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“Understanding Rights as a Political Instrument in Migration Governance: A  
Genealogical Case Study of New York City’s Right to Shelter and Migrant  
Arrivals”

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My family has shaped me and, in turn, this thesis. My father, Carlos, is the reason I am passionate about migration. The stories I grew up hearing of his emigration from Nicaragua are the foundation of my pursuit of this master's degree. My mother, Emily, is my first teacher, instilling in me a passion for learning, and has been my dedicated reader and advice giver throughout my entire education (and, of course, life). And thank you to Georgia, who moved to live in Mexico City with me and helped me make a home away from home.

## **My Positionality as a Researcher**

I first learned about New York City's (NYC) Right to Shelter when I worked as a paralegal for the New York Legal Assistance Group (NYLAG). In this position, I worked alongside lawyers who represented tenants in eviction proceedings in housing court. One of my responsibilities was to write advocacy letters for clients who had applied for a One Shot Deal, a city loan to pay off rent arrears. These advocacy letters were sent in applications to the Human Resources Administration (HRA) of New York, the government agency in charge of the city's social services programs. HRA was notorious, among NYLAG employees, for its bureaucracy, but our clients absolutely depended on the services it provided. The One Shot Deal, a payment the city government made directly to landlords, was all too often the only thing keeping our clients from losing their apartments and entering the shelter system. My advocacy letters always ended with the same message: "My client is at extreme risk of entering the shelter system, which will cost the city significantly more than a One Shot Deal to keep them in their home."

Thus, my association with the Right to Shelter was that it was a worst-case scenario for my clients. The NYC shelters were there in a time of crisis, but it was where clients went if we failed to effectively help them. Advocacy letters attempted to tell our client's stories: explain why they fell behind on rent, portray a full picture of the challenges they faced. They also assured HRA that our clients were capable of paying their rent moving forward if they received a One Shot Deal to prevent an eviction. Advocacy letters were in essence storytelling, explaining how Covid-19 caused job loss and prevented a client from paying their rent; describing how caring for a sick relative left a client in a financial crisis; recounting the horrible conditions in an apartment that prompted a client to stop paying rent. I saw the Right to Shelter as a last chance fallback, but what we really wanted was for our clients to stay in their homes.

After two years of working as a paralegal, I decided I wanted to continue growing and gain new perspectives, which prompted a move to Mexico City to pursue a master's in Migration Studies. As I wrapped my mind around being a student again and embarked upon a two-year thesis project, the Right to Shelter persisted in my consciousness — in news articles, in anecdotes from family and friends back in NYC — only this time in conjunction with a newly identified "migrant crisis."

How uncanny for me to leave NYC to study migration, only for a “migrant crisis” (for that’s how popular discourse characterized it) to take shape in the city just as I left. And a crisis so interconnected with the housing and shelter issues I had learned about in my previous job. I wanted my thesis to tell this story, but as a novice social scientist, I had no idea how to do this.

As one might have concluded at this point, I am drawn to storytelling, but as I navigated social science for the first time, I felt confounded by the “science” of it all. Whether it was hard core positivism asking me to explain social phenomena using three (maybe, just maybe, four) variables. Or an introduction to social science methodologies that wanted me to answer questions I had never before considered: “Are you using qualitative or quantitative methods?” “What are your general objective and your specific objectives for this investigation?” My inner dialogue was, “Well, I don’t know, let me just learn and write about what I learn.” But of course, this isn’t how social science works, and I slowly gained a deeper appreciation for how research can be a complex interplay of epistemology, theory, and methodology. My research could reflect who I am, what I value, and be a rigorous construction of knowledge all at the same time.

So who am I? I am a former undergraduate humanities student studying the social sciences for the first time. I am a native English speaker navigating a Spanish-language master’s program. I am a New Yorker living in Mexico City. I am the son of a Nicaraguan immigrant father and an American mother. These are snapshots of the context and background I bring as a researcher that have informed my perspective of the world and my acquisition of knowledge. What do we take for granted in moving across and between different environments? Whether that environment is an academic discipline, a language, a city, or a cultural heritage, we are susceptible to assumptions about knowledge, words, and even values. My encounters across worldviews, pedagogies, and cultures have formed the epistemological foundation of my research. I am interested in exploring subjectivity, in questioning universals, in empirically analyzing the historical transformation of social problems to better understand our present and imagine new solutions.

As an English and Spanish major at Amherst College, my undergraduate education revolved around an open curriculum. As a student at Amherst, I learned a little bit of everything but was a master of none. A snapshot of my undergraduate courses: Shakespeare in Prison, Fugitives in U.S.

Law and Literature, Radio Storytelling, Borges and Neruda, The Sanctuary Movement, *Cien años de soledad*, Globe and Planet in Contemporary Literature. I will always remember reading Shakespeare's great works alongside inmates at Hampshire County Jail; a semester-long, delightfully slow reading of Garcia Márquez's magnum opus; writing about slow violence and Mrs. McNab in an essay about *To The Lighthouse*. However, I did not arrive at the Universidad Iberoamericana with a foundation in social science theory and discipline. What I did know how to do was read, interpret, and think critically. Foucault's governmentality invites these three things: it provided me an analytic lens with which to interpret government and think critically about governance.

Similarly, my research methods evolved out of my subjective identity as a student, researcher, and professional. Given my background in literature, I felt confident in my ability to analyze documents and interpret rationalities within government records and legal court cases. My background working as a paralegal motivated me to analyze the juridical evolution of the Right to Shelter and understand how rights are political instruments. I also recognize my position as a New Yorker to be fundamental in my research approach, especially in my ability to understand the terrain and to conduct interviews. My connections to the nonprofit sector, attorneys involved in housing rights, and a community of mutual aid volunteers gives my investigation a critical dimension for understanding the governance of the Right to Shelter and its impact on new arrivals.

Lastly, I want to recognize the opportunity of studying in a different country, the ability to leave my city, only to look back on it through my research. This research is a reflection and indirect documentation of my experience migrating. There are affective qualities here: the nostalgia, my gaze back home to my family and community; the love, pride, and critique I have for my city. There are also very real privileges: the ability to study full-time with the support of a Fulbright grant; my temporary resident's card in Mexico; my trip back to NYC over the summer to conduct interviews.

Studying in Mexico gave me an appreciation for methodological rigor; I developed a respect for academic discipline, a desire to be able to defend my values and perspective of the world with theory and the ideas of other scholars. Mexico City is as much a part of this thesis as New York

City, but in a less explicit way. My professors, my classes, my day-to-day life in Mexico City have all influenced the construction of this thesis and my formation as a researcher. I began writing this thesis building upon what I knew: analyzing texts, working with lawyers, my associations growing up in NYC, the critical gaze I developed at Amherst reading literature. I write this nearing two years of living and studying in Mexico City and I now have a great deal more to build upon. As I look to the future, I hope to apply this thesis, as an academic analysis of local migration governance, to new settings in Latin America.

## Introduction

### What is the migrant crisis in New York City?

We must return to the spring of 2022 to understand the events that led to New York City’s (NYC) “migrant crisis.” Of course, we can zoom out further and consider the impact of a generational pandemic on migration patterns; point to international events like political turmoil in Venezuela which caused an exodus of refugees; analyze the impact lifting pandemic-era laws such as Title 42 had on the increase of asylum applicants in the United States. These are only a few of the infinitely complex factors that shape migration in the American continent. Do not get me wrong, these must be studied, but the case I am drawn to is a local one — as local as a global metropolis like NYC can be. By local, I also mean particular and unique. In other words, I believe the Right to Shelter is an exceptional case which can teach us about the governance of migration and the construction of rights for noncitizens. But first, we return to the spring of 2022.

According to reporting by *The New York Times*, on April 13, 2022, a bus full of migrants arrived in Washington, D.C. from the Mexican border, sent by the Republican governor of Texas, Greg Abbott (Newman & Rubinstein, 2023). Some of these very passengers made it to NYC, but this was only the beginning of an unprecedented surge in migrant arrivals. More and more buses were sent from Texas to Democratic cities in the U.S.: Chicago, Denver, Los Angeles, Philadelphia, Washington D.C., and New York. *The New York Times* reports that the busing program in Texas has significantly shaped migration within the United States (Goodman, 2024). Through the busing program, migrants were transported from border regions to more progressive cities in the interior of the United States. There was a clear political agenda behind this program: to place the burden of new migrant arrivals on the Democrats in an attempt to change the narrative on border security and garner support for restrictive immigration policies.

By the summer of 2024, the Texas busing program directly contributed to the arrival of approximately 45,000 migrants to NYC (Goodman, 2024). This was, in fact, only a fraction of the newcomers: in two years over 250,000 migrants arrived in NYC (Goodman, 2024). Notably, the Texas busing program facilitated the transportation of migrant communities who may not have been able to reach NYC otherwise. Most migrants transported from Texas to New York were

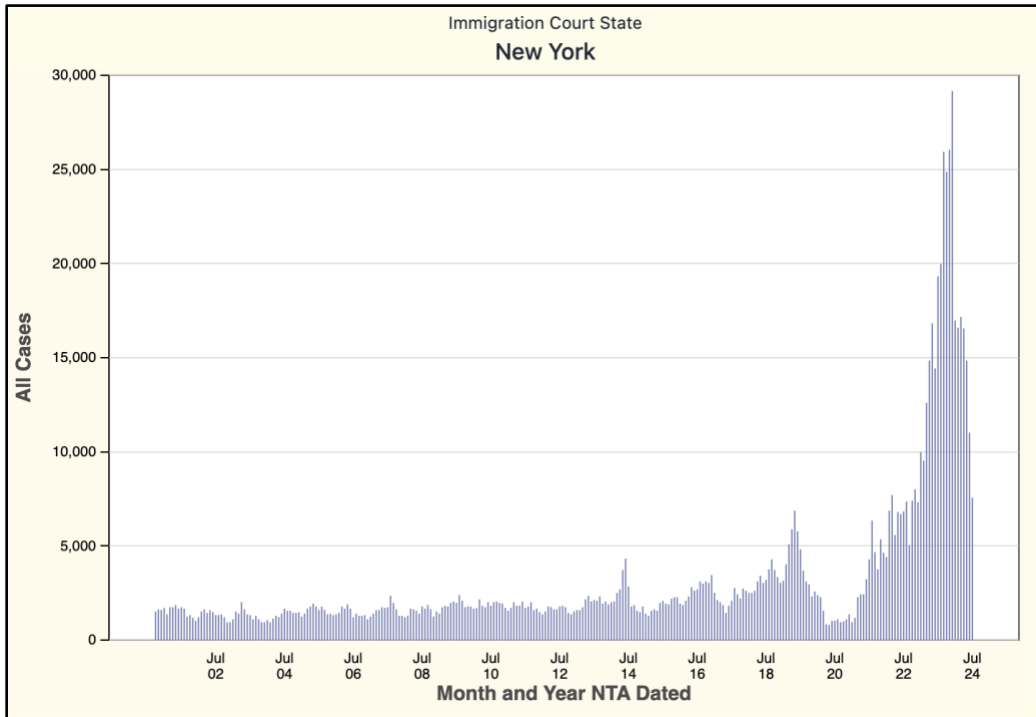
Venezuelans. These new arrivals likely would have ended up in other locations with existing Venezuelan communities, if not for the transportation provided by the Texas government (Goodman, 2024).

