal conceptualizations of asylum-seekers and non-asylum seekers will contribute to a richer understanding of the South African asylum system. In concluding remarks, Coutin describes the significance of studying immigrant population stating that, "Because immigration law is embedded in other institutions and relationships, immigrants' legalization strategies have far-reaching implications," (Coutin 1998, pg. 919). Coutin explores the relationship between immigrants' actions and the U.S. foreign policy, immigrants' relationships with homelands,

national boundaries and legal status definitions (Coutin 1998). Understanding the methods and motivations of immigrants in accessing an asylum system may undermine commonly held assumptions regarding the exploitative or abusive nature of non-*bona fide* asylum claims (Vigneswaran 2008a). Additionally, recognizing migrants' conceptualizations of legality will enhance the understanding of migrants' roles in reshaping their identities and transforming the law. This study may prove valuable to a broad audience.

This research project is distinct in its incorporation of theories of legal consciousnesses and legitimacy in the context of post-colonialism and transnationalism. Additionally, the tangible gains of obtaining asylum status in the United States as explored by Coutin are not readily evident in the South African system. This disparity provides a unique opportunity to explore the moral and intrinsic aspects of seeking asylum and recognition under foreign national law. Surveys conducted with migrants provide figures for framing the question, but this research intended to take "as its starting point an awareness of the gap between an object of study and the way we represent it, and the way interpretation necessarily comes to fill that gap," (Banister 1994, pg. 3). The aim of the research project was to produce a meaningful piece to contribute to the socio-legal field and to those interested in the conceptualizations of legality and legitimacy in the midst of movement and transnationalism.

CHAPTER TWO: THEORETICAL FRAMEWORK

2.1 Overview of Asylum in the Republic of South Africa

Transitioning from apartheid to democracy in 1994, Landau describes "the government publicly committed to tolerance, human rights, prosperity and regional cooperation," (Landau 2008b, pg. 29). Standing as a pillar of peace and prosperity in Africa, South Africa drew many migrants from throughout the continent as they shared in the country's hope for a flourishing future in the emerging democracy. In December 1996, the preamble of the newly signed constitution declared that the people of South Africa "believe that South Africa belongs to all who live in it, united in our diversity," (Constitution 1996).

Migrants arriving in South Africa hailing from throughout the world and with differing objectives receive equal treatment under the state legislation. The total number of non-nationals[3] in South Africa is largely speculative and figures range approximately 500,000 to upwards of 8 million in this category (Landau 2008b). While most represented in this figure are undocumented migrants, a comparatively small number of non-nationals represented have come to South Africa and applied for refugee status. This group of asylum-seekers is significant as it provides an opportunity to explore the operations of a crucial part of South Africa's legislation (Cote et al 2007). Continuing to demonstrate the country's commitment to justice and human rights, South Africa signed the United Nations 1951 Convention for Refugees as well as the 1967 Protocol in 1996. Additionally, the newly formed South African government signed the African Organization of Unity's Refugee Convention of 1967 thereby committing itself to a broader definition of "refugee" that encompasses a scope of people beyond the definition of the United Nations.

[3] Landau describes the non-nationals as, "undocumented aliens, official immigrants, refugees and asylum-seekers," (Landau 2008), pg. 33.

South Africa united these rich humanitarian principles in the development of its own national policy on refugees in the Refugees Act of 1998. The Refugees Act defines concepts and delineates procedures, roles and responsibilities in the application, adjudication and appeal of asylum claims. This piece of legislation espouses the principles of dignity and protection affording equal access to applications, documentation, access to social services and employment as well as the expeditious and considerate adjudication of cases (Bhamjee et al 2005).

Although asylum-seekers and refugees alike are promised broad protection under both the international and national legal framework, there have been well-documented breakdowns and abuse within the system. Difficulties for asylum-seekers can begin at the very onset: crossing the border. Research conducted at the Refugee Reception Office in Pretoria found that more than half of applicants enter "the country without any identifying documentation, informally, across a Zimbabwean border," and those who entered formally frequently did not leave with asylum-seeker transit permit (Vigneswaran et al 2008b, pg. 8). Without formal recognition of intent to apply for asylum at a border post, asylum-seekers are not afforded protection en route to the RROs (Vigneswaran et al 2008b). Once arriving at the RRO, asylum-seekers find a long queue unprotected from weather conditions and without food, water or appropriate accommodation for health and sanitation (Bhamjee et al 2005). While queuing outside and without protection, there are instances of coercion and violence against the asylum-seekers (Vigneswaran et al 2008b). Managing to successfully lodge an application, the asylum applicant should receive a permit; however, there are numerous accounts of delays, errors and corruption in the documents that diminish their worth as identification of person and status (Bhamjee et al 2005). Asylum-seekers also find that the status may become a liability as they are forced to return to the RRO, expending significant time and resources, to renew documentation (Cote et al 2007). The

Refugees Act provides for adjudication within six months, but there is a crippling backlog of asylum claims that grows annually despite efforts by the Department of Home Affairs to reduce the figures which may in actuality, be advantageous for applicants (Bhamjee et al 2005; Cote 2007). Returning to their communities, asylum-seekers carrying documents are afforded minimal protection from abuse, arrest, detention and deportation (Araia et al 2008; Bhamjee et al 2005). However, asylum-seekers with documents frequently still "do not receive dedicated shelter, food, healthcare or education," (Araia et al 2008, pg. 38).

However, despite barriers, abuse, corruption, and little instrumental gain in applying for asylum, migrants are still accessing the asylum system. In 2006, there were 53,361 new applications for refugee status (Cote et al 2007). The largest group of asylum-seekers represented by nationality was from Zimbabwe, and the second largest group was from Malawi (Cote et al 2007). Analysts of the Refugee Status Determination (RSD) process have referenced an informal, conceptual "white list" composed of "non-refugee producing" countries, including Malawi. Although in violation of the Refugees Act, staff in the Refugee Reception Offices will frequently issue blanket rejections to claims made by applicants from these countries (Bhamjee et al 2005).

With consideration of the difficulties associated with applying for asylum as well as the limited tactical benefits associated with the asylum-seeker permit or refugee status, it appears paradoxical that one would undergo this endeavor while undocumented counterparts in large numbers are surviving without declaring oneself to the government. The decision to apply for legitimacy[4], state recognition as an asylum-seeker, under these conditions is particularly puzzling for populations confined to the "white list." In the case of Malawians, coming from a

[4] Legitimacy will be used in this research as formal recognition from the state.

country with limited economic prospects, but also limited persecution and conflict, they are relegated to the "white list" because of the incredible rarity that one would qualify as a *bona-fide* refugee. Research into the asylum system informs us that Malawians are applying for asylum in large numbers, but with such extreme barriers and limited utility of the status, my question is, why?

2.2 Law and Legality in Malawi

With particular consideration of the historic, economic, social and cultural context of Malawi, there are competing theories of how Malawians should understand and interact with the law. With eighty-five percent of the population living in rural areas, and sixty-five percent living below the poverty line of US$1 per day, the population in Malawi faces obstacles to engage with the centralized national law (Divala 2005).

Martin Chanock presents a rigorous historic evaluation of legal systems in Malawi and Zambia. "The law was the cutting edge of colonialism, an instrument of the power of an alien state and part of the process of coercion," Chanock states, "And it came to be a new way of conceptualizing relationships and powers and a weapon within African communities which were undergoing basic economic changes, man of which were interpreted and fought over by those involved in moral terms," (Chanock 1985, pg. 4). Interpersonal relationships and power dynamics changed throughout the period of colonialism in Malawi due to the British introduction of the legal system and capitalism. Changing economic attitudes and opportunities resulted in migration from rural to urban areas and a transformation of social obligations such as family support and bride wealth (Chanock 1985). However, "new property itself was not in itself sufficient: the rights of an individual to new property could only exist through new institutions…," states Chanock, "the new institutions and the new property were together

making it possible for there to be new 'rights' as opposed to the moral obligations of kinship," (Chanock 1985, pg. 36). It is with this social impact that, "economic individualizing and jural individuation went hand in hand," (Chanock 1985, pg. 37).

Law in the colonial apparatus was highly regulative and severe in its efforts to refine and civilize its subjects (Chanock 1985, pg. 229). Although many Malawians feared and averted the colonial courts, the structure was simultaneously embraced and utilized (Chanock 1985). Chanock recounts a local Malawian national's opinion from 1936 in which the traditional leaders' courts were condemned as untrustworthy and unreliable fostering a preference for case adjudication in colonial courts (Chanock 1985, pg. 139). Furthermore, Chanock states that, "at the end of the colonial period, African elite and African lawyers took control. They wanted to make the law both more legalistic and more African. Yet the African element that they were to emphasize had been bequeathed to them by those [the British] they had vanquished," (Chanock 1985, pg. 141).

In comparing the effects of transplanting civilian legal systems, such as the French, and common law systems, such as the British, on post-colonial Africa, Sandra Fullerton Joireman finds that in common law, introduced by the British in colonies such as Malawi, there is an emphasis on "the protection of individual rights *from* the state as a primary goal" (Fullerton Joireman 2001, pg. 473). Stemming from "the idea of legal precedent and reliance on the body of cases decided in the past to guide the present decision of a judge," facilitates the "development and flexibility of a legal system over time," (Fullerton Joireman 2001, pg. 473). Although Fullerton Joireman did not specifically investigate the common law system in Malawi, the use of a legal system designed to protect individuals and afford for heightened consideration of cases may influence the legal consciousness of post-colonial Malawians migrating between democratic states. Jonathan Miller evaluates legal transplants, foreign or international laws or legal systems incorporated into

domestic systems, and their likelihood of success in various social settings (Miller 2003). Miller argues that the local setting must be understood and the legal transplant should be contexualized in order to gauge the strength of its legitimacy and adaptability. "In developing countries, and particularly when countries emerge from a long period of authoritarian rule," asserts Miller, "acceptance of the idea that written, legal norms must be respected for the simnple reason that they are written legal rules issued by the government is much weaker than in developed countries," (Miller 2003, pg. 857).

Commencing at the birth of independence from colonialism and continuing throughout the leadership of Dr. Hasting Kamuzu Banda spanning thirty years from independence in 1963, civics courses offered throughout the educational system have emphasized the importance of conformity, unity and discipline in accordance with the law and single party (Divala 2005). Despite moving to a multi-party system in 1994, the civics courses maintain focus on the structural, theoretical basis of the law without encouraging active participation and construction of the governing legislation and actions (Nsanja 2006). Democracy and citizenship in Malawi is presented as a static, dominant force to be utilized but not produced by the public. Law in this view is an unquestionable state apparatus and one must conform and navigate accordingly to survive within the system.

Despite the fervent engagement in politics in the 1990s, the regression of the government since the institution of the multi-party system has been largely disillusioning for citizens (Nsanja 2006). The poor economic state, allegations of corruption, judiciary and police violations, and disenfranchisement of the poor rural majority have hindered the democratic momentum following the multi-party election of 1994 (UNDP 2008). Additionally, although the constitution of Malawi is highly democratic and principled, the limited governmental capacity and

institutional weaknesses inhibit the implementation of the policies (UNDP 2008). The United Nations Development Programme also states that the population is largely unaware of the rights and procedures to claim rights; further, the barriers associated with traveling from the rural areas to access governmental institutions restricts citizen's utilization of services (Divala 2005).

Migration to from Malawi to South Africa has a historic link to the mines; Malawians established a reputation as hardworking, reliable employees throughout a range of industries including informal 'piece-jobs' and domestic employment (Andersson 2006, pg. 390). Presenting case studies of documentation and legalization strategies of economic migrants form the Mzimba region of Malawi, Andersson depicts the complex negotiation of identity and status while informally or 'illegally' crossing international borders (Andersson 2006). With consideration of the particularly turbulent and complex legal history in Malawi, it is difficult to ascertain how the population will conceptualize legality and foreign legal apparatuses. Having transitioned from a western imposed colonial legal system to a single party rule to a multi-party government that is frequently accused of corruption, it is particularly interesting to explore how Malawians construct their legal consciousness.

2.3 Sociology and Law

A. Socializing Nature of the Law

Several competing understandings and pluralist understandings of law and society exist. Sally Engle Merry recommends evaluating two legal ideologies as, "a top-down, elite-produced and disseminated ideology, and a bottom-up, local constructed one. Top-down and bottom-up ideologies can coexist within the same social setting," (Merry 1986, pg. 255). In the top-down perspective, law is seen as a legitimate force endowed with the power to resolve problems and provide justice (Merry 1992). Further, within this paradigm, law is internalized by the

population, and thus regulates behaviors even when people are not directly engaging the law (Merry 1992; Merry 1995). Santos presents the concept of maps as an extended metaphor for law (Santos 1987). In exploring this metaphor, Santos describes several understandings and uses of the law with parallels drawn to the physical maps that guide people through travels in life (Santos 1987). While law is frequently described as largely normative, it "is also imagination, representation and description of reality," (Santos 1989, pg. 281). Additionally, Santos interrogates the role of social construction of law (Santos 1989). People are accustomed to accepting the law and living beneath it. Merry explores the idea of, "the constitutive nature of law: of the way legal processes construct social and cultural life," and additionally she examines the role of law as a hegemonic power delineating appropriate relations between the dominant and oppressed groups (Merry 1995, pg. 14).

B. Competing Conceptualizations

This view is contrasted by an approach that explores the legitimacy of law and the role of people governed by the law. In this growing body of literature, "law and society research portrays law from the 'bottom up' as a continuing production of practical reason and action," (Ewick 1998, pg. 19). Law, articulated in this approach, is culturally constructed and, "structure is not simply *inserted* into situations; it is *constituted* through active social practice," (Silbey 1992, pg. 43). The cultural perspective also incorporates the "legal consciousness" which is how people understand the law and how this in turn influences their interactions with legal institutions (Merry 1992; Santos 1987). This approach is fluid and encompasses a broad scope of exchanges with the law; however, the power of the law is not abandoned, but rather, positioned in relationship to the people's conceptualizations. Santos describes a postmodern conception of law as "different legal spaces superimposed, interpenetrated and mixed in our minds… in a time of porous legality or legal porosity, of multiple networks of legal orders forcing us to constant transitions

and trespassing," (Santos 1987, pg. 298). This view explores the interplay between the strong socializing influence of central law and the role of the population in constructing and reconstructing legality (Coutin 1995; Coutin 1998; Coutin 2001).