Migration has always existed and NYC, in particular, has been a destination of immigrants for centuries, but the influx of new arrivals the city experienced in the span of two years has been unprecedented. *The New York Times* reports that the city has spent around \$5 billion in its response to arriving migrants, and this number is expected to double by June 2025 (Goodman, 2024). The enormity of these numbers helps explain the discourse surrounding migration in NYC for the past three years: crisis. NYC was experiencing something unexpected and for which it was unprepared and, as a result, the city government, media, and citizens were reacting to a perceived crisis. This investigation pays particular attention to the rationalities of a crisis and how this impacts governance and rights.

While this thesis is not focused on broad stroke representations of migration patterns through data, it is useful to take a look at the new proceedings filed in immigration court documented by Transactional Records Access Clearinghouse (TRAC) at Syracuse University. New proceedings in immigration court give an indication of the number of migrant arrivals in a given location. As can be seen from Figure 1, in the spring of 2022, there was a sharp increase of new proceedings in immigration court in New York State, after years of a relatively consistent number. This corresponds with *The New York Times* reporting and the discourse surrounding the “migrant crisis.” NYC was seeing large numbers of new arrivals in a span of time that was highly unusual. Another report by TRAC Immigration on the most popular destinations for asylum seekers by county, puts the influx NYC experienced in conversation with other parts of the United States. According to Figure 2, NYC was the most popular destination for asylum seekers between March 2021 and May 2023. This data collected by TRAC Immigration indicates that, in the past few years, New Yorkers and the city government have been responding to an unprecedented influx of new arrivals.

**Figure 1.**

*New Proceedings Filed in Immigration Court*



(New Proceedings Filed in Immigration Court, TRAC Immigration July 2024)

**Figure 2.**

*Top County Destinations for Asylum Seekers*

**Table 1. Top Five Destinations for Immigrants in Immigration Court Filings During Biden Administration, March 2021 - May 2023**

	Top 5 Destinations	
	Rank	Number
New York City, NY	1	134,848
Miami-Dade County, FL	2	114,408
Los Angeles County, CA	3	74,854
Harris County, TX (Houston)	4	67,550
Cook County, IL (Chicago)	5	36,355

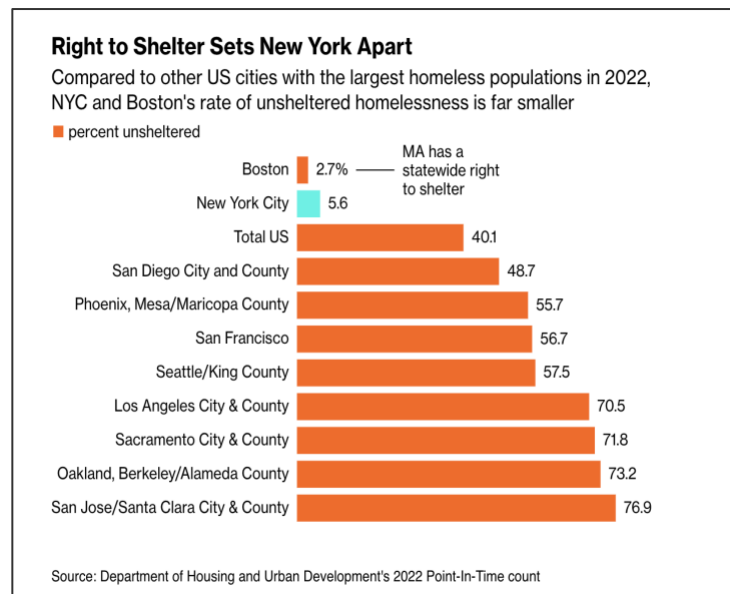
(Top County Destinations for Asylum Seekers, TRAC Immigration June 2023)

## New Arrivals and The Right to Shelter

This thesis will explore the impact over 250,000 migrant arrivals had on NYC's Right to Shelter. Now, what is this "right"? The Right to Shelter is a consent decree, which is a legal term for a settlement in a lawsuit that establishes a legal mandate. In 1979, an organization called Coalition for the Homeless brought a case, *Callahan v. Carey*, against the city government. This case sought to protect the right for homeless men to have a bed in a shelter throughout the winter months. From this case, a consent decree protecting the entitlement to shelter in accordance with the New York State Constitution was established. Today, this entitlement is known as the Right to Shelter. This case study recognizes, as Figure 3 demonstrates, that this consent decree is unique to New York State, and in turn, the city. Furthermore, the Right to Shelter is a foundation of NYC's housing policy and serves as a model for other advocacy efforts on behalf of vulnerable communities. As will be explored further, the Right to Shelter is part of NYC's identity and impacts other dimensions of public policy and social services.

**Figure 3.**

*NYC's Right to Shelter in Comparison to Other U.S. Cities*



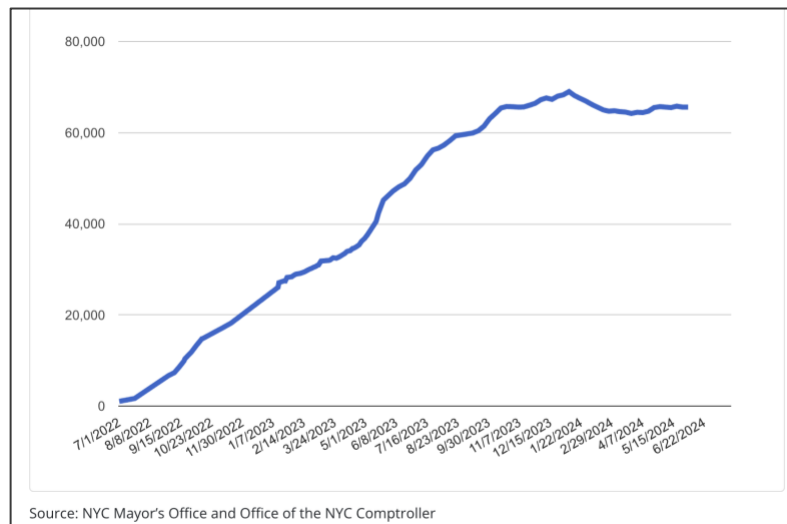
(Holder & Capps, 2023)

This case study seeks to articulate how a social service entitlement for homeless populations that emerged in the 1980s has come to serve and impact migrant populations in the tens of thousands,

four decades later. In other words, migrant arrivals were a population no one envisioned would be the beneficiaries of this right. Another look at city data will help illustrate the relationship between migrant arrivals and the Right to Shelter. The NYC government keeps an Asylum Seeker Census, which documents which social services asylum seekers use in the City. Importantly, asylum seekers are defined as “newly arrived migrants who have come to NYC in need of shelter and are seeking asylum or other forms of immigration relief” (Accounting for Asylum Seeker Services, The Office of the Comptroller). A look at Figure 4 will show the steady increase of asylum seekers in city funded shelters, reaching a high point of around 70,000 in January 2024. Another important statistic the City has documented is that over 199,900 asylum seekers have used the shelter system since spring of 2022 (Accounting for Asylum Seeker Services, The Office of the Comptroller). This provides an overview of the high dependency new arrivals have on city shelters, which has sparked a complex response from the city government.

**Figure 4.**

*Asylum Seeker Population in City Funded Shelter (Individuals)*



(NYC Mayor’s Office and Office of the NYC Comptroller, 2024)

In order to uphold the entitlement to shelter, the City of New York opened Humanitarian Emergency Response and Relief Centers (HERRCs). In other words, the city government has an obligation to provide shelter according to the consent decree based on the State Constitution. According to the Office of the Comptroller, over 200 sites and 15 humanitarian relief centers have been opened in order to provide shelter and essential services to new arrivals (Accounting for

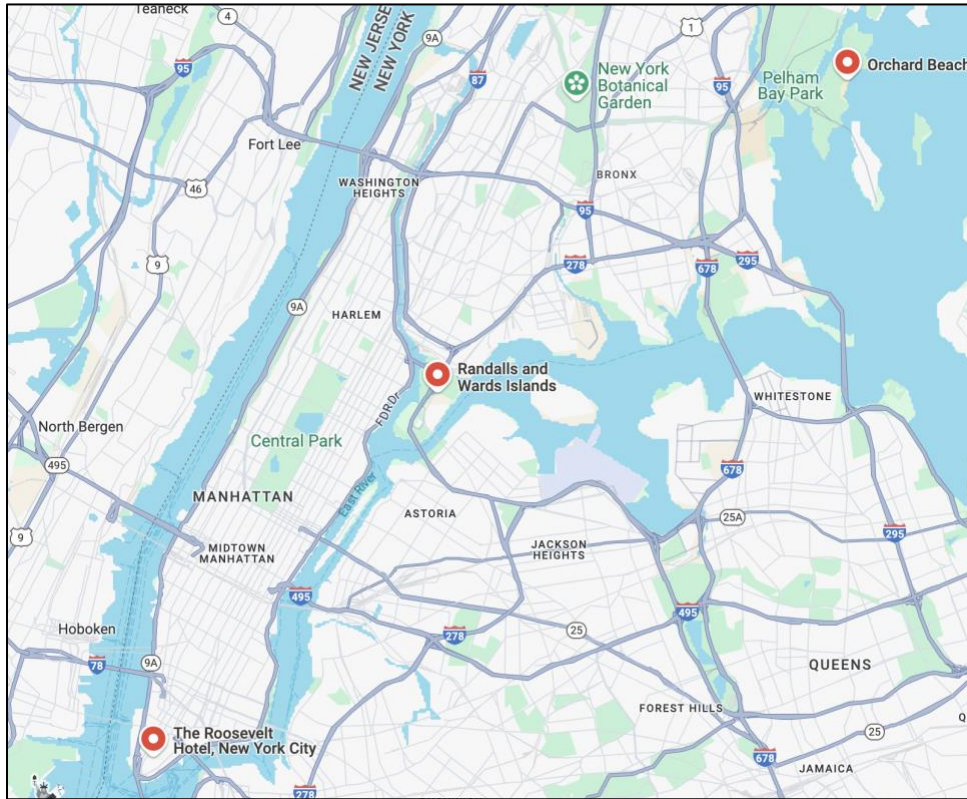
Asylum Seeker Services, 2024). The city government has categorized and organized shelters for different populations: families with children, adult families, and single adults. Nonetheless, the city response to migrant arrivals has been far from organized.

By the fall of 2022, makeshift shelters with tents and cots were being put up in parking lots. In an emblematic chain of events, one of these parking lot shelters in the Bronx, Orchard Beach flooded, forcing the city to change its plan and establish a shelter on Randall's Island, an unpopulated small island that primarily hosts sporting events. NYC's Mayor, Eric Adams, even considered sheltering migrants on a cruise ship, which got significant media attention, and the proposal was subsequently scrapped. The Roosevelt Hotel, formerly a luxury hotel, was transformed into a shelter in May 2023. *The New York Times* reports that city officials described this hotel as the "new Ellis Island" (Goldstein & Heisler, 2023). Figure 5 illustrates the geographic distance between Orchard Beach, Randalls Island and the Roosevelt Hotel, helping to visualize the challenges new arrivals' faced in moving across the city. Migrants were sent from the bus station upon their arrival to the hotel to register with city officials and seek shelter services. By July 2023, there were so many new arrivals seeking shelter that people were forced to sleep on the street outside the hotel.