Austin Sarat synthesized a body of literature on theories of obligation, and examined people's decisions and motivations to obey the law, and his analysis heavily contributed to my report. Sarat pushed prior studies on obligation by considering why the law-obeyers or law-breakers are compelled to act in differing manners. Sarat categorized the rationales presented by respondents to explain legal obedience into five categories. The most frequent explanation was simply that "the law must always be obeyed… if they are not obeyed then they really are not laws," meaning that laws must be adhered to by the society and it "is not defined by the actions of government so much as by the responses of those to whom it is directed" (Sarat 1977, pg. 387-388). Sarat then described social utilitarians' reasoning as "obligations are contingent on the performance of government or the legal system. To the extent that government and its laws benefit society as a whole, we are obligated to obey," (Sarat 1977, pg. 389). Sarat's respondents also relied upon analogies that portrayed laws as the rules to games, and law was a mutual agreement as opposed to an imposition (Sarat 1977, pg. 389). The final alternatives are what Sarat calls 'higher law,' obeying "when it does not violate those higher moral tenets" and obedience due to a fear of punishment (Sarat 1977, pg. 390). These categories were developed out of research in a mid-size city in the United States with a sample size of over two-hundred respondents, and it is useful to compare the varying reasons for obedience with the law in this context with the motivations to obey with immigration law as an undocumented foreigner.

Similarly, Max Weber reviewed the underlying faces of authority that would "legitimate domination" by the law (Miller 2003, pg. 856). A "rational" basis is closely related to the rule of law in that the government has authority to exact laws because authority is assumed for those in

power (Miller 2003, pg. 856). "Traditional" authority is based upon a history and tradition of legitimacy (Miller 2003, pg. 856), and "charismatic" domination is accepted when the "exceptional sanctity… (of an) individual has been elevated above his peers," giving the leader the authority to dominate with the use of law (Miller 2003, pg. 856).

C. Morality, Identity, Legitimacy and the Law

Fusing these two perspectives and supplementing with additional sociolegal theorization, Susan Bibler Coutin relays the experiences of Salvadoran and Guatemalan asylum-seekers in the United States throughout a period of greater than twenty years beginning in the 1980s (Coutin 1995). Coutin examines legal understandings on multiple levels including: the federal government; sanctuary providing civic and religious groups; and Salvadoran and Guatemalan immigrants. Coutin explores the morality of the law in determining that, contrary to the position of the government, Salvadoran and Guatemalan migrants were indeed refugees, activists began assisting migrants over the border from Mexico, providing food and shelter, assisting with legal navigation of the asylum system, and advocating on behalf of the "Central Americans[5]" (Coutin 1995; Coutin 1998). As sanctuary providers acted in direct opposition to the law, the government pressed charges on fourteen individuals, eleven of which stood trial and were found guilty, and over one hundred additional people were indicted but not tried in court (Coutin 1995). However, the defendants' defense rested heavily on the argument that they acted in adherence to the 1980 Refugees Act of the United States and international law (Coutin 1995). The sanctuary providers claimed that the government was in violation of the law and not fulfilling its obligations to the protection of refugees; sanctuary providers implemented their own asylum determination process that was, in their view, more just than the federal governmental procedures (Coutin

[5] Coutin notes that the terms "Central Americans" and "refugees" were used interchangeably throughout the discourse in the sanctuary movement.

1995). The legal understanding of the sanctuary providers prompted them to engage with and oppose the federal law as they appealed to, what they perceived as, higher religious, moral and international forms of law. Coutin's work underscores the importance of understanding competing conceptions of law and explores the multiple dimensions of the legal framework.

Merry also explores morality in law as she argues that "the ideology of formal justice is the articulate, dominant model of American society. …It claims that all citizens are entitled to natural rights, toleration and equality," (Merry 1986, pg. 257). According to this model, there is a relationship between Americans' expectations of law and their sense of morality (Merry 1986). Americans' "ideas about the law and its role in society grow out of this general political understanding of legal rights rather than accurate knowledge of the rights articulated by law," and this basic understanding guides their decisions on when and how to engage with the legal system (Merry 1986, pg. 257). However, as opposed to Coutin's explanation of individual or group morality as a legal guide, Americans presented by Merry appeal to bodies of law for their sense of rectitude and provision of justice as they work in accordance with the law (Merry 1986). Merry further explores the concept of "situational justice" and states under this view "enforcement of laws is not automatic; it must be triggered by complaints," (Merry 1986, pg. 258). In this conceptualization, law is not distributed equally, but rather it contextualizes the people involved and distributes rights and justice accordingly (Merry 1986; Yudice 1989).

Accordingly, migrants conceiving the law as omnipotent, just and right will feel compelled to conform to the legal system and seek legitimacy by accessing the asylum system; although, this act of conformity is actually in direct opposition to the law if illegitimately applying for asylum. In this regard, even illegitimately accessing a legal system provides a greater moral sense of legitimacy because of the attachment to state recognition and documentation. Recognized legal

status improves the moral sense of self and the ability to make claims of protection from the government. Reinstating state recognition of legitimacy illegitimately is less of a moral transgression than living completely outside the national legal framework.

2.4 Critical Legal Theory

Critical legal studies as a discipline evaluates the multiple dimensions of law, the outcomes, implications and underlying power dimensions. It is closely connected to socio-legal studies with scholars overlapping between the veins of research. Immigration policies have been closely examined because of the inherent power relationships and the precarious conditions of (il)legality produced by state statues, policies and enforcement.

Kitty Calavita explores the process of 'irregularization' that results from Spanish immigration law and asserts that due to the stringent and generally impossible requirements for regularizing status, undocumented migrants are unable to achieve or maintain status (Calavita 1998; Menjivar 2006). The legal system produces a class of subordinated people in constant flux in status and threat of detection (Calavita 1998). Similarly, Nicholas de Genova examines the productive power of law in creating a population of 'illegal' migrants (de Genova 2002, pg. 420). de Genova problematizes the privileged status of law that frequently affords freedom from scrutiny and criticism of the consequences and motivations (de Genova 1998; de Genova 2002). "Undocumented migrations are constituted in order not to physically exclude them but instead," asserts de Genova, "but instead, to socially include them under imposed conditions of enforced and protracted vulnerability," (de Genova 2002, pg. 429). Cecilia Menjivar draws from Calvita and de Genova in evaluating the 'liminal legality' of Central American migrants in the United States (Menjivar 2006, pg. 1002). Menjivar details the extensive complications and hardships associated with precarious legal statuses distributed by the state as well as the fortitude and

courage arising from the legally marginalized population (Menjivar 2006). These critical analyses incorporate the broader theoretical arguments such as the social production of the 'other' presented by George Simmel and the practice of exclusionary inclusion in society by Giorgio Agamben (see Ek 2006; Simmel 1950).

David Kyle explores the perspective of undocumented Ecuadoran migrants in Spain in an attempt to ascertain their understanding of committing a crime by disregarding Spanish prohibition of entrance and employment without documentation (Kyle 2008). Kyle argues that migrants may appeal to history for justification or construct a villainous state exempting them from adherence to laws (Kyle 2008). Absolute desperation also affords migrants an opportunity to commit legal infractions, and Kyle also presents a common distinction between tiers of crimes in which immigration codes are separate from other violations within the legal framework (Kyle 2008). Tara Polzer also examines law through migrants' eyes as she evaluates the reality of Mozambican refugees in South Africa (Polzer 2007). Polzer succeeds in "considering the interstices between formal policies, the impact of changing polices over time, local interpretations of the labels and categories imposed by law, and the agency of those affected by law to subvert, oppose and evade it," (Polzer 2007, pg. 23). Charting changes in official legal statuses over the course of twenty-years, Polzer provides insight into the ability of migrants to adapt locally in the midst of unfavorable official policy.

2.5 Synthesizing and Applying the Literature

With further analysis of both the asylum system in South Africa and the political, socio-economic, legal context of Malawi, it is evident that tangible gains from asylum-seeker status may not warrant the sacrifices with applying. The socio-legal theories presented serve as tools for understanding Malawians' conceptualizations of legality and reify the importance of recognizing

variation in legal consciousness. Analyzing theories on morality within the law provides models for explaining how migrants' conceptualizations of legality and legitimacy influence their decision to enter the South African asylum system. The theories presented a possibility that the instrumental gains awarded with asylum-seeker status did not provide sufficient motivation, and rather, it was a moral, intrinsic quest for legitimacy that prompts the application for asylum.

According to available literature, applying for asylum, perhaps even illegitimately, may afford an opportunity to reenter the overarching, just legal structure. Explorations of the socializing nature of law exemplify the importance to one's self in acting in accordance with the law. In reviewing additional theories, it is also highly possible that applying for asylum means tactical gains in the minds of applicants; however, I was most interested in exploring the argument of law as a pervasive social construct guiding actions of applicants through their moral reestablishment of legitimacy throughout this research project.

Utilizing the rich body of socio-legal theory as well as the wealth of data collected by the Forced Migration Studies Programme at the University of Witwatersrand, I felt confident in the resources available for critical analysis. Although not the central framework, I also familiarized myself with theories of resistance and tactics of the marginalized as tools for analyzing data (Certeau 1988; Scott 1985; Scott 1990; Yudice 1989).

CHAPTER THREE: METHODOLOGY

3.1 Overview

By undertaking this research, my objective was to explore the relationship between migrants' decisions to apply for asylum and their conceptualizations of legality. Applying existing socio-legal theories and building from data available from the Forced Migration Studies Programme at the University of the Witwatersrand, the project aimed to answer the following questions:

- What is the relationship between migrants' conceptions of legality and their decisions to apply for asylum?
- How do migrants explain their reasons for seeking refugee status in South Africa and how does this relate to their legal consciousnesses and knowledge of law in South Africa?

3.2 Population of the Study

As Malawians comprised the second largest national group of asylum-seekers in 2006 and considering the political climate in Malawi is stable and "non-refugee producing," I focused my research on this population (Cote et al 2007). In survey data produced by the Forced Migration Studies Programme at the Refugee Reception Offices, twenty-five out of thirty-one Malawian asylum applicants interviewed stated they left their country of origin for economic reasons (FMSP RRO Survey 2007). Only two of the remaining six Malawian applicants cited escape from ethnic persecution as their reason for leaving (FMSP RRO Survey 2007). Selecting this population, I hoped to reduce the likelihood of interviewing applicants with well-founded claims to asylum[6] that exist within other national populations of asylum-seekers in order to uncover the intrinsic benefits of asylum-seeker status. In 2006, over 6,000 Malawians lodged

6 According to the South African Refugees Act of 1998, a person qualifies for refugee status if, "owing to a well-founded fear of being persecuted by reason of his or her race, tribe, religion, nationality, political opinion or membership of a particular social group, is outside the country of his or her nationality and is unable or unwilling to avail himself or her to the protection of that country, or not having a nationality and being outside the country of his or her former habitual residence is unable or, owing to such fear, unwilling to return to it; or owing to external aggression, occupation, foreign domination or events seriously disrupting public order in either a part or the whole of his or her country of origin or nationality, is compelled to leave his or her place of habitual residence in order to seek refuge elsewhere." This definition is more inclusive with consideration of tribe and civil strife.

claims for asylum status in South Africa, but there is no reliable figure available to gauge the number of undocumented Malawian migrants in South Africa to establish a sampling frame (Cote et al 2007). All respondents were over the age of eighteen years old and were either seeking asylum at the Refugee Reception Office in Johannesburg or accompanying a Malawian relative to the RRO. In the two instances in which respondents were not personally seeking asylum, one had already received his asylum-seeker permit and the other was in South Africa on a student-visa, but also considering applying for asylum if he could gain entry to the RRO. I did not make a distinction based on asylum-seekers current legal status in South Africa and interviewed both documented and undocumented individuals.

3.3 Research Design

This study was largely exploratory, and it was difficult to predict the highly individualized and personal understandings that would answer the research questions. However, in order to investigate the research topic, I engaged in a review of the existing literature. I prepared for and enacted a cross-sectional study of asylum-seekers at the Crown Mines Refugee Reception Office in Johannesburg to collect primary data. I then, employed rigorous in- discourse analysis methods in evaluating respondents' legal consciousnesses and understandings of legality in South Africa.

3.4 Sampling

With the original intent of interviewing fifteen asylum-seeking Malawian migrants, I was concerned that the sample size will provide limited generalizability (Banister 1994). However, the nature of my research question demanded depth at the expense of breadth in responses. By enlarging the sample size to increase generalizability, I would have compromised the individual intricacies captured in analysis (Banister 1994). The small number of respondents required

purposeful sampling. Initially, I identified respondents at the Crown Mines Refugee Reception Office, and each respondent was an adult over the age of eighteen. Initially, I had hoped to interview only those who had successfully lodged applications. However, I had greater access to and more time to spend with those waiting to access the Refugee Reception Office to file an application. Conducting interviews at the RRO, I planned my fieldwork for Thursdays and Fridays during office hours as these days were reserved for Southern African asylum-seekers. Individuals were divided according to country-of-origin and then into queues separating men from women. As a first step, I applied stratified sampling by focusing only on Malawian applicants. From this stratum, I applied purposeful sampling to conduct interviews with applicants highly proficient in English. On several occasions, interviews were interrupted as respondents returned to the queues with the hope of accessing the RRO to lodge an application.

Originally, I had planned to interview both men and women seeking asylum; however, there were several barriers to incorporating female asylum-seekers into the research. Primarily, women apply for asylum in smaller numbers than their male counterparts. Additionally, the men and women queued separately at the RRO, and women were generally given access to the office ahead of their male counterparts, providing limited time to engage in lengthy interviews. On the three occasions that I attempted to engage women in interviews, the potential respondents exhibited a greater degree of hesitation towards completing an interview. For those reasons, only men were interviewed in this research project.

3.5 Data Collection

Qualitative research has been described as "an attempt to capture the sense that lies within, and that structures what we say about what we do," and "the voice that carries through the sense of the phenomena under investigation, while the quantitative research component circumscribes

the scope and intent of the topic," (Banister 1994, pg. 3, 15). I chose to gather detailed information on a smaller number of people to provide nuanced, highly personal opinions for analysis through in-depth interview. Although there is always a degree of the researcher in the construction and representation of the interview and analysis, interviews enable a richer exploration of ideas and provide flexibility to flesh out respondents' ideas (Banister 1994, pg. 50-51). Questions throughout the interviews were phrased to collect stories of engagement with the asylum law and legal structures in both Malawi and South Africa as these stories can reveal the nature of relationships, positioning of power, and times, places, and motives when engaging with legal structures. Calavita and Seron assert that, "systematic but open-ended and semistructrued interviews with a view toward having the respondents construct for the researcher the relevant categories of experience," may heighten the richness of research into the lives of respondents by bringing nuanced ideas to the surface (Calavita and Seron 1992, pg. 768).