The city government has also contracted other organizations to manage the influx of migrants, which has been another point of contention between the Mayor's office, the Comptroller, and New York City residents. The Adams' administration has been accused of giving lucrative contracts to organizations that don't have the tools or experience to manage the migrant arrivals. Mayor Adams and New York Governor Kathy Hochul have pointed fingers at the White House, requesting additional financial support to manage the crisis. In an interview with CNN in September 2023, Governor Hochul said that the Right to Shelter was never "envisioned that this would be an unlimited, universal right or obligation on the city to have to house literally the entire world" (Audio & Rush Transcript: Governor Hochul Is a Guest on CNN, September 21, 2023). This comment is the crux of the question motivating this investigation. From the emergence of the Right to Shelter consent decree in 1981 to 2024, migrant populations have gained access to shelter in New York City through a political instrument that was never designed for them. How did this practice of governance evolve to create opportunities, and later, contingencies in migrants' access to this right?

**Figure 5.**

*Map of New York City Illustrating Location of HERRCs and Arrival Center*



Note: Own elaboration using Google Maps.

### **The Right to Shelter as a Case Study**

To bring clarity and structure to this investigation, this thesis aims to employ a case study research strategy to describe and analyze the Right to Shelter in NYC. This investigation recognizes that a case study has an empirical and qualitative focus and approach (Yin 2009; Creswell 2014). Arya Priya (2020) gives an overview of the general objectives of case study research: description, explanation, and exploration. This thesis aims to describe through genealogical methodology the emergence of the Right to Shelter in NYC and, using a governmentality perspective, illustrate the techniques and rationalities behind this political instrument. Secondly, this investigation seeks to explore how the techniques and rationalities of the Right to Shelter may have transformed and how they are applied to the governance of migration in the context of NYC.

Priya highlights three important aspects of a case study. Firstly, case studies depend upon a sociological imagination that “exhorts a researcher to study the [case] within [its] larger historical context” (Priya 2020, 97). This aligns with Foucault’s genealogical and archaeological research methods. Given this research project’s strong theoretical leanings on Foucault, my case will recognize the importance of contextualizing a contemporary case with a genealogical perspective of history. Secondly, case studies depend heavily on documentary analyses and can build off techniques developed in cultural studies. Priya elaborates, “in cultural studies, documents, audio or visual records, comics, music, opera and so on, are referred to as ‘texts’ or signifying practices of a culture. Analysis of texts are always done within their context” (Priya 2020, 97). The ‘texts’ in this thesis will be the case documents that established the consent decree of the Right to Shelter. Given the genealogical perspective, the investigation will pay special attention to how these texts developed practices in governance and the rationalities behind them. Lastly, case studies can rely heavily on “thick description” which was first introduced by Geertz (1973) to provide in depth analyses of a case. Priya defines thick description as “intensive, small scale, dense descriptions of social life, through which broader cultural interpretations can be made” (2020, 97). The use of governmentality as an analytic framework complements thick description as it will allow me to demonstrate the nuances within the relationship between the government and governed subjects.

To complement the documentary analysis in this investigation, I craft a “thick description” of contemporary governance by drawing upon semi-structured interviews. I conducted eight interviews lasting between 30 and 45 minutes: two with lawyers, three with nonprofit workers, and three with mutual aid members. These interviews sought to capture a spectrum of perspectives on how the Right to Shelter operates “on the ground,” particularly in the context of new migrant arrivals. The lawyers gave insight to the legal framework, the technicalities, and the ongoing discourses surrounding the consent decree. The nonprofit workers, who are immigrant advocates or housing specialists, provided an organizational lens of the shortcomings of the city’s response and the role nonprofits had to fill. Finally, the mutual aid members gave accounts that offered a grassroots perspective on community-driven efforts to fill service gaps, highlighting how the Right to Shelter intersects with other essential needs of migrants.

Methodologically, these interviews enrich the case study by revealing perspectives that legal documents or policy memos alone might obscure. In other words, the interviews unsettle the official record that is highlighted in my documentary analysis. Semi-structured questioning allowed interviewees to share experiences and critical reflections without being constrained. Furthermore, these interviews illuminate the role civil society played in the governance response to large-scale migrant arrivals. The interviews illustrate that the Right to Shelter is much more than a legal mandate, it is a practice that allows advocacy for marginalized communities, it provides a foundation that civil society uses to protect housing rights for all New Yorkers. In short, the Right to Shelter has become part of NYC's identity.

The interviews foreground the situated knowledge of lawyers defending and explaining the *Callahan v. Carey* consent decree, the expertise of nonprofit leaders juggling relief and advocacy efforts, and the narratives of mutual aid volunteers patching gaps in essential services. In doing so, this thesis moves beyond treating rights as fixed legal artifacts and tracks how they are actively re-negotiated. In placing documentary analysis and interviews side by side the genealogical analysis takes a new dimension in illuminating discretionary decisions, subjective rationalities, and the recalibrations of the Right to Shelter. The interviews validate or contradict governmental discourse, illuminate the on-the-ground disputes within policy implementation, and make visible the disciplinary effects of ad hoc crisis governance.

Now, it is important to articulate how my theory justifies the application of a single case study. Priya elaborates the factors at play in single case studies, “a) when the case under study is unique or atypical, and hence, its study is revelatory, b) when the case is used to test a hypothesis and c) when the case under investigation is the quintessential example of a particular phenomenon under investigation” (2020, 100). This investigation is both unique and revelatory due to its local context, and is being used to test a theory, not a hypothesis. I am inclined to move away from the term hypothesis, solely because of the nuances of the theory I am working with. Following Foucault's epistemology, I am not interested in limiting an understanding of the world to specific variables. Instead, the objective is to gain greater and greater intelligibility of a reality that is infinitely complex and has a multitude of dimensions.

This investigation parts from the theory of the counter-conduct of rights. The stakes of my theory have less to do with whether my case is a unique or typical representation of reality. Instead, governmentality allows us to recognize rights as having qualities that engender counter conduct of governed subjects. These qualities are that rights are contingent, they are liberatory and subjectifying, and they are strategic and evolving political instruments. In order to better understand these qualities, I conduct a genealogical analysis of the emergence and transformation of the Right to Shelter and the contemporary governance of this political instrument in response to new arrivals in NYC.

### **Chapter Overview**

The following investigation's general objective is to respond to the question: How did the Right to Shelter evolve to create opportunities, and later, contingencies in migrants' access to this right? To do so, the general objective is to conduct a genealogical analysis of the Right to Shelter to explore how it has transformed over time to serve new arrivals in NYC. This thesis will be composed of three chapters that respond to specific objectives.

Chapter 1 will situate the case study of the Right to Shelter in conversation with the governance of migration, proposing governmentality as a theoretical framework and analytic approach. Michel Foucault's concept of governmentality gives this investigation the tools to understand the complex interplay of political instruments, institutions, and actors involved in migration governance. Chapter 1 will explain the value and relevance in applying a governmentality analysis as an approach to peeling back the layers of the Right to Shelter to understand the mechanisms and rationalities behind this unique practice. Ultimately, this is a case study that seeks to build upon theory that utilizes governmentality to make rights intelligible as a political instrument that subjectifies individuals and populations but also provides the opportunities for what Foucault conceived as counter-conduct.

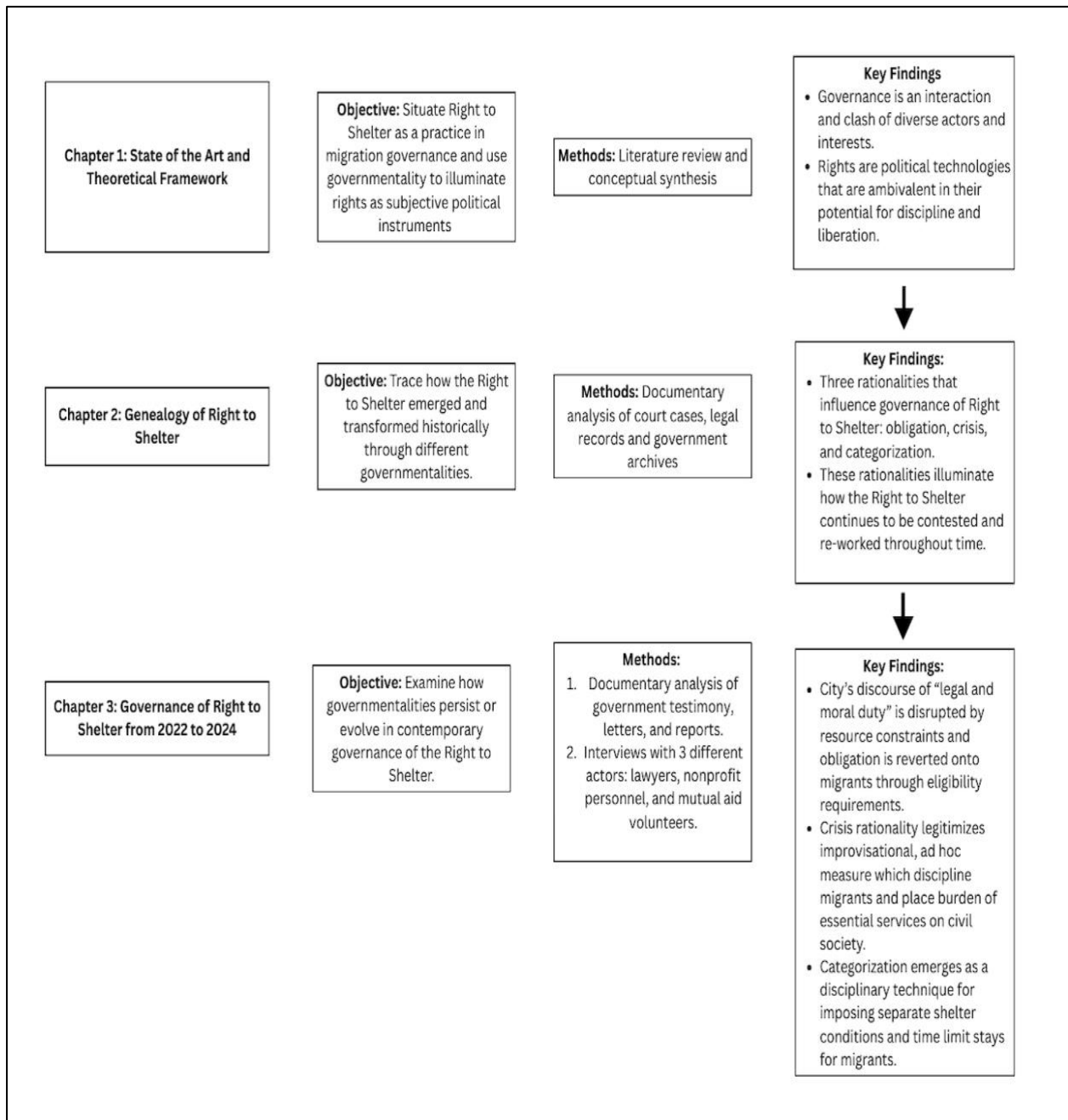
Chapter 2, following genealogical historicist principles, will describe the emergence of the Right to Shelter through a juridical lens. This chapter will explore *Callahan v. Carey* and subsequent court cases that established the consent decree that is now colloquially known as the Right to Shelter. This chapter will highlight three key characteristics: the categorization of populations

within the implementation of the Right to Shelter; the rationality of crisis that both justifies the entitlement, but also ensures its contingency; and the obligation the consent decree creates for the city government.