I conducted fifteen in-depth interviews with individual Malawian asylum-seekers and two in-depth discussion groups at the Crown Mines RRO in Johannesburg over a period of six days. Prior to commencing interviews, I spent one and one-half days observing the activities at the queuing site for first-time asylum-seekers and migrants waiting for appeals. The observation and interviews took place between September and November 2008. I utilized an instrument with both close-ended and open-ended questions situated within the flexibility of a semi-structured interview in an effort to uncover migrants' understanding of the asylum in relation to legitimacy and conceptualizations of legality (Banister 1994, pg. 54; Ewick 1998). The research tool was comprised of a series of talking points to investigate legal consciousness; it was developed as such to allow for the dynamism and freedom to explore ideas at length and respond to unexpected turns in the conversation. The instrument entailed an area of discussion with several subsidiary questions to probe responses from the interviewee. Each talking point

has an open box to the right for supplemental notes that could not be captured in the audio recordings; however, I found that my notations throughout interviews occasionally interrupted the flow of the discussion, and I began to mentally reserve my commentary notes for the end of the interviews.

As Patricia Ewick and Susan Silbey emphasize, "Stories, not statutes or statistics, have become the subject matter of much socio-legal scholarship (Ewick and Silbey 1995). With this insight considered, I employed a social constructionist approach and apply the 'new paradigm' in the development, implementation and analysis of the interviews (Banister 1994). Meaning, I strove to remain consistently reflexive and consider the context of production for material as well as the actual material produced (Banister 1994, pg. 9, 52). Adhering to the 'new paradigm' in interviewing, I recognize my limited, yet active role in advancing the research objective while accounting for the active construction and contribution of the interviewee (Banister 1994, pg. 52-53). Throughout the course of discussions, the transcription process and analysis, I noted the words that respondents selected to describe myself. Respondents often evoked my shared status as a 'foreigner' or contrasted our situations by referencing my legal status as a student with a visa. Respondents also identified or associated various attributes with my background from the United States and fair complexion. Although I do not believe these distinctions impeded the interview, I was cognizant of the way in which respondents constructed the interviewer with their descriptions and references.

A. Semi-Structured Interview Content

Enabling migrants to share their stories throughout the adaptable and open-ended interview revealed the nuanced positioning of "self" in relation to the legal system (Ewick 1998). The interview questions were closely modeled off of the interviews conducted by Ewick and Silbey to

gather information for *The Common Place of Law*. Ewick and Sibley's interviews were comprised of questions probing the upbringing, education, and experiences and engagement with the law; the interviews also included "standardized indexes used to measure knowledge of law, experience and familiarity with courts and legal institutions, perceptions of legal authorities and legal procedures, mastery of English and basic demographic data," (Ewick 1998, pg. 253). I incorporated these ideas and utilized "nonanalytic, colloquial terms" in the interview (Ewick 1998, pg. 253). These topics proved invaluable in obtaining the data necessary for answering my research question.

After collecting responses on the general opinion of the legal and democratic systems, the interviews shifted to questions regarding legitimacy, legality, the asylum process, and the meanings of status and documents. I also asked asylum-seeking informants to recount experiences at the Refugee Reception Offices, encounters with governmental officials, and interactions with third party actors that influenced their decision to apply for asylum. This gradual shift was with the intent of postponing the introduction of concepts of legitimacy, asylum and documents into the conversation in order to mitigate the influence of the researcher (Ewick 1998). Requesting memories of interactions with the law, authority and democratic processes, I hoped to uncover points of interest, curiosity and positioning in relation to the law. Additionally, these stories were able to provide insight into the social structures and power relationships and positioning.

B. Recording and Transcription

To ensure a full and accurate record of the interview, I digitally recorded the conversations with respondents (Silverman 2000). Recording the interview enabled me to concentrate on engaging the interviewees and supplementing the interview notes containing context and setting

information for further reference during analysis (Banister 1994; Silverman 2000). Recordings were essential in capturing subtleties such as "pauses, overlaps, inbreaths and the like," that provided insight beyond the spoken word (Silverman 2000, pg. 149). The total recording time transcribed came to seventeen hours and fifty minutes. The average interview length was one hour and three minutes, while the range in length was thirty-three minutes to ninety-five minutes (See Appendix 1).

From the recordings, I transcribed the fifteen individual interviews and two additional group interviews in their entirety and at great detail for accurate analysis (Silverman 2000). The transcripts amount to 425 pages of data with an average length of twenty-five pages per transcript. The transcripts range in length from nineteen to thirty-five pages (See Appendix 1). The role of the researcher and analytic decisions are unavoidably present in the construction of the transcript. I strove to maintain a close accuracy to recreate the actual word selections, pauses, and emphases by employing the transcript coding provided in *Qualitative Methods in Psychology* (Banister 1994, pg. 69). Although I was conscious in my efforts to remain consistent throughout each transcription, I made judgment calls in representing pauses or breaks in the conversation.

3.6 Data Analysis

Employing aspects of the grounded-theory method of analysis, in the first stage of analysis, I initially read the transcripts through with an open-mind for recurring themes and made notations throughout the transcript margins (Ewick 1998; Silverman 2000). Grounded theory "allows the connection of codes and categories in the data to be established and theoretical propositions to be developed," and facilitates openness which is most appropriate for this exploratory, interview-based research undertaking (Priest 2002, pg. 46). However, I had a focal area within the data, legality, legitimacy and asylum, within the data, so I did not employ full

grounded theory starting from a *tabula raza* (Priest 2002). Banister recommends collaboration with others throughout discourse analysis, and to enhance the analysis, I discussed initial thematic, conceptual categories from transcripts with a third party, also trained in discourse analysis (Banister 1994, pg. 97; Priest 2002; Silverman 2000). After exchanging opinions, the transcripts were reread and coded appropriately; codes were assessed for utility and refined to fit the recurring concepts during analysis (Ewick 1998; Silverman 2000). Simultaneously to and also upon completion of the open-coding, I developed sub-codes and axial codes to further the analysis and interconnect ideas (Priest 2002; Silverman 2000). Coding was compiled into an electronic spreadsheet and divided into separate worksheets for efficient data analysis. The codes from each interview were also entered into a separate worksheet which provided a coded summary of themes from individual interviewees' responses.

Respondents had opportunities to explain their understandings, motivations and perceived benefits in applying for asylum. I paid close attention to and made note of the variations, contradictions and absences in the transcribed speech (Banister 1994; Silverman 2000). Throughout the analysis, I looked for references to legal structures, language, engagement and symbols (Ewick 1998, pg. 254). Additionally, I evaluated the use of pronouns, possessive pronouns and verbs throughout segments of the respondents' statements determining to whom the respondent gives ownership, voice, activity and power (Janks 2008). With careful discourse analysis, along with conscious reflexivity, the text produced from the stories and descriptions of respondents was able to provide a window of insight into the meaning of asylum for those facing the decision to apply. With the massive amount of data produced in the course of an in-depth interview and transcription, I relied upon the methods of Silbey and Ewick and created a short summary of each interview and consolidated individual excerpts into "theme files" for management (Ewick 1998, pg. 254-255).

3.7 Ethical Concerns

A. Nature of the Topic

In undertaking an exploratory research project to understand how migrants conceptualize legality, it was impossible to predict the responses from migrants. However, the content of the responses included an abundance of highly sensitive material. Respondents revealed subversive ideology, illegal actions, xenophobic abuse, speculative conspiracy theories and tales of corruption within the South African Department of Home Affairs and the Refugee Reception Offices. In selecting my sample from the Malawian population, it was with the understanding that Malawians are likely non-*bona fide* asylum seekers. However, it was never my intent to approach this research from the national or international legal framework and uncover how migrants abuse the system. The discovery of this project rests with how migrants conceptualize legality and legitimacy, and in many ways, counter-intuitively, I found that asylum-seekers were often acting justly within their own conceptions of legality that exist outside of the formal law. I was not seeking to criminalize the actions of Malawian migrants, but rather, understand the legal consciousness and motivations for applying for asylum. In encountering illegal or abusive accounts, I only used the information for scholarly purposes, and I was conscious to maintain my role as an academic and not an advocate. I stated this explicitly at the start and termination of the interview to mitigate any confusion.

Robert Burgess explores three examples of ethical dilemmas in field research; the first of which is Project Camelot sponsored by the United States Army. The government intended to use data collected in this project for military advantages, and it raised the ethical concerns by "using social scientific skills in the service of government," (Burgess 1984, pg. 151). Although my research is in no way funded by the government as in the sited example, I would like to

emphasize that the intent of my research project is not to provide tools for the government's use in combating illegal migration. Additionally, Project Camelot raised objections because, "such projects can create divisions in the academic community, violate supra-national ideology and present dangers to peace," (Burgess 1984, pg. 151). As I recognize the argument, I also believe that my social science undertaking should not create suspicions or divisions between national actors or within local communities. The data collected and analyzed is solely meant to be presented as an analysis of the layers of law that exist within a national legal framework.

B. Protection of Respondents

The power and vulnerability of asylum-seekers and undocumented migrants has been negotiated and contested throughout literature. I do not find reason to believe that asylum-seekers or undocumented migrants are for any reason inherently vulnerable; on the contrary, the literature reviewed supports the affirms the agency of individuals and their ability to make strategic decisions to ascertain objectives according to their moral and physical priorities. Interviewing informed and consenting adults, the research objectives and methods will be presented in full-transparency, and informants will receive assurance of complete confidentiality. However, this is not to imply that there is limited responsibility in assuring respondents' protection. Initiating the interview, potential respondents were informed of the academic nature, and I thoroughly explained that there was no immediate, direct compensation for interviews.

I stressed the voluntary nature of the interview and explained that it could be terminated at any time; however, respondents did not choose to terminate the interview except in instances where they were entering the RRO or leaving the queue. Additionally, I asked for informed consent, "gained initially by open and honest interaction," and ensured "all elements of the research (are) fully disclosed", at the start of the interview and gauged the respondents' throughout the

conversations (Banister 1994, pg. 153). I explained that the respondents could choose when to disclose information or withhold responses without question. Throughout the interview, I concentrated on upholding the dignity and respecting the welfare of the respondents exercising restraint if I sensed any discomfort (Landau 2008c). On the occasions that respondents disclosed experiences with exploitation, abuse or illegal activities, I distributed a resource with locations and telephone numbers to appropriate offices providing legal or social support. I am not in a position to provide direct assistance or support, but I was able to direct the individuals to local organizations providing services for the respondents' particular needs.

The confidentiality and protection of informants is essential, and I will continue to maintain full responsibility for protecting informants' anonymity (Banister 1994). I have been conscientious not to divulge any information that may identify informants, such as dates or times of activities, places of employment or residence, or interactions with the law (Landau 2008c). At no time will the names or personal information of those interviewed be revealed. Controversial studies in the past that documented deviant or illegal activities raised the possibility of data being further "used for blackmail or criminal prosecution," (Burgess 1984, pg. 151). Cognizant of this fact, any illegal information revealed during interviews will, of course, remain anonymous and private. Respondents were assigned a representative letter in alphabetical order during the transcription process. Pseudonyms were developed for each respondent during the analysis of interview transcripts.

C. Researcher Responsibilities

I understand and respect my responsibilities to the respondents, the public, the academy, the government and to myself. Throughout the implementation of my research project and the resulting analysis, I consistently reflected upon the impact my work may have on others. I

conducted myself professionally and with maturity while upholding the moral precedents set by scholars. Additionally, I strove to preserve my integrity, honesty and credibility by exercising well-rationed, ethical judgment throughout every stage of research (Banister 1994; Landau 2008c). I have held myself accountable to the principles of the department, university and academic field.

3.8 Limitations

A. Sampling and Sample Population

Evaluating the design of the study, sampling is a clear limitation. I was initially hesitant to engage purposeful sampling in overcoming a language barrier as it may present a bias due to a disparity in education level or type of employment amongst respondents highly proficient in English; however, respondents exhibited a range in schooling and professions. Amongst the Malawian population, I found a high level of English-speaking skills; however, there may have been limitations while attempting to articulate nuances of legal consciousness. Occasionally, words were mistakenly switched or sentences were incomplete during conversations, but I transcribed the respondents' words accurately, and the transcripts reflect any language limitations. The size of the sample, fifteen informants, does not afford sufficient statistical data to draw broad generalizations. Throughout the coding process, themes and ideas appeared in greater frequency and will be addressed in the discussion of findings, but these data are not statistically significant. However, as previously stated, the goal of this research is to explore a small area in depth as opposed to maximizing generalizability.

While conducting interviews, respondents frequently referred to the xenophobic violence that occurred throughout South Africa in May 2008. I was concerned that xenophobic climate and heightened alert would prevent asylum-seekers from discussing their conceptualizations of legality; however, I found that respondents were generally happy to engage in deep

conversation and to speak freely. I cannot be fully certain that the responses were entirely truthful, but I have no reason to suspect otherwise as interviewees frequently exhibited enthusiasm. With this considered, I also made an effort to be conscientious about the potential for "volunteer characteristics" of those who are more likely or willing to participate in research as well as "demand characteristics " of those "anxious to confirm what they think are the desired outcomes of the study," (Banister 1994, pg. 6).

B. Role of the Researcher

The role of the researcher is a constant consideration in social science projects (Palmary 2006). In order to conduct meaningful interviews and account of the subjects' perception of me, I clearly outlined the research and my objectives. I was explicit in presenting myself as a student, someone entirely removed from the government and law enforcement bodies. I explained the purpose and value of the study; with this, I also explained the importance of honesty and free expression of ideas for the integrity of the study's outcomes. I also made a conscious effort not to lead responses or provide personal opinions when asked by the respondents.

Palmary explores the complexities of representation of the "other" in social science. Understanding the researcher "goes further than simply attending to the race, class and gender relationships in our work," Palmary argues, "and requires us to consider the power inequalities inherent in all interactions with those we see as recipients of our work," (Palmary 2006, pg. 31). Throughout the interviews and analysis, I remained cognizant of my own perceptions and subjects' perceptions of me. Banister states, "qualitative research does not makes claims to be 'objective', but it does offer a different way of working through the relationship between objectivity and subjectivity," (Banister 1994, pg. 13). Operating from the social constructionist approach, I labored to explore and acknowledge my own subjectivity and placement within the

context of the conversation and analysis (Banister 1994). I made note throughout the analysis of external perceptions of my foreign status as an American, my gender, race and level of education. Each of these variables was considered while reviewing the context and power dynamics of the interviews and analysis (Banister 1994).

C. Discourse Analysis

By consciously exercising researcher reflexivity and carefully planning the sequence of questions, I hoped to limit my influence in informants' responses. Evaluating responses to open questions is inherently subjective (Banister 1994). The limitations in qualitative research include the inability by nature to be replicated due to the "indexicality" as outcomes change with the context, "inconcludability" as results evolve with more information, and "reflexivity" with the differences in the researcher (Banister 1994, pg. 3-4, 10-14). As this is a qualitative research project and unable to be replicated, the value of validity and reliability in quantitative methods is not fully transferable; rather, "the aim of qualitative research is not so much replicablility as specificity," (Banister 1994, pg. 11). The value of the research contribution may be ameliorated with reflexivity and transparency (Banister 1994). The use of interviews and discourse analysis was subject to my own perspective; however, I maintained detailed notes throughout the data collection and research analysis (Banister 1994; Silverman 2000).

Although these are limitations in interviews and the proceeding discourse analysis of transcripts, there is frequently value in what goes unsaid or initially unnoticed (Banister 1994). Additionally, although conducting research from the framework of legality, I was cautious not to impose preconceived theories to the research, but rather, I strove to maintain an open-mind and allow the theories to flow from the transcriptions (Banister 1994; Silverman 2000).

CHAPTER FOUR: PRESENTATION AND DISCUSSION OF FINDINGS

4.1 Obligation to Obey

This section operates from the categories outlined in the work of Austin Sarat obligation to obey the law based on the perception and relationship to the legal framework (Sarat 1977). Sarat's survey sampled adults from households in Madison, Wisconsin in the United States to assess general attitudes towards obedience and disregard to the law. The groups presented in Sarat's review were helpful in fleshing out themes from the transcripts; however, the population surveyed throughout my research varied significantly from that of Sarat's, and the frequency of the recurrences of themes reflected the difference in the respondents.

Out of the fifteen in-depth, individual interviews conducted, four respondents had not lost legal status in RSA. Two respondents were within their initial thirty-day temporary visa; one respondent was in South Africa on a study-permit, and the fourth had received an asylum-seeker permit after repeatedly renewing his visitor's permit while applying for asylum. Every respondent agreed that remaining in South Africa undocumented was a breach of the law to some extent. Thus, respondents were primarily in an 'illegal' situation during the time of interviews, and this afforded an opportunity to investigate how migrants negotiate this status and what motivates these individuals to apply for asylum.

A. Fear of Punishment and Consequences

Although data available suggests limitations to the benefits of the asylum-seeker permit and a discrepancy between the law and reality of life for those with asylum-seeker status, all respondents indicated that there are, indeed, tangible gains and protections afforded by the permit. Each informant expressed a fear of punishment for being undocumented to some extent and delineated the various consequences for not having papers, primarily the threat of police

detection which arose in fourteen of seventeen interviews. Respondents were anxious to receive asylum-seeker permits to avoid deportation and as a means of escaping a system of corruption exacting bribes during police arrests. Beyond protection from deportation and access to employment, education and health care, asylum-seekers also expressed the value of the document as a form of identification and a reference for the government. Two respondents also explained the value of the document in the event of death in South Africa and stated that the government would use the asylum-seeker permit as a means of locating the individual's family and repatriating the body. Lester, a Malawian student at Wits, was considering applying for asylum to learn about the process, so he could help newcomers without documents secure asylum-seeker permits in the future. He stated:

> Most of the time, I like to see because knowledge is power. If you know something, it's going to help you in the future. Like the way I know if my friend from home comes, I'll take him straight away here (to RRO) before they catch him. But if I don't know the place, then which means, I can't know where to apply, that one will be arrested when the days are over. (Lester)

For Lester, providing future security to friends was sufficient incentive for applying for asylum while he conceded he did not meet the definition of 'refugee'. However, many respondents reflected upon their limited mobility and restricted lifestyles throughout their responses. Dylan, a twenty-nine year-old who had not yet lapsed in his status, expressed his concerns with running out of days on his temporary visa.

> Because, this place, (South Africa) you can only be safe here when you are legal, but when you are illegal, you can't do anything. (Lester)

A thirty-three year-old asylum-seeker with a wife and two children in Malawi, Gabriel, described numerous benefits accompanying the asylum-seeker permit.

> Here, it's, the asylum paper is, is it's like an identity for me. Because, I'm from Malawi, when the policeman came and caught me, and then show me, when I do, I can show the asylum paper that I'm from Malawi. Yeah, it's like an id. … Yeah, my benefits, maybe, because I can took it, looking for job or maybe employment

> because those asylum paper, it's a one work permit. Two, it can help me as an id. (Gabriel)

Interestingly, one of the additional benefits for Gabriel was also expressed a great deal of fear and anxiety over staying without documents, and he shared a willingness to struggle at the RRO to ascertain the document.

> Yeah, without my asylum paper, I'm afraid of it. That's why I'm starving here looking for my asylum paper. Yeah, I'm starving. I'm afraid about it. Yeah, it's very bad breaking laws through, I don't have, my days are already gone, so I'm saying, I'm afraid. I want to get my asylum paper. (Gabriel)

Tom, a thirty-one year-old staying with his wife in Johannesburg, summarized his motivations for seeking asylum as:

> You see, in that document, neh, they said if you are coming from outside country, you are a foreigner, if you want to look for a job here, you need to get that paper, so that you should have, you should have to be free. If you get that, that paper, you can stay here, you can get a job, you can do whatever you like, but apart from those, apart from crime, I'm mean, apart from a, I don't mean about crime, what-what, but you can do whatever nice things. You want to work, if you want to move, if you want to do anything nice, you can do that. That's why you see most people they are coming here. (Tom)

Asylum-seeker permit was described as more than a document that can open up access to jobs and education on numerous occasions. The document fetishization was frequently prevalent and Elliot, a single twenty-nine year old man , equated the benefits with life itself.

> It mean a lot of things. You see, it does not mean necessarily that, uh… People who are here, they are people who are searching for jobs only. Eh? Having that paper, it mean a lot. One, these other people, I'm telling you, like my own family, they were on… on, eh… I can say they were, they are like rivals because of land. These other people, they are coming here to secure their only life, only on their own life, that's the first priority. So, it means, a lot to these people. Why? Because if you get that paper, you cannot go there. He's here securing his or her own life. So, it means a lot. Because the most important things is life. You see? So, they are securing their own life come from here. Yes, I should put other people, they are securing these thing, now it's an, now it's a second thing. Maybe they're looking for opportunities, other opportunities. For example, education. Jobs. These other things. But, eh, should not just expect that people are looking for this paper because they, they want a job in South Africa. (Elliot)

While there was a general consensus that the permit would temporarily legalize their stays and improve the quality of lives with access to employment, health care and education, there was variation in the degree that instrumentalism factored into their decisions to apply for asylum. Some respondents considered the benefits and protection from asylum-seeker permits, but also closely aligned themselves with the law as an entity that should be respected for the good of society and simply because it's the law.

B. Must Obey

In eleven of the seventeen interviews respondents indicated that they are complying with the law because that is what must be done because it is right. These individuals expressed concern over committing a crime by being without documents. Although there was a degree of instrumentalism as they outlined the consequences of living undocumented, these respondents particularly believed that rules and laws were meant to be obeyed. Elliot, who believed in the profound instrumental gains of the permit, also expressed responsibility and acceptance of consequences for remaining undocumented during our conversation stating:

> No, even myself, a person from South Africa, going to Malawi, I know is having papers. Maybe he's having passport; he's been given days. How long are you going to stay? Maybe you want to extend days, you go there and extend days. Yeah. Uh… In other cases, we should not blame only the police, we can sometimes blame ourselves sometimes because it's the rule which says that you're supposed to have a document, so we are supposed to follow the same channel. (Elliot)

Elliot contrasted South Africans' visits to Malawi with his undocumented stay in South Africa, and lamented violating the laws. To further illustrate his point and demonstrate his knowledge of immigration law, Elliot flipped through his Malawian passport to the page with his Temporary Residential Permit from South Africa and cited the Act.

> Well, that is a crime. I need not to hide here. While I'm a Malawian, I should not back because I'm coming from Malawi, that's an offense. … Because, in any passport, when you move in any country. Like, even you're coming to South Africa, they give you this. (Flips to page in passport with South African permit.) …. Act. This Act. Department of Home Affairs, uh, Republic of South Africa. Temporary Residential Permit. This, this Section Eleven of Act Number 13 of 2002. So, it means, that when you don't have it, or when you don't have any days, it's a crime. Yes. (Elliot)

Zachary also expressed his grave concern with breaking the law and stated that as reason enough for seeking an asylum-seeker permit.

> Interviewer: It's against the law to be without documents?
>
> Zachary: Of course, everywhere in the world.
>
> Interviewer: Have you ever broken a law before?
>
> Zachary: Ah, no, it's only this one. Yeah. It's only this one. (Laughter). It's only this one.
>
> Interviewer: How do you feel about that though?
>
> Zachary: I feel guilty. … … I feel guilty. That's why I am here… to get a paper. I feel guilty.
>
> Interviewer: Why do you feel guilty about this?
>
> Zachary: It's against the law. Yeah, because once they find me, that means I'll be get punished, sending me back home. Yeah. Because now, I'm not ready to go back home, that's why I'm here. Yeah. / Eh… Yeah. Something is illegal, it's a crime.
>
> Interviewer: What do you think about that?
>
> Zachary: That's why I'm here. That's why I'm here to try to get a paper. I came here yesterday, slept here, the open place, as you can see, it's hard.

Furthermore, Zachary also described the xenophobic violence of May 2008 in detail making a distinction between 'legal' and 'illegal' migrants that indicates the 'legal' migrants were less deserving of the violence.

> For the immigration laws, it's now the government, eh? It's the government. And, we have to respect the laws, but there are these other people who are legal, but they were also beaten, so I'm confused. (Zachary)

Elliot and Zachary both emphasized a respect for the laws and a strong desire to comply with the regulations of South Africa that extends beyond simple instrumentalism. These men were not alone in this sentiment as appeals to obedience frequently recurred throughout the interviews to varying degrees. Xavier, the son of a police officer from Malawi, expressed a strict adherence to and deep respect for legal frameworks.

> Yeah, to break the law is… Every citizen must respect the law that is the rule of the government. Yeah. So, if he, if somebody fear to break the law, that means he is keeping the government's rules. Yeah. A good citizen must respect the law. (Xavier)

Xavier stressed that one must obey the laws of the land because that is what is expected of a 'good citizen'. This responsibility provided ample motivation for seeking asylum and legalizing his stay. After a lifetime devoid of criminal activity, Xavier was unsettled at the prospect of illegality.

> Yeah, for me it is very bad to break the law. I respect the law of here, of every country. Yeah, if I go any country, I respect the law because if I break the law, I can face a lot of problem, maybe I can be arrested, I can suffer that's why I respect the law in every country. Yeah, wherever I go. (Xavier)

Throughout the interview, Xavier reinforced his compliance with rules and his labors to avoid 'friends who think wrong ways'. Although Xavier was afraid to encounter the police and believed the asylum-seeker permit would offer protection, he was highly interested in obeying states' statutes because it is his belief that laws should be obeyed.

C. Game Rules

The concept of law as rules to a game, understood as either an agreement between the government and migrants or the government and South African citizens, also came up

throughout eleven interviews, but at a lower frequency than the Must Obey category. There was an idea that the government will assist the registered foreigners as the foreigners become visible and traceable in their system. Respondents said the state can monitor the refugees, which deters crime because the registered asylum-seekers' fingerprints are on file, and in return, asylum-seekers can seek jobs and receive services so long as they are complying with the laws. When asked what he believes to be the purpose of registering for asylum, Dylan, a single twenty-nine year old, responded with the following:

> It helps the government. It's a mutual, it's a mutual agreement, you know? When you are registered, you can't do crime, you know? Because when they get you, or you cannot runaway, you see? When you are registered and you are working, you cannot steal from, from your employer because he will trace you. Yeah, it helps the government. It helps me not to be deported. Yeah. (Dylan)

Dylan describes the reciprocity of his arrangement with the RSA. As Dylan registers for asylum and enters into the state's database, he succumbs to the watchful eye of the government and tacitly consents to monitoring. Perceiving the state's ability to track him if he commits a crime, Dylan will avoid criminal activity and contribute positively to South Africa. The argument is exhibits a paralleled reasoning to the concept of the Foucauldian panopticon, in which the threat of detection and observance renders people compliant (Cronin 1996; Dean 1996). If the government wishes to observe Dylan, then he must receive protection from deportation in exchange. Dylan also went so far as to advocate for a camp-based policy for refugees in South Africa as it would provide maximum monitoring capacity and provision of security within the state's borders.

In the following example, Stanley also expresses his agreement with the government. Stanley exhibited an acceptance of the government's arrangement in good faith and thoroughly believed that the tangible gains of employment, education and health care would be upheld so long as he complied with the rules and lodged an application for asylum.

> Interviewer: So, is it, um, when South Africa makes a law though, saying you have to have permits, why do they do that?
>
> Stanley: The government, he, he agreed to help the people, maybe the people they can go to take the documents. Yes.

Remaining undocumented in RSA would be a violation of South Africa's rules and thus disqualify one from reaping the rewards of the contract.

> Interviewer: But, being without documents, is that a crime?
>
> Gabriel: Yeah, it's a crime because there are rules. I'm against their rules. Yeah, it's a crime. Yeah.

Jack, a single twenty-year old, also shared a similar conception of an implicit contract between the government and migrants which would afford protection on the condition that migrants registered with the state.