Chapter 3 will analyze the contemporary techniques and rationalities the government uses to govern the Right to Shelter for new arrivals. Through interviews with lawyers, nonprofit workers, and mutual aid organizers, this investigation will analyze the relationship between law, the construction of rights, and the governance of migration in times of crisis. Ultimately, I will pay attention to the techniques used by the government to undermine the entitlement of shelter through the contingency of this essential service, which is a disciplinary use of power. I will also illustrate the way in which the new arrivals disrupted the status quo, and asked critical questions of the city, state, and federal government through the Right to Shelter. Whether this is a moment of counter-conduct will be left open for debate and future research. However, this thesis aims to participate in the dialogue on how and when rights can be a terrain for the disruption of hegemonic institutions of governance that all too often discipline migrants.

**Figure 6.**

*Outline of Thesis*



Note: Own elaboration.

## Chapter 1: Theoretical Framework and State of the Art

### Michel Foucault and Governmentality: Towards a broader understanding

Michel Foucault gives us powerful analytic tools and theoretical concepts to build off the interpretive epistemology that I am drawn to and through which I seek to explore NYC's Right to Shelter. Foucault has made many contributions to social science and our philosophical understanding of power and knowledge. Over the following paragraphs, I will follow Foucault's train of thought that builds from the microphysics of power and transforms into biopower, biopolitics, and eventually governmentality.

The microphysics of power is not a theory of power, but a proposal to analyze power as a relational and diverse concept (Foucault 1997; Jessop 2007; Walters 2012). In other words, instead of conceiving of power as something that is controlled by a king or a central authority, power is exercised by a wide array of actors. Building off this premise, power can be exercised everywhere and in all sorts of relations. As such, there are certain techniques through which groups are controlled and in which authority (or power) is managed. For example, in *Discipline and Punish*, Foucault explores "disciplinary techniques" that were used in the modern prison system "to observe, monitor, shape and control the behavior of individuals" (Gordon 1991, 3). As the word 'micro' might suggest, there was a focus on specifics of power relations, not a global perspective that might be put into conversation with politics.

Accordingly, Foucault developed the concepts of biopower and biopolitics to engage with the demands of a world in which states governed or held dominant authority. Colin Gordon succinctly defines biopower as "forms of power exercised over persons specifically in so far as they are thought of as living beings: a politics concerned with subjects as members of a population" (Gordon 1991, 4). Foucault is interested in a historic moment when mechanisms for managing population became intimately connected to the modern state. Biopolitics is an early concept Foucault uses to think about liberal government and about the manipulation of power by nation states (Foucault 2003; Walters 2012).

In his February 1<sup>st</sup>, 1978 lecture at the College de France (in *Security, Territory, Population*) Foucault presents his concept of governmentality as an ensemble of institutions, analyses, tactics and calculations oriented toward managing population. There are three dimensions to governmentality: a form of power that takes population as its target, the use of political economy as a discipline of acquiring knowledge, and a reliance on apparatuses of security. Governmentality is contrasted with earlier forms of power such as sovereignty and discipline, however, it does not replace them. Foucault presents governmentality as a transition in governance to managing people as a population with specific techniques and rationalities (Foucault, 2007). In other words, governmentality pays attention to how population is shaped by birth rates, health trends, and economic activities and how governance manages people in ways other than simply enforcing laws or ruling a territory.

This focus on population, required a discipline of knowledge to help the government understand how to intervene strategically and influence markets, production, and circulation. Foucault proposes political economy as a scientific discipline to inform governors how to rationalize governance. Through statistics, concepts like supply and demand, or market regulation, governments could calculate and manage people and their interdependencies. Political economy becomes a knowledge critical to governmentality in the sense that it gave government the ability to calculate, predict, and optimize. Out of this knowledge, emerged apparatuses of security, which are a set of interventions such as public health systems, insurance, or urban planning that use political economy to ensure a collective well-being. Instead of prohibiting behavior through discipline or developing extreme punishments, security apparatuses employ measured responses to conduct population. In summary, security apparatuses are how governmentality operationalizes power (Foucault, 2007).

There is much debate among scholars of what Foucault meant by governmentality. There are some who think Foucault meant that governmentality only describes the power relations specific to liberalism, and others who think governmentality was used in a variety of ways and contexts. I will build off scholars who believe that Foucault uses governmentality in multiple ways and propose a perspective that embraces the “history of governmentality” (Dean 2009; Donzelot 2008; Golder 2007; Walters 2012). These scholars believe Foucault was interested in writing a history

of governmentality and, in his analysis of power and rule, a key example was the rationalities and techniques of liberal and neoliberal governance.

Again, while governmentality can explore all sorts of power relations, Foucault developed the idea of governmentality most specifically in relation to the “governance of and by states” (Walters 2012, 24). Foucault approached the governance of the state through a genealogical analysis. Through genealogy, Foucault attempted to understand the history of the State and “its existence at the level of specific arts, practices, techniques that have combined in different ways and at different times to make something called ‘the state’ thinkable and meaningful in the first place, and viable as a framework for conducting human behaviour. Governmentality in this sense explored ‘the conditions of possibility of the modern state’” (Walters 2012, 24). This idea of possibility is worth emphasizing further. Instead of taking for granted the power relations of governance or the engrained institutions of the government, governmentality provides the tools to think about governance critically, productively, and in new forms.

Governmentality explores the “conduct of conducts” (Foucault 2000, 341). There is a double meaning of the word conduct that must be fleshed out. On one hand, to conduct means the act of governing. Ben Golder eloquently articulates, “One governs the economy, one governs the soul, one governs the poor, one governs families. But what is one doing when one governs? One is conducting says Foucault” (2023, 224). On the other hand, conduct implies the behavior of an individual or population. The “conduct of conducts” is ultimately paying very close attention to the ways in which the behavior of individuals and populations is controlled, influenced or manipulated, and what are the rationalities and interests behind this control, influence, or manipulation.

Governmentality explores the techniques of government, the rationalities, and arts of government (Foucault 1997). Governmentality research, in turn, investigates these techniques or arts, and subjects them to critical reflection. There is an important epistemological and methodological point here: governmentality must be applied to empirical cases in order to successfully guide research. Nikolas Rose describes governmentality as an “analytical toolbox” and Walters describes it as “a highly sensitive diagnostic tool” (Rose et. al. 2006, 18; Walters 2012, 14). The specific approach

to analysis or diagnosis that Walters develops is one of critical encounters. Walters describes how the word encounter provokes the association of something unexpected:

The analytical tools of governmentality should open up new ways of understanding social and political problems. But new empirical domains, and unexpected social transformations, should in turn prompt us to revise and amend existing concepts [...] The toolbox needs to be reimagined as a dynamic and transactional space... (Walters 2012, 17).

Instead of setting out to explain a phenomenon in the world, governmentality is deeply empirical. It uses specific cases of the problematization, conflict, confusion of governance to better understand and see the power relations of the government and the governed.

This investigation critically encounters the Right to Shelter in NYC. In turn, I ask, in what ways can the Right to Shelter be made intelligible as a technique of government? What does this case reveal about the governance of migration? How is the government conducting migrant populations through particular rationalities, through an art of government, that is known as the Right to Shelter? In order to answer these questions, we must refine our focus to understand how governmentality coincides with migration governance.

### **Connecting Governmentality to Migration Governance**

Human mobility is ultimately a political issue that provokes and exacerbates key questions of governance: How does governance operate beyond sovereign territories? How do states cooperate in response to international migration flows? Which interests take preeminence in policymaking? The following section will elaborate the relevance and utility of governmentality for migration research. As other scholars (Geddes 2022; Pécoud 2020) have established, migration governance is not one concrete concept but, instead, a multitude of actors and practices are involved. More importantly, migration governance does not simply respond to patterns and flows of people, but is a key factor in shaping human mobility.

The governance of migration consists of and is influenced by a vast array of institutions or actors. Andrew Geddes proposes that there are “actors” that employ “repertoires of migration governance” (2021, 3). These actors can be national governments, international organizations, and

regional organizations that all employ repertoires of what they “know how to do” and “what they should be doing” (2021, 3). This is one approximation of how migration governance is a subjective enterprise that needs to be understood through a particular analytic lens, in this case repertoires. Antoine Pécoud and H  l  ne Thiollet suggest global migration governance “is a kaleidoscope of institutions and configurations, a web of complex relations, in which states are connected to other states, migration intermediaries, markets and private business actors, international organisations, migrant networks, and civil society groups (2023, 1). Migration governance can take so many forms that it requires “a highly sensitive diagnostic tool” such as governmentality (Walters 2012, 14). Ultimately, the research of migration governance must go beyond the State, scaling both outwards and inwards.

Governmentality can be applied to migration governance through a recognition that governance manipulates migration in an active and subjective way. Andrew Geddes establishes that “governance systems - through their organisation, their effects, and the ideas that animate them - play a crucially important role in defining the challenges that they face” (2022, 312). One useful example of governmentality at play is through an analysis of migration management.

Eduardo Domenech (2018) employs governmentality through a critique that governance of migration and migration management mean the same thing in normative spaces. These terms are used by the International Organization for Migration (IOM) interchangeably. In the 1990s, experts began to suggest that migration issues should be managed. This management has been characterized as “technocratic, utilitarian, economical, political and disciplinary of migration” (Domenech 2018, 113). By characterizing the governance of migration in this manner, Domenech is proposing a specific governmentality. A governance that manages migration, that seeks to control human mobility efficiently and administratively, follows a particular rationality.

A rationality alludes to an interest, and governance is something fundamentally influenced by interests. In the context of migration, these interests tend to be a defense of sovereign borders and political membership, and a utilitarian valuation of human mobility, while humanitarian interests take a back seat. Lelio M  rmore uses the term, models of governability (*modelos de gobernabilidad*), to address the interests behind migration governance. Governability is a term used

to represent the capacity for a government to implement policies effectively. Marmora (2022) provides a framework for understanding what can be considered effective policy in migration governance, depending on different interests. There are three models: securitization, shared benefits, and human development of migration. Securitization represents the interest of sovereign States and results in policies that criminalize irregular migration and militarize national borders. Shared-benefits represent an economic and utilitarian interest behind migration policies that places a high valuation on highly qualified, labor migration. And finally, human development places a valuation on human rights and incorporates different levels of actors within migration policies, such as nongovernmental organizations, within governance.

Ultimately, the governance of migration can be understood through a recognition of its multitudinous structure and through a particular attention to the interests behind policies. In other words, understanding migration governance as a kaleidoscope of institutions or as repertoires signals a need to pay attention to the arts of government. Geddes (2021) refers to “elite actors” within governance such as national government, and regional and international organizations, that have the capacity to influence policy. Pécoud and Thiollet also pay attention to institutions that may be traditionally perceived as having less influence than the state such as “social networks, smuggling cartels, religious groups, transnational organisations, cash transfer companies, security firms, trade unions, families, sponsors, etc.” (2023, 1). These are interpretations that make migration governance intelligible beyond the state, which is another place in which governmentality can be usefully employed. Governmentality facilitates the epistemological and methodological destabilization of the primacy of the state. In other words, through the “analytic toolbox” of governmentality, we can perceive and analyze the governance of migration on a different scale, which can subvert normative and hegemonic actors (Rose et. al. 2006, 18). The Right to Shelter is an intentional exploration of a local and specific context of the governance of migrant populations.

One rationale for this particular attention to localized policy is the futility of global governance in responding to migration. One useful example is Antione Pécoud’s (2020) analysis of the Global Compact for Safe, Orderly and Regular Migration (GCM). Pécoud recognizes the GCM as a tool of global governance of international migration. In 2018, 164 nations signed the GCM which lay

out guidelines or suggestions for managing international migration. However, there are strong critiques of the GCM given the complex and conflicted panorama of this undertaking. In other words, because of differing worldviews and opposing interests between nations, the GCM becomes a “depoliticised document” that fails to enact action and concrete steps of what global governance of migration should do (Pécoud 2020). In order to develop a Global Compact, the United Nations primarily presented an ideal vision of what global migration governance would look like and stressed cooperation among nations. Ultimately, as Pécoud emphasizes, the “ideal migration world is crisscrossed by tensions, dilemmas and contradictions” (Pécoud 2020, 28). While there is great value in the development of normative governance frameworks in the context of migration, I believe there is greater complexity and richness in studying governance through a micro, local lens.

The gap between localized “tensions, dilemmas and contradictions” of the real world and normative migration governance indicates the need to research migration governance from a different perspective (Pécoud 2020, 28). I argue for the importance and need for better understanding of migration governance in local, problematized settings. We need to understand the moments of problematization in their fullest nuance in order to think differently about governance. How do conflict, violence, or natural disaster change the patterns of migration and place a strain on governance? In what ways does national (or international) policy change the flows and patterns of migration and impact local governance in unpredictable ways? The landscape of migration is ever-changing, unpredictable, and volatile which creates tensions between all the actors of governance: the different levels of state and international government, the citizens, and finally, migrants. I argue for the need and value of understanding and studying the practices, techniques, and rationalities of governance in a localized setting, an approach Foucault developed through the concept of governmentality.

### **A Critical Counter-Conduct of Rights**

If governmentality is the overarching framework for thinking about governance and the ways in which governments influence the conduct of people and populations, we must establish Foucault’s approach to rights as “political tools” and as an “object of scholarly analysis” (Golder 2023, 220-221). This section will build upon Foucault’s statement from 1981, “Confronting Governments:

Human Rights,” Jessica Whytes’ analysis of this lecture in “Human Rights: Confronting Governments? Michel Foucault and the right to intervene,” and Ben Golder’s interpretation of Foucault’s lectures at the Collège de France, particularly *Security, Territory, Population*.

Golder argues that Foucault’s discourse of political rights builds off an analysis of conduct that is articulated in governmentality. Despite interpretations of Foucault that claim his interest in rights contradict his critiques of sovereignty and normative liberal institutions of government, Golder emphasizes a critical counter-conduct of rights as a framework that incorporates the full nuance of Foucault’s thought. In his later years, Foucault expressed his views in “Confronting Governments: Human Rights” where he asserts that rights are not static entities but strategic instruments capable of contesting established forms of power (Foucault, 1994). Whyte (2012) analyzes rights as historically contingent political struggles and underscores their role as instruments that can confront and disrupt governmental rationalities. In other words, rights claims are confronting governmental rationalities, creating space for subjects to contest and redefine governmental practices. Rights represent tactical interventions in governance, capable of both reinforcing and undermining governmental structures.

Governmentality is a concept Foucault develops to de-center the power of the state, but also to understand the relationship between the government and subjects. In other words, Foucault is interested in analyzing the power dynamics that occur when vast populations and individuals are governed. According to Golder, governmentality’s most important contribution is “that it foregrounds the political question of the subject and how that subject might struggle with and against the available political tools - often still provided by the state and law - in order to transform itself and others” (Golder 2023, 223). As was put forth prior, this has analytic and political implications. Through a genealogical understanding of governmentality, researchers recognize the modern State does not have “analytic primacy” (Golder 2023, 224). Through Foucault’s genealogical exploration of the forms of governance that led to the creation of the modern State, he is critiquing the supposed objectivity of concepts such as sovereignty and the State itself. Golder argues that this has complex political implications in that it “risks obscuring the continued salience of state (and legal) forms of power” (Golder 2023, 224). Governmentality provides us the analytic framework to critique normative liberal institutions and mechanisms of government, such as rights,

but we cannot reject their relevance and continued importance in social phenomena. However, the relevance and importance of juridical power and rights is based on their ability to transform, to which Foucault “remains scrupulously attentive to their possibilities” (Golder 2023, 224).

Foucault develops his idea of counter-conduct within a genealogical analysis of pastoral power in his lectures in *Security, Territory, Population*. In an attempt to understand how and why particular forms of power are found in modern government, Foucault embarks on a grand, historical exploration of the Christian pastorate. For the purposes of this thesis, I will not dive into the full nuance of Foucault’s discourse on pastoral power. However, Foucault’s genealogical interpretation is that the Christian pastorate created a “technology of power” that controls vast populations through the development of a power dynamic in which the individual is obedient to the desires of the pastor (Golder 2007, 167; Golder 2023, 225). In other words, as Christianity spread throughout the West, a particular rationality arose in which individuals were incited to engage in “practices of veridiction and telling the truth about oneself” to their pastor (Golder 2023, 225). As Golder summarizes concretely, “The pastorate thus revolves around the notions of salvation, obedience, and truth” (2023, 167).

In a fascinating interpretation, Golder argues our secular modes of government and governance have not emerged from these foundations of pastoral power. Notwithstanding, what is important here is that out of Foucault’s interpretation of pastoral power he introduces counter conducts as “specific movements of resistance and insubordination” (Foucault 2007, 194). If pastoral power, and in turn governance, is a way of enforcing obedience, counter conduct pushes back. Foucault identifies five examples of counter conduct: asceticism, communities, mysticism, scripture, and eschatology. Again, there is no need to explore these examples in depth, the point is that “the idea of the counter-conduct performs a crucial transitional function in [Foucault’s] work, helping to shift him from an analysis of objectivizing political technologies (like disciplinary power and biopower) towards a consideration of the ways in which resistant subjects might seek to contest the terms of their subjections by constituting themselves differently” (Golder 2023, 226). Rights are therefore a mechanism through which subjects can exercise counter conduct.

Golder facilitates a deeper understanding of Foucault’s critical counter-conduct of rights through an example of his stance on gay rights and three foundational points. First, Golder notes that Foucault recognizes that the liberal juridical framework allows for a right to be possible in the first place. For example, in the context of gay rights, Foucault defends the possibility of expressing one’s own sexuality and maintains that human rights protecting sexuality are a necessary normative rights framework. However, the second point, Foucault also critiques this framework and suggests identity-rights are another way of controlling the conduct of governed subjects. Golder elaborates, “rights claimants are beckoned to inscribe themselves in and perform particular (restrictive) subjectivities. Rights conduct us; they are a form of subjective capture” (Golder 2023, 227). Lastly, the third point, on the issue of gay rights, Foucault stresses “the political utility of the strategy of rights claiming” (Golder 2023, 227). Though rights can be subjectifying, and work within a normative framework of obedience and control of governed subjects, Foucault argues rights are a metaphoric handhold for subversion, for counter-conduct. In regard to gay rights, Foucault pushes for a “relational right,” using a juridical right to get institutional recognition. Rights can be used strategically, through counter conduct, as a political instrument to disturb the status quo and disrupt disciplinary power relations. Ultimately, Golder highlights three important details in understanding a critical counter-conduct of rights: “the contingent ground of rights; the ambivalent nature of rights as simultaneously liberatory and subjectifying; and finally, the tactical and strategic possibilities of rights as political instruments” (Golder 2015, 22).

I am using the framework of a critical counter-conduct of rights because it provides us a point of entry to describe and explore the Right to Shelter of NYC. In what ways is the Right to Shelter contingent? In what ways is it liberatory and subjectifying for new arrivals in NYC? And finally, what about the Right to Shelter made it possible for new arrivals to have access to a right that was never intended for them?

### **Situating the Right to Shelter of NYC within Rights Discourse**

Now that we have an overview of how we can employ governmentality to explore rights as a political instrument, we must justify the relevance of studying the Right to Shelter. In order to illustrate the value of a case study of the Right to Shelter, which is localized and unique to NYC, it is necessary to portray the rights discourse within migration governance and for noncitizens.

Seyla Benhabib's book, *The Rights of Others* (2000), offers a perspective on the philosophical and discursive conception of the rights of noncitizens in modern governance. Benhabib (2000) explores the concept of political membership and how it connects to Kant's cosmopolitan federalism. Drawing on Kant's cosmopolitan right in which "hospitality is a 'right' which belongs to all human beings insofar as we view them as potential participants in a world republic," Benhabib explores the moral obligations of humanity (2000, 26). Universal human rights build off cosmopolitan values in which there is a world community where all humans have an obligation to one another. However, what happens when nation-states disrupt this world community?

Benhabib develops a term called the paradox of democratic legitimacy to illustrate the challenges human rights face in the modern world. Benhabib writes,

"The paradox is that the republican sovereign should undertake to bind its will by a series of precommitments to a set of formal and substantive norms, usually referred to as 'human rights.' The rights and claims of others - be they 'auxiliaries to the commonwealth,' as women, slaves, and propertyless males were considered to be, or be they subjugated peoples or foreigners - are then negotiated upon this terrain flanked by human rights on the one hand and sovereignty assertions on the other" (2000, 47).

In other words, political membership and the protection of national territory is in direct conflict with human rights. Nation states sign international conventions and agree to uphold and protect human rights, but sovereign self-determination gets in the way.

Javier de Lucas also offers a critical perspective of how human rights appear within migration governance that is aligned with a critique of sovereign determination. De Lucas characterizes two fundamental perspectives behind the governance of migration: one that is utilitarian and one that is humanitarian. The utilitarian perspective connects with the critiques of "migration management" in which the valuation and assessment of migration is through an economic lens and immigration policies are focused on administratively managing quotas. This creates an understanding of "real" and "fake" migration. "Real" migrants are highly qualified and serve an economic purpose for receiving societies, while "fake" migrants are those who have been forcibly displaced and require a protection of universal human rights. The humanitarian perspective is also critiqued by de Lucas

as a paternalistic compassion that doesn't allow migrants opportunity and agency as political subjects (2002). This is simply another panoramic assessment of how rights factor into migration governance, in which hegemonic interests often interfere with the practicing of international and regional instruments recognizing human rights.

Taking a closer look at the United States, Susan Coutin (2011) explores the juridical framework behind the rights of noncitizens. A federal republic government like the United States allows for the construction and evolution of laws that have served or discriminated against immigrant populations since the creation of the country. As early as 1798, the Alien and Sedition Acts placed restrictions on foreign born Americans and tightened residency requirements (Alien and Sedition Acts (1798), 2023). While history is certainly a focus of my research, a meticulous account of immigration law in the United States is out of the realm of this investigation. However, Coutin (2011) makes two fundamental points, that build off de Lucas, about the rights of noncitizens in the United States: these rights are inextricably tied to economics and employment, and there is a legal distinction between refugees and economic migrants.