> Ah, okay. I have said that, uh, to register, to me, it is a good idea but not just stay, yeah. Maybe, see, even the budget of the government if you register here at Home Affairs. They know that we are such-such people, so we have to do this and this for things to work okay. / Uh, I heard a certain citizen here in South Africa say, ah, if you want to stay here free and not feeling what, this I have to go to such-such place and register that that will be fine and stay here and you can do whatever you want as long as you are doing the right things. That's why I came here. (Jack)

Respondents viewing the asylum procedure as an agreement occasionally expressed frustration with the arrangement. In one instance in particular, the respondent felt that he was upholding his end of the bargain by sacrificing his time and suffering at the RRO to acquire the papers, but he was unable to acquire the documents because the government was not processing all of the hopeful applicants.

As with many games in life, there is often a condition of 'home-court advantage' with the rule-setter maintaining an advantage over the visitor. As foreigners, asylum-seekers referred to the laws of South Africa as 'their rules' frequently throughout the interviews. Although the asylum-

seekers may not have agreed with the rule, they conceded that they would play by it. While on South Africa's figurative turf, the state gets to set the terms and conditions for its visitors who must then comply even if it entails personal hardships.

> Yeah, I see one because, I can say, whether you like it or not because if you don't get that paper, the policeman is going to catch you. Yeah, it's their own rules, that's why I say each and every country for their own rules. In our country, they don't make like this. Even if you can go to our country, you can't see people staying like this, said, "I'm looking for paper," what-what, only for passport Immigration Offices only, but not for paper, asylum papers, what-what, you can't see. You see? Only, I wonder why these people they are doing like this. / So, that's why I've said, ah, this country, sometimes it's not good. Of course, for them, for their owners, it's (the laws are) right, but for the foreigners, for those people who's coming from outside countries, ah, it's difficult. (Tom)

> We are like illegal immigrants, but we are coming here because of our poverty. We are coming here to improve something. We are not saying we are going to be here for years and years, but it's their rules, they need to chase us. … The rules of the government are saying that, we are not committing a crime, but it's, we're against their rules. (Victor)

The law and law enforcement was frequently cited as more harsh and severe with foreigners, a privilege afforded to the home team, RSA and its citizens. Although expressed on multiple occasions, Isaac captured the sentiment poetically.

> Isaac: Well. … I think you have got your answer on yourself. We people, we are the same in the name of God. But, in this world we are different.
>
> Interviewer: And the police see the difference?
>
> Isaac: Well, yes. They are able to see the difference until the end of this earth. Yes.

Walter, Jack, Tom and Andy also emphatically highlighted the difference in the law and enforcement. Through their cognizance of difference, these respondents reinforced their social positioning as the 'other' (Menjivar 2006; Simmel 1950). They could not lay claims to nor expect equal treatment under another state's laws.

> Ah, I don't know their problem, but uh, I don't know their problem, yes, they are security, but the problem is that thieves they are too much, yeah. That's why we

are saying there is not enough security. But security, in terms of foreigners, yeah, catch foreigners. Yeah, in terms of that, there is security. But in terms of thieves, they don't have enough security. (Walter)

As of now, I can say that, these police, in terms of, uh, security, they are working. But most of their job what I see here in town, they are just catching people who don't have papers to send them back home. Yeah, that's what I see. (Jack)

Yeah, yeah, the, the laws of South Africa sometimes it seems it's for everyone, but it's not. Because for example, I can move in the street, I meet the policeman, I am a foreigner. Someone is South African. We are moving together. The policeman is going to ask me about my passport, or my paper or id, what-what. Then, he's going to another asking for passport, paper, what-what. You see that guy's answer is, "Why are you asking me about my passport, id? For sake! I am going. I'm a South African." He's going. The policeman doesn't do anything, just left the guy going. He's got freedom. It's his own country. But for myself, I can't do like that. It's not my country. That's why sometimes I say, sometimes I said, sometimes South African people the laws, they take the laws to foreigners… (Tom)

Interviewer: Now, do you think the police here, have you heard that they're doing a good job or are there problems with them? How are you finding the police?

Andy: Well, I think… in terms of the security of the country, as keeping away intruders, they're doing a very good job, a very good job.

Interviewer: Keeping away intruders?

Andy: Like, like these people who are just migrants, immigrants, who have moved they don't have the documents. They are always good at it; they always chase away. I don't know how much they're fighting this crime of theft problem, I don't know because I'm not very sure.

Asylum-seekers also stated that, although they do not believe they qualify as a 'refugee', South Africa says they are, so they are and thus, must register for asylum. This opinion portrayed the government as confused and mistaken; asylum-seeker permits are meant for foreigners, and the error was on the side of RSA as they carelessly used the wrong word to describe the permit. Accepting the label 'refugee' was a concession and compromise to reenter the state system and gain benefits from the asylum-seeker permit.

> Tom: (Chuckles) Uh, for example, neh, I don't know these people, these, these government what they did. I'm also wondering because a refugee is someone who is coming from another country where there is a war, you understand? Is, is, it's like Congo. Like those countries there's war, neh? Congo, DRC, ah, Rwanda, uh, what-what, those countries they, the people are fighting, so those people they are refugees. So, I don't know why they introduce that paper they call "Asylum." I don't know.
>
> Interviewer: Mm.
>
> Tom: And why they accept each and everyone who is coming from, who is not, their country there is not war, but they said you must have, must take that paper, asylum as you are a refugee. I don't know why because some of them, we are not refugees. In our countries, there is no war.
>
> Interviewer: Do you think you're a refugee?
>
> Tom: No, I'm not a refugee because in my country there is no war. Now, it's about fifty years, no war in my country. Maybe thirty, forty, no war. I've never seen someone with a gun shooting each other. So, I wonder they just mixed, said, "Hey, this asylum paper, refugee, what-what." I don't understand. Maybe they can change, they should have to just change the name, just to do some other kind of paper at least. Sure.

Tom was mistaken about the rules of the game, but he attributed the problem to the government of South Africa. So long as it was part of the agreement and Tom could secure the benefits of asylum, he would assume the refugee label and consent to the state's wishes.

The legal framework was understood as a system of rules governing the game. There were two agreements emerging from the respondents: the state and its citizens, and the state and its visitors. The instrumental gains previously described were conditional upon compliance with the rules; although, respondents also occasionally positioned themselves as at a disadvantage as foreigners in the system.

D. Higher Law

Sarat found that people felt obligated to obey the law except in instances where it violated a higher authority, such as religious values or individual understandings of justice. In nine of the

seventeen interviews, appeals to a higher authority were made during the discussions. Respondents in these instances indicated that survival and the maintenance of life can supersede the law; actions were motivated and justified by desperation. There were also several appeals to God and God's understanding or judgment of actions. Additionally, respondents present universalist or pan-Africanist sentiment that should mitigate differences between citizens and foreigners.

In the following excerpt, Isaac offers Allah's word as his reason for finding work and refraining from criminal activity.

> That's why, that's why here, I don't want take anything someone for free because Allah is not like. So, him already say, man's working. We don't know all black people say, "No working. No eat." Even if you looking tobacco, say, "No food less money. No work, you must die." That's why I'm here. I don't want to take anything to someone for free. For free or not paid, I don't like. That's why you, but, if you give this one for a gift, "Thank you," that's what I say. (Isaac)

Respondents occasionally shifted from a discussion of law to either God or personal values denoting a prioritization of their moral frameworks over the legal codes. In explaining the high rates of crime in South Africa, Zachary first provides a lack of respect and understanding by criminals in South Africa; he then indicates that it's actually a sufficient understanding of the invaluable nature of life that is lacking and leading to crime. He is able to argue that if one agreed with his perception of the sanctity of life, the individual would be unable to commit a moral infraction that also coincides with legal infractions.

> Zachary: It's because they do not respect the law. Because if you do respect something, you can't do something wrong to it. Yeah.
>
> Interviewer: Mhm. What makes someone disrespect the law?
>
> Zachary: Mm… I think it's understanding. They don't understand, maybe. Yeah.
>
> Interviewer: You think they don't understand that it's against the law to kill someone?

> Zachary: Yeah. Because if you do understand that this life of a person is worth important than anything, you can't do it. You can't kill that person. Yeah.
>
> Interviewer: So, is it a lack of understanding of the law or a lack of understanding of other people or what is missing here?
>
> Zachary: I think everything is missing. Yeah. Lack of understanding the law. And, to respect, ah, your friend. Yeah.

While being undocumented is a crime, it is not a sin, and in two instances, respondents argued that God understands if one must lie or bend the rules to survive. The gravity of illegal activity was transferred to the weight of religious infractions. In the following excerpt from a group interview, George initially agrees that it would not be a sin to lie in an effort to ensure survival; in this case, survival was equated with the asylum-seeker permit. However, George later concedes that it would be a sin to lie, and although he also states that it is illegal, he is more concerned with making an apology to God.

> Alexander: Good lies you can survive, bad lies you cannot survive.
>
> Curtis: In fact. In fact, this lie, even God knows that that guy want to survive because he is suffering. We can't made a sin.
>
> George: Abraham. Abraham lied to them that Sarah was his sister. He lied, but he know that, he didn't commit a sin.
>
> Frank: She was his wife.
>
> Interviewer: Right, but it's not a sin when it's…? Go ahead.
>
> George: Abraham know that she's her wife, but she lie. And, here now, we know that a lie doesn't count as a sin. / To me, I can say it's not good to lie. But, we can't do otherwise we would just do that to survive. Cause if you don't do that, you can't survive. We can't get a permit, so we just lie to get a permit. But it's not good, it's a sin.

As the discussion continued, there was a clear distinction between lying as unavoidable as a necessity for survival, which would be morally excusable, and lying to cover-up

criminal activity, such as murder, which would be entirely inexcusable. Although aware of the illegality of actions, these respondents were primarily acting in accordance with their perceptions of a higher law of religion and survival.

An alternate authority that was prevalent in five of seventeen interviews stems from an appeal to universalism and Pan-Africanism. These respondents expressed their confusion from the drastic distinction made between citizens and foreigners, and also shared a strong desire to lay claims to a common origin that calls for equality amongst human beings. The following three examples arose in the conversation on the topic of xenophobic violence and sentiment; although respondents believed the xenophobic violence had subsided, there was still a great deal of fear and pain that came through in interviews.

> This is Africa. We are all people. (Tom)

> (The xenophobic violence) Feels bad cause we are the people… one God. Eh? From one, eh, from one continent which is Africa. We are the same people. We speak a little bit, eh, one language, eh? Our languages from, eh, Central Africa and East, East Africa down here up to South Africa, the language which we speak, it's just the same. So, it means we are all one. So, it's like we are one family. So, I feel confused. Somebody from the same family is trying to kill somebody. (Zachary)

> Even if you have a the document or don't have, it's the law of the government to protect you as a human being. (Jack)

Zachary furthered his argument by recounting a brief history of Bantu migration from Central Africa. In the excerpt below, Lester concludes that a distinction between citizens and undocumented foreigners is no different than unacceptably treating black and white people differently based on skin color and racist sentiment. According to Lester, exclusionary immigration policies and government enforcement of regulations would constitute bigotry. Lester emphasizes the importance of equality across all social divides, including race, legal residence status, and gender.

> You can't feel alright, not the same. Blacks and whites. If they say this place is for whites only, no blacks, how is the black going to feel? Not right, not so? The same with foreigners. When they come to South Africa. Hey, foreigners, we don't want foreigners, we want only South Africans. How is the foreign going to feel? The same as refugees. They say, refugees, we don't need refugees in South Africa. We want only the South Africans with documents. How are those without documents and refugees going to feel? So, to me, I feel like, the thing is equality. (Lester)

Relying upon a higher law of pan-Africanism or univeralism, applicants may present an alternative logic for determining grounds for legalization from the state or refugee protection (Kyle 2008; Vigneswaran 2008a). These respondents were not criticizing the current system, but also generating a different perspective to view human mobility within a nation-state system and corresponding documentation. As they were still attempting to lodge asylum applicants, respondents were not undermining the state's authority regulate movement; however, these opinions capture the extent to which asylum-seekers and refugees may present a counter position for considering refugee status, membership and citizenship (Landau 2008a).

E. Utilitarianism

The utilitarian spirit was prevalent in seven of the seventeen interviews; however, this particular orientation towards legal obedience appeared in a much lesser frequency than the prior categories. While analyzing transcripts, responses indicating that compliance with South Africa's asylum codes either assisted the RSA or aided society were considered utilitarian. In the following examples, Lester and Ricky, both of whom had not lapsed in their status to legally reside in South Africa, demonstrate a desire for registration as a tool to combat crime in South Africa.

> Lester: Yeah, to me, I would like if the government can allow everybody who is a foreigner to apply for those papers, so they can be identified and recognized. If something goes wrong, they can catch him quickly.
>
> Interviewer: Catch him quickly?

> Lester: Because he has been identified. Let's say he's done something which is criminal. He does something wrong or he steals something, they can catch him quickly because he is in the database.

Lester gives credence to the state's database of asylum-seeker and argues that by identifying foreigners, the RSA can identify and locate individuals suspected of committing crime. Presumably, the threat of detection would act as a deterrent for violating laws. Below, Ricky first states that the government should know the number and type of foreigners within their borders, but he then states that this will be a valuable resource in tracking criminals.

> Ricky: They make this because they must know how many people they can get inside the country. … They must know the exact people who are coming inside and how many people they are going back to their countries. Yeah. Because if you don't have passport, how can you know that you're coming from America?
>
> Interviewer: Right. So, do you think it's a problem then when people don't have documents if they're trying to do maybe piece work and they don't have documents?
>
> Ricky: It's not good. Once they, once they knock off with the car, how can they know to this guy is coming from Malawi or Kenya or Uganda?

Tyler, a single twenty-two year old, also shared the belief that registering for asylum will assist the government in enforcing the laws and locating guilty parties through their database with applicants' information and fingerprints.

> Okay, so, because they take my information. Like me, they take my information, least maybe, fill everything and they're going to know this man, he come from this place, what-what-what, and also his name, where they stay right now and maybe where they're coming from. And then they're going to put in the computer. Just maybe the case, maybe if you're going to steal somewhere else, there… Then, maybe, like for example, maybe I want to steal to my boss, maybe money, whatever, they going to come there, they're going to find my fingerprint. Maybe my name, they're going to find. After they find my name, they're going to find maybe my fingerprint. (Tyler)

In addition to increasing the state's ability to vigilantly patrol criminals, registering for asylum was seen as an opportunity to save the state money in one group interview. Although this

opinion did not arise consistently throughout discussions, the argument presents a nuanced view on the efficient appropriate of state resources.