This legal distinction requires a brief historical overview. After the second world war, in the aftermath of vast populations being displaced, the 1951 Refugee Convention was created, providing a legal and normative definition of a refugee and what their rights were. The 1967 United Nations Protocol Relating to the Status of Refugees built upon the Convention, removing the geographical and time limitations from 1951. Crucially, the 1967 U.N. Protocol established the principle of non-refoulement in which refugees or asylum seekers cannot be returned to their countries of origin if they fear death or serious persecution. A refugee is defined in Article 1 of the 1951 Convention as someone:

Who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or owing to such fear, is unwilling to return it.

In terms of the United States, asylum applicants are required to prove that they are being persecuted on one of the five grounds: race, religion, nationality, membership in a particular social group, or political opinion. Another crucial legislation in establishing the normative rights of asylum seekers is the Refugee Act of 1980. Using the definition of a refugee from 1951, this Act gives people physically residing in the United States a path to asylum. This is the juridical groundwork for the rights of noncitizens, particularly refugees and asylum seekers. Nonetheless, as Benhabib and de Lucas are suggesting, the practice of these universal rights is challenged by interests of a more powerful actor: the sovereignty and economic interests of States.

Governmentality helps us understand the full complexity of rights and how they complicate migration governance. Wendy Brown explains how rights, “as an aspect of governmentality, [are] a crucial aspect of power’s aperture. As such, they are not simply rules and defenses against power, but can themselves be tactics and vehicles of governance and domination” (2004, 459). Nonetheless, as Ben Golder reminds us, we cannot forgo the potential utility of rights as a political instrument and in order to assess this, analytic scale must be decreased. Golder describes rights as having an “ambivalent yet hopeful creativity” that “aims at a more subtle and local reimagining of possibilities, crafting lines of flight and ways of being otherwise” (2023, 232). NYC’s Right to Shelter is a local case that is rich terrain for exploring the ways in which rights conduct migrant populations and are also grounds for a “break from the logic of the conduct within which they find themselves embedded” (Golder 2023, 232).

Coutin (2011) proposes a concept of law on the ground that focuses on analyzing the implementation and practice of law on noncitizen’s lives. Similar to the discussion on governance, this is a turn away from a macro framework of conceiving rights. Scholars studying law on the ground observe “how immigration law plays out on the ground, in state and nonstate institutions, and in immigrants’ lives” (296). This proposes a different area of focus for researchers. As Coutin maintains, law is a fundamental tool for establishing the rights of noncitizens, but there is a rich field of case studies in which normative frameworks are disrupted and the relationship between law and governance is complicated.

Benhabib (2000) is also interested in a landscape of disruption and complication to analyze the rights of noncitizens. Benhabib defines democratic iterations:

“[A] complex process of public argument, deliberation, and learning through which universalist right claims are contested and contextualized, invoked and revoked, throughout legal and political institutions as well as in the public sphere of liberal democracies [...] Through such processes the democratic people shows itself to be not only the subject but also the author of its laws” (2000, 20).

Benhabib’s writing invokes Foucault’s understanding of governance as a power relation between governed subjects and the government. What were the processes of public argument, of deliberation in which the consent decree, which established the Right to Shelter, was “contested and contextualized, invoked and revoked, throughout legal and political institutions”? In order to answer this question and analyze the construction and evolution of the Right to Shelter, I will employ a genealogical methodology to explore this case.

## Chapter 2: Genealogy of the Right to Shelter

### Overview

In Chapter 2, the focus shifts to the genealogy of NYC's Right to Shelter, empirically analyzing its emergence and evolution throughout time. The chapter begins by exploring genealogy through three interrelated themes: an epistemology of critique, a historical perspective, and a methodology. A fundamental quality of genealogy is the importance of connecting empirical research and a critical historicist perspective to understand the present. Using documentary analysis of court cases and government records, this chapter traces how the Right to Shelter emerged as a response to intersecting social, political and legal dynamics.

The chapter continues to contextualize the emergence of the Right to Shelter and expansion of shelter services in NYC throughout the 1980s. This section draws from the findings of Donna Wilson Kirchheimer's article (1989), "Sheltering the Homeless in New York City: Expansion in an Era of Government Contraction" and puts them in conversation with genealogy to understand the provenance of the Right to Shelter. Shelter expansion is highlighted as unlikely and unexpected given government contraction and fiscal conservatism in the federal, state and city governments in the 1980s. Nevertheless, NYC's advocacy community, the media, and the state judicial system were key actors in the expansion of shelter. Out of this context, the *Callahan v. Carey* court case, a class action lawsuit against the state government, takes center stage.

The chapter goes on to analyze the *Callahan v. Carey* case to understand the Right to Shelter as a practice of governance rooted in specific rationalities: the categorization of populations, the logic of crisis, and the implementation of government obligations. This section of the chapter focuses on three case documents: a 1980 amended complaint, a State Justice decision from 1979, and the consent decree from 1981. Through documentary analysis, I highlight the categorization of the homeless population, the logic, and language used to describe the homeless crisis, and the legal mechanisms used to obligate the government to provide shelter. These rationalities help articulate how the Right to Shelter was born out of immediate crises, but established legal, social, and operational standards that have transformed into instruments of political and social negotiation.

The last section of the chapter traces the evolution of the Right to Shelter over time. I return to Foucault's (1998) genealogical understanding of emergence, in which practices are subjected to "a series of subjugations" throughout time that continue to shape them (376). In order to understand the Right to Shelter practice in its contemporary iteration when migrant arrivals came to NYC from 2022 to 2024, we need to understand how it transformed under a "particular state of forces" (Foucault 1998, 376). As such, I characterize the Right to Shelter as a practice that is defined by contestation over time.

The historical struggle between the city government and civil society over the provision of shelter precipitates the migrant crisis of 2022 to 2024. The contestation of the Right to Shelter is intimately tied to the rationalities I empirically identify in the *Callahan v. Carey* case. I explore how the categorization of populations is contested through subsequent court cases attempting to protect the entitlement to shelter for women and families. Furthermore, I analyze how government administrations attempted to undermine the Right to Shelter obligation through the implementation of eligibility requirements. Throughout its existence, the Right to Shelter has been a battleground between the interests of the government and those of marginalized communities. The struggle and contestation that has taken place over the implementation of the Right to Shelter defines this practice and shaped it into what it was when migrant arrivals needed shelter.

### **Genealogy: Epistemology, History and Methodology**

Genealogy will be considered both a methodology and an important epistemological foundation to this research. Similar to governmentality, genealogy is a vast concept and discipline. However, I will engage with genealogy through three themes that are ultimately inextricably related: an epistemology of critique, a historical perspective, and methodology.

#### Epistemology

All research has a foundation in a philosophy or a theory of the world and what reality means to the researcher. Epistemology is "the theory of knowledge, especially regarding its validation and the methods used" (Walliman 2011, 17). Empiricism and rationalism are the foundations of generating knowledge in the social sciences. Empiricism being knowledge developed through

concrete experience or real-world events and rationalism being knowledge developed using reasoning. To clarify further, empiricism uses inductive reasoning, relying on observations and experiences to develop a conclusion. Rationalists use deductive reasoning, which begins with a premise and uses a logical argument to reach a conclusion. The scientific method combines inductive and deductive reasoning. Furthermore, in the social sciences, there is the important question of the subjectivity and objectivity of the real (or social) world. In social science, there are human subjects and (human) researchers. On two ends of the spectrum are positivism and relativism: the prior is a belief that the world is “real” and the world can be explained and understood through causal research using the scientific method; the latter is a belief that the world cannot be perceived objectively and the researcher cannot extricate themselves from an experience of the world. Of course, there is also a middle ground, which I believe is most usefully categorized as critical realism. Nicholas Walliman describes this approach, “The underlying order must be discovered through the process of interpretation while doing theoretical and practical work, particularly in the social sciences [...] Concepts and theories about social events are developed on the basis of their observable effects, and interpreted in such a way that they can be understood and acted upon, even if the interpretation is open to revision as understanding grows” (Walliman 2011, 26).

Richard Bowman (2007) proposes an epistemology of critique when reflecting on the objectives of genealogy. As mentioned prior, Foucault suggests an interpretation of history and, in fact, reality that has infinite complexity or dimensions. In other words, Foucault attempts to move away from universal or objective understandings of social phenomenon and history. Genealogy attempts to “disturb formerly secure foundations of knowledge and understanding,” but not to entirely replace previous perspectives (Bowman 2007, 141). Genealogy does not aim to uncover an objective truth. Instead, genealogy is looking to amplify “the combative power of potentially subversive forms of knowledge” (Bowman 2007, 142). If there are dominant narratives or discourses throughout history, genealogy is looking to discover what has been hidden or overlooked and explain how it informs the present.

Bowman suggests that this epistemology of critique moves away from an exclusive emphasis on generating truth and instead takes on a political quality. As Bowman (2007) writes,

“[G]enealogy, like other critical research methods, does thus apply itself to knowledge production and the generation of kinds of ‘truth’ (or, as Foucault might prefer, ‘truth-effects’); however, these are operative, action-directed ‘truths’, capable of opposition and/or resistance, rather than ‘truths’ of a static or merely factual variety” (142).

Foucault’s employment of genealogy reflects a fundamental perspective that knowledge and truth is not objective. The role of genealogical research, therefore, is not to simply explain phenomena through objective facts, but instead take on a tactical approach that furthers a cause. As presented prior, this cause oftentimes has to do with uncovering the overlooked, ignored and, perhaps, subjugated truths. Bowman (2007) emphasizes Foucault’s pointed stance in *Nietzsche, Genealogy, History* that “knowledge is not made for understanding; it is made for cutting” (1978, 154).

Once more, genealogy is a powerful tool to critique the contemporary world. Genealogy serves the researcher who recognizes their subjectivity and uses empirical, documentary research to disturb dominant narratives and normative frameworks. In the spirit of transparency, I acknowledge these values as a point of entry in my research.

### History

Foucault’s essay, *Nietzsche, Genealogy, History* is a useful text to reflect on the relationship between history and genealogy. In the opening paragraphs, Foucault (1978) rejects a linear conception of history; an assumption that events follow a consistent logic and pattern over time. Genealogy commits itself to “record the singularity of events outside of any monotonous finality” (Foucault 1978). Genealogy does not look for the origin, instead there is a recognition that there is a constant evolution of events and practices that inform the present.

In *Nietzsche, Genealogy, History*, Foucault develops the concepts of a ‘historical sense’ and an ‘effective history.’ A historical sense can be misused if engaging with universals and absolutes. In order to use history effectively one must “uproot its traditional foundations and relentlessly disrupt its pretended continuity” (Foucault 1978, 88). Effective history, as Foucault describes it, returns to the epistemological foundation developed prior, in which knowledge is a subjective perspective and history cannot be explained objectively or by a few, constrained variables. History is not understood by “a decision, a treaty, a reign, or a battle” (Foucault 1978, 88). Instead, events in

history are disruptions in power relations and “haphazard conflicts” (Foucault 1978, 88). Another important quality of effective history is that it moves away from a broad or distant vision of change over time. Foucault proposes that effective history “studies what is closest, but in an abrupt dispossession, so as to seize it at a distance” (1978, 89). This points to an empirical and documentary quality of genealogy. Genealogy can take contemporary, localized moments of problematization and use historicism to understand the present moment in greater nuance.