> South Africans they are losing a lot. They were supposed to take us when they caught you without a paper, sending you to Lindela, make you a, an asylum and then you come back. At least it was far much better. Give us food in Lindela. You can spend two weeks eating food, breakfast, lunch, dinner. And they will deport you, same time you come back, and they will keep on doing something, yeah, same thing. Can't they see they are losing a lot? Already they have introduced the asylums. They were supposed to just give us asylums, then they know they are not losing. If they are losing on papers, they can ask even, a little amount of money or something like fifty Rands so they can pay their workers, so it would be easier for the government not to lose anything because right now you can find they are losing, we are not paying anything. They can take us to Lindela, they give us food, they deport us and we come back the same day. What are they doing? They are doing nothing. They are doing nothing. (Max)

According to this statement, the RSA would be able to save money by expanding it's registration of asylum-seekers and by extending legal temporary residence within its borders to those who have complied with their system. Although interesting, utilitarianism with the interests of the state or society in mind was not a prevailing motivation for obeying the asylum laws.

F. Exceptions to Obligations

In addition to the exceptions made in accordance with respondents' perceptions of higher laws, respondents also made a distinction between crimes, viewing immigration violations seen as less severe than other crimes committed in South Africa. The hierarchy of crimes appeared to some degree in ten of the seventeen arguments. This line of argument is also consistent with the belief amongst respondents, mentioned previously in the Game Rules section, that the police are frequently more vigilant in enforcing immigration laws. Throughout these interviews, there were claims to innocence and victimhood, particularly with law enforcement or the xenophobic violence, indicating that the respondents viewed themselves and their breach of the laws as

criminal to a lesser degree or even acceptable because they were not harming anyone by being in the country without documents.

> Uh, oh, maybe I can give, like maybe you are hurting someone. That one is different than staying without these documents because you are staying but you are not doing wrong things that makes someone, yeah, to be, not to be happy. Yeah. (Jack)

Respondents also made exceptions to the rules by emphasizing their own limited agency, a concept that appeared in fourteen of seventeen interviews. Immigration crime and illegality were seen as conditions of poverty, compelling their flight from Malawi, causing their inability to pay for work visas or restricting their ability to pay necessary bribes, racism in the legal system, or as a condition of SA regulations. On numerous occasions the exact phrase, "it's not my wish," followed explanations of limited agency that generates 'illegal' activity, such being undocumented or dishonest in applications. Respondents' decisions to come to South Africa without documents or their decisions to stay in the country out of status were eclipsed by the conditions beyond their control that lead to their illegal status.

Victor presents an argument in which he is bound to undocumented life in South Africa due to the extreme poverty he escaped and the poverty that awaits him in Malawi. Due to the investment of his energy and resources, he cannot walk away from the capital he used to cover his journey to Johannesburg. He is beyond the opportunity to return to Malawi without the earnings he envisioned.

> Yeah, that's why I'm forced to be here. It's not, I'm not happy to be here because I know that life here is tough. Because I have run away from the police when I see them. You know, life here is tough. What we are doing is tough. If I start walking, going to work, you know I'm walking looking here and there when I see a police, I know life is tough. But, what can I do? I am already here. I spend a lot of money here to make my passport, for my transport to be here. I need to just leave and to be back with something. If I can say, I'm ready to go now, then

> I will go home poor and I will start thinking about the money which I spent. I spent a lot of money coming here. (Victor)

Similarly, Andy also exhibited an enormous sense of urgency and desperation that limited his choices. Andy, a teacher from Malawi trained as a paralegal, was robbed of his documents within the first day after his arrival in Johannesburg. He was convinced by his friends that the police would not believe his story, so he must first go to the Refugee Reception Office to apply for asylum and then he could try to return to Malawi. Although a highly unique situation, the sentiment of resorting to 'illegal' activities, accessing the asylum system without qualifying, due to the belief that there are no alternatives is the same.

> Mmmm! Ha, it's tough because even I, it's against my conscience, but it's still the little thing, the only thing that I can do. It's against my conscience because it's not as easy to, to, to break the law. As a person who has an idea of what the law is all about, you know it's tough to break it, and when somebody is breaking it, you don't feel that good. And, in doing it yourself, now you go like, "If I don't do this, what will I do?" You know, it's that, it's that. (Andy)

Respondents frequently cited the inability of officials from DHA and RRO to process all of the potential applicants as the reason they were left undocumented. Queuing outside in the midst of the elements and missing opportunities for employment, the respondents felt they were making their best effort to secure documents and live 'legally'; however, beyond these attempts, the onus to document migrants would rest with the government. The seemingly impossible obstacles to securing a document leave the hopeful asylum-applicants in a perpetual state of vulnerability accessing the asylum system as officials within the RRO may use their administrative capacity to deter asylum applications and foster exclusionary practices (Calavita 1998; Vigneswaran 2008a).

> That is, yeah, that is a crime. You have to have a paper. The way we are doing it is not a crime. You have to have the paper, but to have the paper is difficult to find it. You see we are suffering to find, what? The paper. You see. It's like that. (Donald)

> I'm here in South Africa without documents. You know it's bad, but I can't do otherwise. Yeah, I came here, I didn't find any document. At first, I was just getting people saying, ah, said a friend of mine, come here almost one week, no getting a paper, so today, I said, ah, let me just go and see, maybe I'll be lucky. And today, I'm not lucky. That means, I cannot come again. Otherwise, maybe I can lose my job, what I've said. So, about the documents, it's bad to live without that document to be without, but you can't do otherwise. (Victor)

> Then, when he be coming back that same paper has been expired, you see? When he meets a policeman, he's going to be caught. By, but, the thing is, he has been here waiting for the whole night, yet the document has been, has not been stamped, you see? But he has been waiting here on the line. But, because there were a lot of people, they cannot manage all of us, no. But, the paper has not been stamped, still more, they've been caught. … Expired. But whose fault is that? (Elliot)

After making an effort to lodge applications for asylum and weathering the difficulties in the RRO queue, Donald, Victor and Elliot are able to excuse their undocumented status with the ineffectiveness in Home Affairs. However, Stanley feels limited by the state in a different way; he believes the individuals working in the RRO maintain ill-sentiments towards foreigners which influences the daily procedures and the number of applications processed at the office (see Mountz 2003). Although the law provides framework, it is the people enacting the law that give life and meaning to its implementation. Within the Refugee Reception Offices, state agents are the frontline for enactment of the asylum law. Mountz's investigation demonstrates that although mandated to apply the legislation approved by the South African government, status determination officers are also social entities (Mountz 2003). As individuals, they are exposed to the same media conduits and popular discourse. The personal is inextricable from the profession, and efforts to uphold state legislation is unavoidably mediated through personal interpretation to some extent (Vigneswaran 2008a). Officials working within the RRO will view mandates and assume their governmental responsibilities with through individualized lenses conditioned through social experiences and historical positioning.

> Okay, government, sometimes, like me, I'm coming the passport. Maybe I'm from overseas, I'm coming here, you know? You, you are white. You're going to go in Home Affairs Department, "I'm going to extend another days," the government, "Yes." Me it's, "No, the days is expired." Why? (Stanley)

Stanley's statement above and comments inserted throughout the interview, illustrate his view that Home Affairs officials are not immune from the biases presented in the media, the public discourse of immigration or racial divides. In the RRO, government officials assume the responsibility of applying legislation to distribute benefits to those meeting criteria; however, the assessment of criteria is interpreted through human subjectivity (Calavita and Seron 1992; Handmaker).

Blame for the government policies took various shapes throughout interviews occasionally dressed euphemistically in pan-African discourse, but also plainly expressed in a heat of frustration. While documented himself and greatly concerned with lapsing status, Dylan stated that it was the policy of policing undocumented migrants that was at fault.

> Interviewer: Yeah, so… Everyone who is in South Africa without documents, are they breaking a law?
>
> Dylan: Ah, yeah, they are breaking law. They are breaking the country's law.
>
> Interviewer: Mm. What do you think about that? Is it…?
>
> Dylan: No. Eh, it's the government which brought the stupid policy because the first place, they would have known why these people are here and solved the problem in the first place. Other than letting them move around without proper documents. Because people don't come here, ah, like me, I don't know, maybe some people, but… the one I know, for someone to come from Malawi to come here, it's a capital, it's a business capital. It's a lot of money because it's more costly, and all those people who come here come here for their own reasons. They don't just come here. So, to arrest someone because you have overstayed without knowing why he has overstayed, ah, no. No, they've got stupid policies in their own government. They need to solve their own problems in the government first.

At this moment in the interview, Dylan appeared exasperated with the idea that being undocumented is a crime because although he recognized that it's a violation of the law, he had made a distinction between the crimes and believed it was an unnecessary, useless law from the government. For Dylan, the immigration policy did not hold a moral authority, but the reasons for complying were instrumental in avoiding needless, 'stupid' consequences.

4.2 Source of Authority

Research by political scientists and sociologists has labored to understand the depths and variations of populations' legal orientations and motivations to obey the law (Sarat 1977). Sarat notes that early efforts to determine if people will obey the law have slowly moved towards understanding why it is that people either adhere to or disobey the legal framework. Pinpointing single experiences with direct correlations to individuals' legal consciousnesses is unlikely and problematic; though through the process of socialization, researchers generally concur that individuals develop their legal compasses by early adulthood (Sarat 1977). However, an alternate explanation for behaviors of adherence to the law argues, "that views of obligation and obedience to law are more 'permeable' and subject to the influence of contemporary life experiences," (Sarat 1977, pg. 385).

Interviewing respondents that have crossed international borders and largely remain in a liminal or tenuous legal status, their current situations have likely had a significant impact on their relationships with the legal framework in South Africa (Calavita 1998; Kyle 2008; Menjivar 2006). However, in the following pages, I have identified several recurring experiences that influenced respondents' conceptions of legality and obedience prior to migrating from Malawi. While respondents shared memories of legal learning through reading newspapers, conversing with coworkers and overhearing stories in town, the primary sources referenced throughout

interviews related to their home lives and family, civic education, village Traditional Authorities and religion.

A. Home and Family

Throughout the interviews, respondents frequently described experiences and dynamics within their families which continue to influence their behavior as adults living from their hometowns; this sentiment came through in eight of the fifteen individual interviews. Below, Xavier explains the relationship with his father, a police officer in Malawi. Imbibing his father's the unwavering support of the law as a child, Xavier developed into a law-abiding citizen with a strong fear of breaking the laws.

> Yeah, because he, we talked with my father. My father, before he dead, each and every time he was advising us about the laws of the government. Yeah, he was telling us that, "Doing this is a criminal, doing this is, you will not stay well on the earth, you must avoid doing this, this, this…" Yeah. So, that's the government laws we know through our father because he was a policeman. Each and every time he was advising us the way of living. / Yeah, he has passed away. So, the advice I don't lost it, it's still in my… That's why since my life, I've never, uh, do any criminal about theft or whatsoever. Just fear about doing anything wrong. That's the way how I'm living my life. (Xavier)

During our discussion, Xavier explained that he felt scared living undocumented in Johannesburg and guilty as he recognized that the was breaking the law; he explained that it was for this reason that he was struggling to attain his documents at the RRO. Although unsure if he would qualify, Xavier was committed to securing an asylum-seeker permit and hoped that with luck, the officials in the RRO would legalize his stay with the permit. He did not make a distinction between the legality of ascertaining a document one may not meet the legal criteria for; for Xavier, a document from the state was a document from the state affording him the opportunity to reside safely within their borders long enough to return to his homeland.

Xavier was not alone in his understanding, as Ricky also relayed the instructional upbringing he received from his parents. However, Ricky's parents emphasized a moral code as opposed to a legal code. In turn, Ricky believes that he has been kept safe in life and has had good fortune because of his adherence to morals and respect for others. Additionally, in the excerpt below, Ricky believes that he is setting an example for his family by obeying moral and legal codes; after successfully attaining an asylum-seeker permit after years of renewing his passport at the border, Ricky brought his uncle to the RRO to also legalize his stay.

> You see, not I'm going to other country just to make something which is wrong or stealing or killing, no. I'm going maybe somebody can employ me, and I must help, what? My, my, my family and my brothers, so that I'm teaching them something which is good, and that's then, because if you went to school, you learn something, then after that whatever I'm teaching them, is what they can do. If I'm doing something wrong, them also, they also, they will be wrong. You must smoke a ganja. You must do what. They'll do the same thing, you see, yeah, because I'm teaching go to mosque. Go to mosque, respect your mother, respect your mom, respect everybody. / Because you do respect you and everything will go smoothly and it's exactly when I come here, you can see me, I don't have any scratch. This thing (points to scar on face) is what, injection, you see? (Ricky)

Respecting others and exercising a disciplined life, Ricky expected his good deeds to come back to him throughout the course of his blessed life. He had a deep commitment to his family, willing to forgo marriage to provide financial support, and wanted to live a life of example encouraging his family to also live well.

While not speaking directly of his own rearing, Dylan stressed the importance of discipline and obedience during childhood. Dylan stated that one problem with shifting to a multi-party democratic system was the leniency that develops in childrearing, and he strongly opposed youth claiming rights and rebelling against their parents by threatening to call upon police to avoid punishments.

> (Laughter.) You see, we respect that children should be raised in a normal way, in the normal family way. Go to school. They've got their own rules. You've got

> your own rules in your house. By five o'clock, have to be home whatever the case. But, eh… you know, children can even go against that. Yeah, they can challenge you. They can challenge your, your house laws anytime. They can break things. (Laughter.) And, they can do whatever they like. You see, you tell them maybe, "You don't smoke." They will smoke. "You don't drink," they will drink. And, you don't have the power to stop them once they start doing their things. "You don't go out with boys." "You don't go out with girls." They will do whatever they feel like doing because they say, "I've got the right to." You see? (Laughter.) That's the bad thing about democracy. (Dylan)

Dylan advocates a system of corporal punishment to instill discipline and values into children. He was worried about the decay of the traditional system with parents maintaining ultimate authority and control. Dylan was not yet out of status and explained that he would return to Malawi if he was unable to secure an asylum-seeker permit and legalize his stay. Although he was vocal in his disagreement with the immigration policies in South Africa, Dylan conceded that he would comply and would not risk living undocumented.