Mark Bevir (2010) builds on Foucault’s genealogy and historical perspective and connects it to governmentality and governance. Bevir moves away from a structuralist conception of governmentality and governance to propose historicism as a guiding force in empirical research. Bevir writes, "I want to suggest that genealogy is a mode of inquiry based on a form of historicism that highlights nominalism, contingency, and contestability" (Bevir 2010, 426). By nominalism, Bevir connects to the effective history Foucault developed in *Nietzsche, Genealogy, History* in which universals are rejected, and a present reality does not originate anywhere, but comes from a “particular slice of the past” (2010, 427). Furthermore, a contingent perception of history accepts that change over time may come from unexpected, inexplicable, or even accidental events. Lastly, a contestable view of history accepts that events or practices in history can be interpreted or understood in innumerable ways (2010, 428). Bevir suggests that in invoking nominalism, contingency, and contestability one becomes a radical historicist that aims to de-center and reveal that dominant narratives are, in fact, social constructs.

Through genealogy, Foucault aims to understand reality, events, and practices in their full complexities, not solely depending on theory. Walters (2012) explores the concept of genealogy that Foucault borrowed from Nietzsche, emphasizing its rejection of universals. Genealogy focuses on “moving objects, not the fixed objects to which we are accustomed in our social science disciplines, defined clearly, related to a model, a system, an order” (Brass 2000, 313). Walters elaborates on the fact that certain scholars have called Foucault a positivist (Veyne 1997). However, instead of attempting to define specific variables that explain a phenomenon, Foucault wants to explain practices.

According to Walters, Foucault is interested in explaining the “transformation” of a “practice” of

governance (Walters 2012, 30). What does this concept of practice mean? Methodologically, Walters encourages researchers to “approach the emergence and transformation of practices as ‘events.’” The procedure of “eventalization” and “causal multiplication” is deeply empirical and focused on understanding reality, but not in limiting the variables at play. Walters writes, “It means that rather than singling out a few particular processes and privileging these as explanatory factors, one seeks to lighten ‘the weight of causality’ by ‘constructing around the singular event analyzed as process a ‘polygon’ or rather a ‘polyhedron’ of intelligibility, the number of whose faces is not given in advance and can never be properly taken as finite” (Walters 2012, 30; Foucault 1991, 77). In my research project I will conceive my empirical case, my event, the Right to Shelter and the influx of new arrivals to New York City, through this perspective. I will not try to confine my understanding or the intelligibility of the case to prescribed factors. Instead, I aim to provide an interpretation of reality and governance that might give way to a transformation or a new way of understanding migrants’ rights.

### Methodology

Walters, along with other scholars (Dean 1999, 2010; Rose 1999), suggests that to use governmentality most effectively in the exploration of contemporary events and problems, researchers need to link it with “the sensibilities of genealogy” (Walters 2012, 124).

Unfortunately, the methods of genealogy are not a cut and dried concept and can be used in many ways, however Walters develops a framework that will be useful in my project. I aim to use a style of genealogy that is characterized by Walters as "genealogy as lines of descent" (Walters 2012, 112). Genealogy is a research method that works against the "aerial" perspectives of societies and the institutions that make up governance (May 2005). In other words, genealogy supplements governmentality studies because it emphasizes "subtle shifts in the knowledges [...] of government," it is committed to dedicated empiricism, and it seeks to demonstrate that the world does not "march in step" and instead the present and events that are studied are an "entanglement of many times" (Walters 2012, 113).

Martin Saar influences Walters’ perception of genealogy as a method and as an approach to investigation that is not easily summed up. Using Foucault, Saar illustrates that genealogy is used

in many ways, sometimes as methodology and other times as a perspective to understand history or origin (Saar 2002). Ultimately, genealogy is a powerful tool if used correctly because it aims to reveal that "who/what we are is not given or inevitable" and it facilitates a "capacity to imagine other forms of politics and subjectivity" (Walters 2012, 115). In other words, genealogical studies are committed to denaturalizing the subject or object of investigation.

### Lines of descent

This style of genealogy is highly empirical and takes a historical approach to understanding how "something significant and valued in the present came to take the form that it has" (Walters 2012, 118). In the context of this investigation, the Right to Shelter will be analyzed and researched through a line of descent. The research approach will require a careful and meticulous history of this practice revealing "when, where, under what circumstances" it came to exist, and how it became "coherent and rational" (Walters 2012, 118). Through this analysis, the ultimate goal is to destabilize the normative understanding of this practice to think about it differently. It is important to note that genealogy does not operate solely within the analysis of an institution but instead "moves outside the institutional point of view, opting instead to trace the making of a specific technology of power" (Walter 2012, 119).

How can analyzing the Right to Shelter through a line of descent reveal new perspectives about the creation of this concept we call a "right?" The Right to Shelter will be understood as an "event." In order to make something an event, through Foucault's lens, a researcher must attempt to situate a subject within different processes to identify specific lines of research to follow. Through lines of descent genealogy, this project aims to shed light on how governmentalities influence the implementation of this practice known as the Right to Shelter and subjectify new arrivals.

Dean brings this methodology back to the contemporary when he writes that genealogy "is conducted in the presence of certain issues problematized by contemporary social struggles" (Dean 1994, 35). In other words, contemporary problems are very important in identifying the aims of genealogy. The influx of asylum seekers in New York City calls into question, how do asylum seekers receive rights, and how does this impact governance? Genealogy as a line of descent will guide the analysis of the specific practice of governance called the Right to Shelter. Ultimately,

the genealogical analysis will deconstruct the normative and institutional conceptions of rights for asylum seekers and illuminate the rationalities behind these political instruments.

### **The Emergence of the Right to Shelter**

This section will provide a genealogical interpretation of Donna Wilson Kirchheimer’s article (1989), *Sheltering the Homeless in New York City: Expansion in an Era of Government Contraction*. Kirchheimer’s exploration of NYC’s response to homelessness in the 1980s seeks to evaluate the impact seven prescribed factors had on the expansion of shelter services. These factors are bureaucratic momentum, the political opportunity structure, the political culture, the policy regime, the political interest structure, media agenda, and authoritative bargaining arenas, see Table 1. Kirchheimer’s article is valuable for this investigation because it presents a multifaceted analysis of the forces at play when the Right to Shelter emerged. However, my intention behind highlighting Kirchheimer’s analysis is to “lighten ‘the weight of causality’ by ‘constructing around the singular event analyzed as process a ‘polygon’ [...] of intelligibility” (Walters 2012, 30; Foucault 1991, 77). Kirchheimer gives this investigation insight into the multitudinous processes that led to the Right to Shelter. Most importantly, the Right to Shelter was not an inevitable event that created a new social service practice in NYC, for it arose in a time of considerable government contraction. The emergence of the Right to Shelter was not a process that “march[ed] in step” (Walters 2012, 113). Recognizing the clash of interests that occurred in the 1980s is crucial in understanding the governmentalities that proceeded from the Right to Shelter consent decree.

**Table 1.**  
*Definitions of Kirchheimer’s political factors influencing shelter expansion in NYC*

<b>Political Factor</b>	<b>Definition</b>
Bureaucratic Momentum	Refers to the internal push of public organizations to expand their domain, often driven by bureaucratic self-interests and external professional pressures. However, in this case, expansion was not bureaucratically driven but rather a response to external litigation.
Political Opportunity Structure	Describes the conditions that make government action politically feasible, such as a policy window or crisis. In this case, the increasing visibility of homelessness acted as a crisis

	event, creating public pressure for action despite no classic policy windows.
Political Culture	Refers to the dominant values and beliefs about government roles in society. New York's political culture was split between egalitarian, redistributive values and fiscal conservatism. The resulting tension influenced the political response to homelessness.
Policy Regime	Focuses on the dominant coalition of interests in a city that shapes policy through leadership's balancing of economic and political interests. Mayor Koch's coalition favored redevelopment over redistributive policies, which influenced the shelter expansion's reluctant growth.
Political Interest Structure	Refers to the organized interests, such as subgovernments or issue networks, that influence government decisions. In this case, a loosely connected policy community of advocates, service providers, and officials pushed for shelter expansion through advocacy and litigation.
Media Agenda	The media's role in shaping public perception and government priorities. Increased coverage of homelessness raised public awareness and pressured government officials to take action. Media attention also helped advocacy groups influence policy by keeping homelessness in the public eye.
Authoritative Bargaining	Refers to the role of judicial or legislative institutions that can compel government action. In this case, lawsuits in state courts played a crucial role in enforcing shelter standards and expanding the public shelter system for the homeless.

Note: Own elaboration, based on Kirchheimer, 1989.

The emergence of the Right to Shelter in NYC came in a context of government contraction under the Reagan administration. The Omnibus Budget Reconciliation Act of 1981 led to cut-backs in federal budgets on social service spending, limiting benefits, and capping grants to local governments. Kirchheimer (1989) highlights the improbability that cities would independently and quickly make additions to social services. Additionally, NYC's local government was led by mayor Ed Koch in the 1980s. Koch was a conservative, and his voting base consisted of white middle-class populations. As a result, Koch had real estate and financial interests to protect, which is in direct opposition to the expansion of shelter services which benefit poor and minority populations. Kirchheimer (1989) elaborates, "Growth of the shelter function did not result from

voluntary action by the city’s dominant coalition of interests. The mayor’s electoral coalition remained fiscally conservative on redistributive policy, and it did not incorporate the interests of shelter beneficiaries” (614). Despite this government context, the shelter services in NYC expanded enormously in the 1980s. From 1978 to 1985, the city’s budget for sheltering single homeless men and women increased from \$8 million to \$100 million (Kirchheimer 1989, 608). The city budget for sheltering homeless families, which was non-existent before 1982, grew to \$100 million by 1985 (Kirchheimer 1989, 608). How did these enormous investments in the expansion of shelter services happen, given that the government was opposed to redistributive policies that benefited the poor?

The expansion of shelter services and the emergence of the Right to Shelter was in response to an increasingly acute homelessness crisis in NYC in this period. There were several changes that Kirchheimer highlights between 1978 and 1988, see Table 2. Concretely, the growing number of people needing shelter, the increase of families dependent on shelter, and the longer stays provoked the expansion of the shelter system and, in turn, the Right to Shelter consent decree. This aligns with what Kirchheimer characterizes as the political opportunity structure, in which certain conditions make government action possible. However, I contend these are conditions that made government actions necessary. In other words, “Mass temporary shelter was not [...] an old policy idea whose time had come; it developed as an acute ‘innovation’ that was desirable solely in crisis” (1989, 611). Kirchheimer articulates the impact crisis conditions had on shelter provision in NYC, but I part from her understanding of “crisis” as something that creates a neutral “opportunity.” I propose that “crisis” has a particular, subjective rationality that can be traced from the emergence of the Right to Shelter to the present day and has operated in nuanced, particular ways throughout time.