B. Traditional Authorities and History

In eleven of the fifteen individuals, the role, responsibilities and relationship with the Traditional Authorities (TA) provided insight into respondents' conceptions of authority and the division of power between national and local governance. Several respondents depicted a transition from the respect for TAs to respect for the national government. As the TA and government of Malawi were seen as working in unison, the respect for one extended to respect for and obedience to both.

Although the descriptions of Traditional Authorities varied, there was consensus amongst respondents that community members do not disobey the TA. When asked whether individuals disobey their TA, Walter was initially aghast and amused by the idea, and then described the consequences for deviance as the following:

> He's just chased away from the village to go away from the village. Yes, because that is the responsibility or the obligation of the chief, yeah, to command everybody that you must do this and then you must go to follow that. Yeah. (Walter)

The threat of excommunication from the village is sufficient for the TA to maintain order and authority in the community. Tyler also captured the commitment of obedience to the Traditional Authorities, and stated that although one might not understand the rationality entirely, he or she will obey the TA.

> Yeah, but TA, I'm not sure, you see. I'm not sure because if maybe they want to come TA into our face and say, "No, don't do this and this." Okay, we're going to accept, but I don't know, other side, what they doing there, you see? Yeah, because person you can't go inside his head and see what he thinking now. (Tyler)

Traditional Authorities' maintained exactly what their title indicates: traditional authority. Out of respect and tradition, community members gave credence to TAs' word; although their roles have changed over time, the TAs were a constant and direct source of authority for respondents. In most instances, TAs' primarily roles were described as an advisor, a community liaison and advocate to the national government, and as an adjudicator of small grievances. The balance and division of power between the national government and the Traditional Authorities were described at length. Respondents indicated that TAs will generally rely upon the law of Malawi to maintain order in the communities, and they will work closely with the national government. While recounting experiences with crime and justice in their communities, several respondents revealed an hierarchy of authority and described various scenarios which would require different types of justice. On all but one occasion, respondents stated that major offenses would be dealt with by the police and national government and minor offenses would be handled at the community level. Below, Stanley and Elliot capture the sentiment of these responses.

> It's from the British Colonial, that's why he's taking, the government to take the power to give the chiefs to help us. / Oh, the chiefs they are controlling the people. Don't do that. You can do that and do that. You know. / Yeah, it's good. Like to save the crime and to, like, you know the people from Malawi, they are good people and they are working hard. And the spirit from relationships, it is good. (Stanley)

> These big offenses it mean that the government can what, can do it. I 'll give you an example. Maybe I'm married, and I've got a married, marriage, marriage certificate, I don't think a Group Village Headman can do on that because I've registered to the government. I've not registered with the Group Village Headman. Maybe there's, the *Bible* there are, there are other places where by you can break with the family, maybe you don't want the girl or you don't want the man, so if you have registered that marriage it becomes very difficult if say big offense, to say that it's going to be sorted out by the, what? By the Group Village Headman or the TA, no, the government can act on that. But, if you have not registered, no, you still go to the Village Headman and sort out that problem. Yeah. But, if maybe you have registered, it's a minor offense or a minor problem, still the Village Headman can sort it out. (Elliot)

Elliot's account of the minor offenses not included in the excerpt, stealing, and the major offense, adultery, signify his relationship and understanding between the TA and the government of Malawi. This statement demonstrates an overlap between the legal and Biblical codes as well as between the two sources of governance, the TA and national courts. With a major offense, Elliot stated that it's understood one must go to the government; however, Elliot's further comments indicated that he believed if one were to bring a petty offense to the national government, the individual would be ridiculed by the officials for bothering the state with trivial matters that would best be resolved with the assistance of the TA.

While discussing origin of chiefs' respect and the relationship to the current government of Malawi, Andy clearly outlined his perception of the source of law and obedience for the legal framework.

> Well, mm, I think if you look at, if you look at the original Africa. You know, it was chieftancy and what-have-you. So, that great respect for chiefs dates back to our forefathers back when. So, this law is something that has just been developed. It's always been there. It's always been there. You know, if we read

> our culture back when, whenever the people started, you already knew they could describe when somebody does this, this is what, but it was said. Now, because people want to be more organized, that's when they write, but it (the law) originates from as far as maybe, I will say, the first few people in Africa. / Yeah, to have it written down is better because when somebody commits a crime, you're able to see that it's a crime. Literally, it's written down somewhere because it's not easy to argue, to say it's a rule, so what if somebody says it's not? Yeah. But, when it is written down, everybody is sure, so you adopt it, you abide by it, it works. (Andy)

Andy continued his description by tracing the history of the slave trade, Christian proselytizing, colonialism, single-party rule and finally, the multi-party system of democracy currently practiced in Malawi. Law, according to Andy, was always present in different forms, so the respect has not waned nor wavered over the history of man. Andy asserted that law is best written down as it is 'more organized' and mitigates any ambiguity or space for contestation which allows for its continued success in governing the people.

Stanley's account of governmental authority covered a range of periods throughout Malawi's history as well with references to the biblical teachings, British colonial law, Traditional Authorities and finally, representative government. Stanley indicated that the laws take hold and achieve authority when there is agreement between the government and the people by taking a vote amongst the general population and the parliament. This concept of representation was applied equally by Stanley at the community level, asserting that twenty people consenting is sufficient, but also at the national level. As he later recounted experiences with his village TA, Stanley demonstrated through his apparent contradiction that though he agrees with national law in principle, he will follow his TA's word in practice even when it runs counter to the national legal system.

> Stanley: The government he agreed to these to the people because it is a vote from the people.
>
> Interviewer: A vote from the people?

Stanley: Yes.

Interviewer: For the law and punishment?

Stanley: Yes.

Interviewer: Who takes the votes?

Stanley: The people. The government, he asking the people. Maybe government, he find the people, twenty people, you agree to these things? Yes. And voted. And he take this vote to go to the parliament and again to vote.

The role of the Traditional Authorities remained a prominent source of authority in respondents' explanations of law, governance and obedience. The distribution of power and responsibility between the national and local levels appeared to successfully maintain order in the communities. Furthermore, TAs were able to administer tasks and delegate responsibility to the village members by organizing community policing, encouraging community members to turn over criminals to the police and even administering a counter system of vigilante justice.

C. Civics Education

Civics education, a noted objective in the Malawian educational system, proved influential in several of the individuals interviewed (Nsanja 2006). Below, Elliot explores his conception of good citizenship as he learned in formal civics courses. Although he claimed that much was forgotten, he recalled the reciprocal relationship between citizen and state.

> Um, one is, eh, the right of a citizen. What the citizen, a citizen has got rights, and uh, road safety. And, as a, I can say like a, like a citizen of that country, what can you do for that country? Because we not that just wait, just sit down and wait for what the government can do, but also, what can you do for the government. So, I learned that. And the other things because it's so long, I know some of these and some of these I've forgotten it, but if I can go through my books, I can just tell you that this and that. (Elliot)

In two additional interviews, respondents made references to the Malawian Constitution as a source of information for learning about the laws of the land and citizens' rights. However,

Andy believed that citizens in the villages would frequently disregard the law in order to maintain a sense of community amongst community members. Andy stated that social pressure stopped individuals from pushing for harsher punishments for criminals; he believed that additional civics education would create a sense of greater buy-in amongst the community which would in turn, create a greater willingness to enforce the rules.

> That's too bad, honestly. That's too bad. Yeah. … And, it's not, it's not easy sometimes to, to go against the norms in the society because it's like, you may see it is bad, but when you try to take it on, you just like, you find yourself one-day opposing side, opposing everything. So, it's been no more, they can't just see it as bad. Somebody needs a great effort to civic educate the people. (Andy)

Although influential, the government's civics courses do not appear to be a prominent source for generating authority or instilling obedience to national laws.

D. Intersection of Religion

In the fifteen individual interviews, there were four Muslim respondents and eleven Christian respondents. Of these, thirteen individuals stated that they considered themselves religious and continued to practice either in a mosque or church or with independent *Bible* study. Further, two respondents were living in churches and explained that prayer was a prominent part of their daily activities. As previously described, religious codes were a source of both comfort and exception as a higher law for respondents. Religious values also appeared to influence respondents' understandings of crime and punishment.

> If I can kill a person right now or even by the gun, you know to kill someone is, like, something a very big sin in Malawi. If I can kill or even like a gun or that person is wrong to me, then the government has to kill me, I guess. (Victor)

Above, Victor shifted from a description of crime as a violation of law to a 'big sin' and explained that the punishment would be immediate death without a trial. He argued the people would know that killing is a sin punishable by death. The value and sanctity of life as irreplaceable arose in several interviews while on the topic of crime.

Stanley also relied upon the *Bible* for his conception of punishment and justified vigilante justice by citing the story of Herod and the crucifixion of Jesus. Stanley emphasized that executions are the most steadfast method for ensuring that criminals do not commit additional violations of the law.

> Because, you know, like, the people, maybe you can put in jail five years, you can make the jail to work in five years, to come out, you know, maybe do another thing. So, that's why maybe you take to burning the people if you're stealing. / You want the example from the people, you taking this, this things from to the *Bible*. / Like the Roman, you know? (Stanley)

Similarly, Elliot expressed that the magnitude of the crime of adultery was further amplified by the biblical prohibition of the act. While describing instances in which citizens would rely upon the national government, Elliot diverged from state legal codes and strengthened his argument with biblical concurrence.

> Maybe, you and me we are discussing here, we have just quarreled. That can be a minor problem. But in the family, maybe you have caught your wife doing adultery with somebody else or doing sex with somebody else, that can be a major, a major offense. Why? Even the *Bible* says that, that offense, that is the last of it, and that, if you have registered, can very difficult to go to the Group Village Headman to say, "Ah, no, you see, my wife has done this, so I need…" No, you go to the government because that's a major offense now, but if we have just quarreled, then we should go to the government, what the government will say us? That, "These people they don't have heads. They are not intelligent enough." (Elliot)

In the excerpts above and frequently throughout interviews, the religious affiliations and affinities of respondents demonstrated a relationship between moral and legal codes, obedience and justice.

4.3 Truth, Lies and Good Fortune

A. Lies

In all but four of the seventeen interviews, two individual and two group interviews, respondents fully intended to answer questions about their personal history in the RRO with full honesty. In the remaining four interviews, however, dishonesty remained part of a strategy for survival. Respondents appeared conflicted and even troubled by what they viewed as a necessity to lie, but dishonesty was an unavoidable compromise to secure documents. An excerpt from a group interview below illustrates this understanding.

> Max: Yes, it is against the law, but life is all about compromise. So, you have to do what allows you to take the paper whether it's lies or truth.
>
> Interviewer: So, if that, um, so if that's against the law…
>
> Oliver: It's against the law. If you are lying, always, it is against the law. / Because if you say the truth, they can't give you that paper. So, there's nothing you can do if you don't have that paper, so you have to lie or to say the truth like Zimbabweans. Most of the South Africans, they know what the problem is. But for others, others, like Malawi, the problem is political impasse. So that political impasse also is affecting our economy, so those differences is affecting each and every citizen of Malawi.

Lester also expressed a similar perspective as achieving one's goal, in this instance an asylum-seeker permit, superseded any moral reservations regarding dishonesty. Judging from the conditions, argued Lester, individuals will act strategically to maximize personal gains.

> Life is about compromise. You can't be hundred percent. Maybe somewhere according to the situation, you have to lie to get through. In some places where according to the situation, you have to say the truth to get through, so it's going to depend on the situation. If the situation allows you to get the lies to get through, you lie! If the situation doesn't allow you lying, you'll be in trouble yourself if you lie, you say the truth! So, it's gonna depend on the situation. So, you're going to compromise yourself. (Lester)

Andy, the tourist who was robbed of his documents, explained that he fully recognized that he did not qualify for refugee status, and when asked what he will tell the officials in the RRO, Andy responded with the following:

> Well, mm. … I have to cook-up a problem back home that is not a true problem at all, so. Uh, I don't even have to mention what I am. Meaning, I have to

> mention my name, but the real environment, why I'm visiting the place. You know, I just came to visit a friend, just holiday maybe and I'll go back home. … But, down here, this situation, I think, when you tell them, "I'm visiting a friend," they will think you're going to work. You're not, that's the nature. Yeah. (Andy)

For Andy, he believed the truth would appear implausible and raise suspicion barring him from his return home. Although he did not want to lie, he felt bound to dishonesty by his situation and by the system which would reject or punish him for speaking the truth. Beyond his own compromised honesty, Andy expressed his belief that other asylum-seekers also do not qualify and are likely planning to 'cook-up some stories'.

de Certeau examines the roles of 'strategy' and 'tactics' in deconstructing everyday activities (Buchanan 2000). "A tactic," defined as "a calculation determined by the absence of a proper locus," distinguishes the daily practice from a strategy because of its lack of spatial positioning in its own right (Buchanan 2000, 87). Tactics are operations that must take place within the space of another broader structure. Accordingly, as non-*bona fide* asylum-seekers access the RROs they are employing tactics within the overarching asylum apparatus. While complicit with the structure and the state's authority to grant documentation and status determination, non-*bona fide* asylum-seekers operate within the margins of their marginalization to negotiate their exclusion from society (Scott 1986). These respondents, seeking asylum dishonestly, are reaffirming the dominance of the state, but also enacting subtle subversion at the fringe by resisting illegalization and irregularization by the state. These respondents viewed their intentional dishonesty as illegal according to the state, but their transgression would go undetected and therefore, unpunished.

B. Truth and Luck

Several respondents were unsure whether they would qualify for refugee status or secure their asylum-seeker permit based upon their personal histories, but they had the full intention of honestly answering the questions in the RRO. Frequently, they expressed a belief that their fate would be left up to chance or luck. A large degree of superstition and chance pervaded these interviews. Out of the fifteen interviews, five of the respondents did not believe they were refugees, seven believed they did qualify for refugee status according to their experiences in Malawi, and three respondents had a mixed opinion on their claims to refugee status. However, of the five individuals that believed they may not qualify, only two conceded that they would likely lie given the opportunity to enter the RRO. These two individuals were also the most exceptional cases with nearly full certitude that they would not be considered refugees as one was a documented student considering lodging an application and the latter was Andy, the visitor who was robbed of his passport.

> Xavier: No. Maybe by luck, they can help me, but according to my story, ah, they can't, I can't be qualified.
>
> Interviewer: Do you think it's a problem to apply for a status that you might not qualify for?
>
> Xavier: Ah, my problems, that's why I'm saying there's no way I can do. To stay here without paper is a crime, you see, so there's no way I can do. The way I can do is to get the paper for these three months to get the money for transport to go back. Yeah, that's what I need. But, it's not my wish to be in the line of the refugees, but according to my problems, I can do so. / Yeah, that way of issuing an asylum paper, the government is helping. Yeah, I appreciate the government.

In the previous excerpt, Xavier expresses his limited options as an undocumented migrant in South Africa. He states that any questions from officials in the RRO will be answered honestly, and only with luck, will the government assist him by providing an asylum-seeker permit. Xavier did not find lying a viable option, and he preferred to leave the outcome of his application up to chance. Below, Walter explains a similar perspective.

> No, we just tell them directly that we are from Malawi. Then, they are going to interview us. Then that interview, we are going to be, it's going to be answered by us. So, the day after they are going to take our fingerprints and do any other things which they know. / Yes, they have any story. Yes, they have stories. Their stories they are saying that there are not any difficulties. They just register and take the fingerprint, and then after, if they are lucky, then today they are going to collect the papers, or tomorrow they are going to take their papers. Yeah, according, it depends according to the way they have told their… (Walter)

Walter did not believe he qualified for asylum-seeker status, but felt that he would answer the questions honestly with the hope that he would join the string of lucky applicants receiving asylum-seeker permits.

C. And the Truth Shall Set you Free

These respondents, seven of the fifteen individuals, believed that they would qualify as a refugee based upon the merit of their asylum-claims. They intended to answer honestly and receive asylum-seeker status accordingly. Elliot was adamant in his defense of the merits of truth. The following excerpt captures his sentiment, although not in its entirety. Elliot also believed that individuals with lesser grounds for refugee status had walked away with asylum-seeker permits, so he saw no reason why he shouldn't also expect to receive a permit.

> Why should I change my story when I know my story? I know my story from A to Z. If I will change my story, it's a bad. It will be a mess. Why? I will be saying something which I don't know. … Again, the problem is that I don't have anything. So, then another reason I came here, maybe I can find a school opportunity, maybe I can go back to school. Yeah, that's what I'm thinking. So, the other people are qualifying. People I know them, that, maybe they are well off, more than me. Why not me being given? And why, if I'm inside there, changing the statement? Why should I change the statement? That means I'm lying. I should not change the statement because if I have changed the statement, I'll be given problems because those people don't just say, "Because I've seen this face, I will give you. I'll give you this paper." No. This, these, those people who are inside there, they are really, really keen to their work. … So, when I go inside there, there's no means of changing the statement to… there's no way I will change the statement because I already know why I'm here. Yes. (Elliot)

Above, Jack states that all of the asylum-seekers, including him, answer questions honestly. He felt confident in the likelihood that his claim would be received positively, and he would be rewarded with an asylum-seeker permit.

> Yeah, those people they say one hundred percent. They are saying the truth, they give true reasons when they are interviewed. / But according to me, I'm going to say everything true, what makes me to come here. (Jack)

Below, Ricky states that during his application with RRO, he answered all of the questions honestly and he left with an asylum-seeker permit. He had returned to the office to assist a family member with their application.

> I tell them like the way I'm telling you, that my, I'm poor. My country is poor, and I came here maybe when I come here maybe I can difference in something because if they come through political things, also things become worse, you know? You see? And you, we have got no work there, you see? I did tell them the same, and when I was doing the interview, I tell them the same. No food. How can I survive? (Ricky)

The three individuals who were uncertain of whether or not they qualify for refugee status were conflicted because though they did not believe they were refugees, they believed they qualified under the law and would be granted asylum by the officials in RRO. This finding, ten of fifteen respondents expecting a positive acceptance from the RRO, is consistent with data collected from a survey conducted at the RRO by the Forced Migration Studies Programme which indicated that asylum-seekers, even in instances in which cases are ultimately rejected, frequently believed that their cases for asylum were credible and would be granted during the adjudication process because of their particular understandings of the definition of 'refugee' (Vigneswaran et al 2008b).

CHAPTER FIVE: CONCLUSION

Through the use of in-depth interviews with Malawian asylum-seekers at the Crown Mines Refugee Reception Office in Johannesburg, this study sought to explore migrants' conceptions of legality as they applied for asylum in the Republic of South Africa. This research concentrated on a population frequently considered non-*bona fide* refugees in order to understand respondents' motivations for seeking asylum in system that requires significant personal sacrifices with arguably limited returns on the investment.

The study found that although studies have documented shortcomings in protection for migrants with asylum-seeker permits, asylum-seekers widely believe the document will afford safety from deportation and police harassment, access to employment and social services, and reference as a form of identification. The instrumental gains attributed to the permit, although a motivation, are not the sole reason for seeking asylum. Respondents exhibited complex spectrum of legal consciousnesses with overlapping explanations for legal obligation. Sarat found that people generally believe that the law must be obeyed in nearly all instances; he also presented several additional categories for conceptualizing legal obedience (Sarat 1977). The findings of this study suggest that the respondents also share a great respect for the law and believe that it should be obeyed. However, as their tenuous undocumented status presents tremendous difficulties and the threat of future punishments, asylum-seekers also made appeals to higher codes, such as religion, universalism and maintenance of life, and offered a host of exceptions to legal obedience. In twelve of fifteen individual interviews, migrants had lapsed in their temporary visa permits and were currently undocumented. These respondents expressed a great deal of concern, and they believed that they were struggling at the RRO to secure documents and legalize their stay. Respondents also constructed the legal framework as a game

which can be seen as an agreement of terms amongst the state and either its citizens, which would present a disadvantage for migrants, or with its visiting migrants.

This study sought to investigate individuals' legal consciousnesses and conceptions of legality after migrating from a post-colonial country, living in the midst of transnational processes and struggling to secure documents legalizing their stay in South Africa. While sociological studies on socialization and human development frequently suggest one's orientation towards legal obligation is determined by adolescence, this study exhibits qualities of a slightly varied vein of research which contends that individuals maintain a degree of flexibility in his or her legal consciousness that can vary with conditions (Sarat 1977). However, the respondents indicated that their understandings of law and authority were influenced by their families and relationships with Traditional Authorities. Additionally, respondents' conceptions of legality and justice also coincided with their religious codes and education; though, this study is careful to note that the relationships with these influential facets are useful in understanding respondents' legal consciousnesses, but they do not attempt to identify a solitary influence or causal connection.

Non-criminals found themselves in a criminal situation due to conditions they believed were beyond their control, such as the state's inability to process applicants, poverty, corruption and xenophobia (Calavita 1998; Kyle 2008). Seeking asylum was seen as an opportunity to rectify the situation and once again, live in compliance with the laws and with the corresponding protection and benefits. Although citing reasons of extreme poverty, lack of education or employment, family discord or the temptation of 'greener pastures' for their migration, in seven of fifteen individual interviews, asylum-seekers believed they qualified for refugee status. Additionally, three respondents stated that although they do not consider themselves 'refugees', they believed

that the South African government would classify them as 'refugees' after they entered the RRO. This finding is consistent with research that suggests many asylum-seekers, even those who may eventually have their cases denied, believe they are applying for a status for which they are qualified for and entitled to according to their understandings of immigration law (Vigneswaran et al, 2008b). Furthermore, all but two of the fifteen individuals interviewed believed that, given the opportunity, they would answer all questions pertaining to their asylum application honestly. The two conceding that they would be dishonest were in highly unusual situations, one being a documented student and the other a tourist who had been robbed of his documents while traveling in South Africa. Respondents who were unsure whether they would qualify still maintained that they would answer truthfully and with luck, they hoped to receive permits from the officials in the RRO.

Findings from this study are intended to contribute to the body of socio-legal literature examining legal consciousness and migration. By exploring the multiple faces of legal understanding and asylum-seekers' motivations for lodging applications, this research sought to undermine common assumptions and allegations that dismissed migrants' efforts in applying for asylum as abuse of the system. This study suggests that asylum-seekers, even those whose claims may not meet the legal criteria of asylum status, largely believe that they are making an honest effort to legalize their stays and live in accordance with the laws of the land.

APPENDIX 1: SUMMARY OF DATA COLLECTION

Interview*	Length in Minutes	Transcript Length in Pages
A - Group	63	19
B, 1	52	23
B, 2	49	19
B, 3 - Group	66	18
C, 1	68	24
C, 2	58	35
C, 3	68	29
C, 4	60	27
D, 1	95	26
D, 2	59	29
D, 3	33	19
D, 4	52	20
E	87	27
F, 1	87	29
F, 2	65	32
F, 3	41	24
F, 4	67	25
TOTAL	**17 hours 50 minutes**	**425**
AVERAGE	**63**	**25**
RANGE	**33 to 95**	**19 to 35**

*** The letter represents the date interviews were conducted and the number indicates the order in which interviews were completed each day.**

APPENDIX 2: INTERVIEW INSTRUMENT

Project Title: Exploring Conceptions of Legality and the Meaning of Asylum Law in Johannesburg
Instrument Title: Individual Interview Guide
Method: Semi-structured, face-to-face, in-depth interview
Topic: Legal Consciousness, Asylum in Johannesburg
Target Audience for Research: Socio-legal Scholars
Sample for Interviews: Individual Malawian Asylum-Seekers
Goal of Interviews: To uncover migrants' legal consciousnesses and understandings of the meaning of asylum.

The following provide a general guide for interviews. I anticipate a great deal of flexibility to ensure the flow of conversation. I will develop follow-up questions to the responses provided by respondents to fill gaps and develop a full and rich body of text for analysis. To the right of the talking points, there is space to provide any additional notations of importance that may contribute to the analysis through context or reflexivity at a later point.

To be read before beginning the interview:

Greetings! My name is Kara Scheiden, and I am a student at the University of the Witwaterand (WITS) in Johannesburg. I am conducting research on the experiences of migrants residing in the city. I do not work for the government of any country or any organization.

With your permission, I would like to discuss your experiences, particularly with the law and asylum system, throughout an in-depth interview. The interview may take up to an hour, and I can not provide any compensation for your time beyond my sincere appreciation. Your ideas and experiences are important, and I would like to include your valuable account in the research to provide a better understanding of law in migrants' lives. You may choose not to answer any question, and you may also terminate the interview at anytime. I will request your full honesty and protect your confidentiality. The information you share will not be revealed to government authorities or police agents, and I will not disclose any information that could reveal your identity.

In order to concentrate on our conversation and refer back to your ideas at a later time, I would like to use a tape recorder. We can pretend that it is not here throughout the discussion.

If you agree, can we begin?

Interviewer should sign in the appropriate box.

Yes	**No**

I. General and Biographic

Date of Interview:
Location of Interview:
Time of Interview:
Duration of Interview:

Sex	Male
	Female

Age	

Marital Status	Single (never married)
	Living with partner
	Married and living together
	Married but temporarily living apart
	Divorced or Permanently Separated
	Widowed

When did you arrive in South Africa?	Month
	Year

Did you come directly from Malawi to South Africa?	Yes
	No (route) _____

Do you live in Johannesburg?	Yes
	No

If yes, which neighborhood do you live in?	

With whom do you live with?	

What is your ethnic background (tribe or clan)?	

If you have one, what is your religion?	No religion
	Protestant (Christian)
	Muslim
	Catholic
	Other

Do you consider yourself to be a religious person?	Yes
	No

How do you practice religion? Has this changed since you relocated to South Africa?	

II. Experiences in Malawi

Where are you from in Malawi?	

Is that rural or urban?	Rural
	Urban

How long did you live there?	

Can you see yourself returning?	Yes
	No

How much formal education did you complete?	None
	Finished primary education
	Finished secondary Education
	Finished tertiary education (BA, BS, Diploma)
	Post-graduate degree (MA, PhD, PGD)
	Other: _____

Did you complete civics classes in school?	Yes
	No

What did you like or dislike about school?	

Were you working in Malawi?	Yes
	No

What type of job did you have? What did you like or dislike about your job? Did you have any difficulties or problems?	

Did you vote in any governmental elections while in Malawi?	Yes
	No

Why did you/did you not participate?	

What do you miss about home? How does it compare to Johannesburg? Compare/Contrast.	

What did you think about the government in Malawi? How was the government discussed in your family home when you were growing up? What do you think of the government now? Do you know anyone that went to court? Ho was that?	

Why did you want to leave Malawi? Are you glad that you left Malawi?	

III. Experiences in Johannesburg and Understanding of Asylum

Why did you think of coming to South Africa? What had you heard about South Africa before you came? What kind of place did you imagine South Africa would be?	
How has your experience here been? (positives? Negatives? Feel effects of the recent xenophobic violence? Were you or anyone you know affected? How did you respond? Where did you go? Was this surprising? Were you protected? Safe? Community?)	
Employment (Are you working? Any problems with that? What did you do? Stories? Relationship with employer? Daycare?)	
What do you think of the South African government? What have you heard about the South African government? What are the different parts of the South African government?	
Crime in Johannesburg (Have you witnessed or experienced? What happened? What would you do if you witnessed a crime: theft? Attack? What is the biggest criminal problem? Why do you think that is? Interacted with police, courts or government offices? Why/why not? Is it ever okay or just to break the law?)	
Justice and Legitimacy (Definitions. What does it take for a government to be legitimate? Do people take the government seriously? Why? Follow rules? Believe what government says? What is justice for crimes? Who says? How do you solve these criminal problems? Is everything against the law a crime?)	
Documents (What do you have? Asylum-seeker permit? What does that mean? How does that help? Does it? Have you heard things? If not, problems? What do you do? Who can you count on? Legitimacy with documents? Are these documents helpful? What do they mean? What happens if you do not have documents?)	
Asylum (Are you applying? Why? Do you know someone who has? Advantages? Why? What was his or her experience? Community opinion? Feelings? Problems? How did you learn about it? Who told you to apply/not apply? Why? What if you don't apply? Outside of the law? State provisions? Can you tell me a story about applying for asylum?)	
What is a refugee? (Are you a refugee? Do you qualify and deserve this status? Is this different from migrants in temporary S.A. shelters? Legally different? Who can be a refugee? What is special? What does it mean? *Paraphrase definition* Do people apply for asylum without meeting criteria? What do you think of this? Wrong or is it	

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