**Table 2.**  
*Changes from 1978-1988 that influenced provision of shelter according to Kirchheimer (1989):*

Change	Description
Average Nightly Census	For the first time since the Great Depression, the average nightly census exceeded 2,000 people in shelters.
Increased Use of Shelters	The overall use of shelters continued to rise throughout the

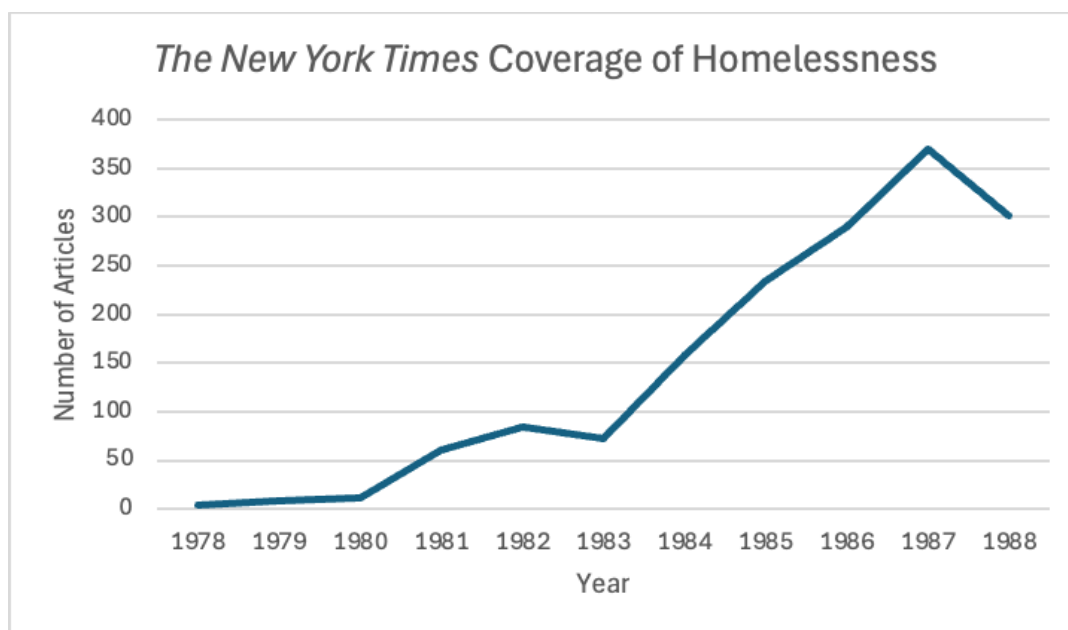
	1980s, leading to greater strain on the shelter system.
Rise of Homeless Families	Homeless families appeared in greater numbers, with the nightly count increasing from around 1,000 in 1982 to 5,000 (including 12,000 children) by 1987.
Longer Stays in Shelters	The average stay lengthened, with families staying in shelters for an average of 13 months by 1986. Additionally, single men and women became repeat users, despite nightly shelter re-entry restrictions.
Growth in Number of Shelters	The number of shelters grew exponentially, increasing from 3 in 1978 to 17 by 1985. For homeless families, the number of hotels and residential centers also grew, from few options in 1982 to over 50 by 1983.
Specialized Services	The type of services expanded to include specialized shelters for subpopulations, such as pregnant women, women with infants, youth, the elderly, veterans, and substance abusers.
Legal Obligation to Provide Shelter	By the 1980s, shelters were no longer able to turn people away, and the city government became legally obligated to provide a bed for everyone requesting shelter.

Note: Own elaboration, based on Kirchheimer, 1989.

NYC government’s investment in shelter expansion did not neutrally arise and, instead, required concerted efforts and advocacy in a variety of spaces: NYC’s community, the media, and the state judicial system. Understanding the role community advocacy efforts had on the expansion of shelter services gives insight into how the Right to Shelter has an intangible connection to NYC’s identity. Kirchheimer explains NYC’s milieu that sparked advocacy on homelessness: “It was an identifiable community of shared values, which consciously challenged the existing institutional structure. It consisted of people who were committed social advocates, not neutral technicians, and they were not based in the city bureaucracy” (1989, 616). These community members were volunteers in soup kitchens, people of faith, students, media members, and legal advocates. Coalition for the Homeless, was one of more than fifty organizations that were created in a three-year period to attend to homelessness issues (1989). Ultimately, the NYC advocacy community was a “dynamic collection of participants” that worked in different spaces to create attention about and meet the needs of the homeless (1989, 618). This community had a crucial impact on educating the media and sparking the court case, *Callahan v Carey*, which led to the Right to Shelter.

The media played another fundamental role in raising awareness and putting pressure on government officials to address the homeless crisis. As you can see in the graph below, *The New York Times* dramatically increased its coverage of homelessness in a ten year span from 1978 to 1988 (Kirchheimer 1989). Additionally, and more revealing, before 1978 homeless people were not categorized in *The New York Times* Index and were described as “vagrants and migrants” (Kirchheimer 1989). This categorization of “migrants” is more than symbolic and reveals a particular rationality behind government action and popular discourse. On one hand, homeless people were conceived as people on the move, people who did not receive institutional recognition. On the other hand, institutional recognition through categorization, as will be explored further, is a technique and practice of government that often subjectifies populations. Thus, the media played an important role in spreading awareness about the homeless crisis and influencing the government and popular culture to recognize a category of the population that deserved access to shelter services.

**Figure 7.**  
*Media Coverage according to Kirchheimer, 1989*



Note: Own elaboration, based on Kirchheimer, 1989.

Lastly, Kirchheimer conceives the emergence of the Right to Shelter consent decree in the context of an authoritative bargaining arena. The state judicial system was also critical in obligating the city to expand shelter services. The courts enforced shelter standards and ruled in favor of the Right to Shelter, making government action mandatory. This alludes to the last rationality I will be exploring in this chapter, which is the obligation articulated in the Right to Shelter consent decree. In other words, through jurisprudence, the city government was imposed to follow certain rules and, as we will see, provokes certain actions and techniques to try to develop contingencies.

Through Kirchheimer's framework, the emergence of the Right to Shelter in New York City can be understood as a multifaceted and improbable event shaped by an array of political, social, and legal dynamics. Despite government contraction during the 1980s, particularly under Mayor Ed Koch, shelter services expanded. Not through voluntary political action, but in response to pressures such as litigation, advocacy efforts, and heightened media attention. The Right to Shelter was not a preordained policy development; it arose from an acute homelessness crisis and the concerted efforts of a diverse community of advocates and legal actors. The following analysis will delve into the series of court cases and government actions that characterize the evolution of the Right to Shelter and the three particular rationalities I have alluded to in this section: categorization, crisis, and obligation. Understanding these governance techniques allows us to critically explore the Right to Shelter and its relevance in governing new arrivals in NYC today.

### **The Callahan v. Carey Case**

With greater intelligibility of the multiple processes surrounding the emergence of the Right to Shelter, the following section will begin to analyze the Callahan v. Carey case in greater depth. As was briefly mentioned prior, Coalition for the Homeless is an advocacy and direct service organization that was founded in 1979. In the same year, Robert Hayes, a co-founder of Coalition for the Homeless, brought the class action lawsuit Callahan v. Carey to the New York State Supreme Court. The lawsuit represented all homeless men in NYC, but the lead plaintiff was a man named Robert Callahan, who Hayes had met sleeping outside in the Bowery neighborhood of Manhattan (Coalition For The Homeless, 2023). Unfortunately, Robert Callahan did not live to see the consent decree signed in his name, for he died in the fall of 1981 sleeping outside in the Lower East Side of Manhattan. This distressing detail illustrates the two long years that went by

as the government defendants and plaintiffs negotiated. Throughout this time, many case documents were submitted, but this section will focus on the amended complaint filed for the lawsuit in 1980, a New York State Supreme Court Judge’s decision in 1979, and the 1981 consent decree.

Callahan v. Carey Amended Complaint (1980)

A legal case begins when a document called a complaint is submitted to the court by the plaintiff (the party who initiates a lawsuit) outlining the facts and basis of the claims against the defendant. The *Callahan v. Carey* case had an original complaint that was brought to court by three plaintiffs on October 2, 1979. Approximately six months later on March 31, 1980, the amended complaint with three more plaintiffs was submitted. Table 3 and 4 present the identities of the plaintiffs and defendants in the *Callahan v. Carey* case.

**Table 3.**  
*Plaintiffs in Callahan v. Carey*

Plaintiff	Age	Conditions described in Complaint
Callahan	54	Lives at Delevan Hotel; sleeps in streets due to dangerous hotel conditions; no income or property.
Fox	46	Lives at Kenton Hotel; dependent on Men's Shelter for lodging and food; no income or property.
Roig	30	Lives at Comet Hotel; dependent on Men's Shelter for lodging and food; no income or property.
Hayes	37	Homeless; sleeps in doorways, streets, and steam tunnels; no income or property.
Spellman	59	Homeless; sleeps in doorways, streets, and public places; no income or property.
Toole	60	Homeless; sleeps in outdoor public places using cardboard boxes for warmth; no income or property.

Note: Own elaboration, based on *Callahan v. Carey* Complaint, 1980.

**Table 4.**  
*Defendants in Callahan v. Carey*

<b>Defendant</b>	<b>Position</b>	<b>Responsibilities</b>
Hugh L. Carey	Governor of the State of New York	Chief executive officer of the State, responsible for the faithful execution of the law.
Barbara Blum	Commissioner of the New York State Department of Social Services	Determines policies for public assistance, services, and care within New York; responsible for licensing the Men's Shelter.
Edward I. Koch	Mayor of the City of New York	Chief executive officer of New York City.
Stanley Brezenoff	Commissioner of the New York City Department of Social Services / Administrator of the New York City Human Resources Administration	Administers assistance and care for the poor in New York City.
Calvin Reid	Director of the Men's Shelter	Responsible for providing shelter, food, lodging, and social services to applicants at the Men's Shelter.

Note: Own elaboration, based on *Callahan v. Carey* Complaint, 1980.

The amended complaint that was filed in *Callahan v. Carey* provides direct insight into the conditions that precipitated the Right to Shelter. Within the first sentence of this document, the plaintiffs are defined as “homeless men without income or property who live in New York City and who are unable to provide for themselves” (1979, 1). There are two fundamental categorizations at play here: first, the articulation of the gender of men; second, the inability for these men to work and, ultimately, care for themselves. *Callahan v. Carey* was establishing the shelter provision for a particular category of the population: men, who due to some disability or incapacity, were unable to work and have homes. As a result, the justification for shelter focused on the homeless crisis and the lack of shelter for men.

The complaint goes on to describe the homeless crisis NYC was facing in which there were “approximately 10,000 homeless men living in New York City, the overwhelming majority of whom are incapacitated due to physical and mental disabilities, often exacerbated by alcohol and

drugs addictions” (1979, 2). At the time of the *Callahan v. Carey* case, there was only one facility in NYC, the Men’s Shelter, that consistently provided regular services to homeless men. The complaint describes how when this shelter fills up, the remaining homeless men are “permitted to sleep with several hundred other men on a concrete floor in the ‘big room’ at the Men’s Shelter or, during the winter of 1979-1980, are bussed to Ward’s Island” (1979, 2). The lawyers in *Callahan v. Carey* spent considerable time illustrating the inhumane, crisis-like conditions homeless men were subjected to due to lack of shelter. Notably, winter weather plays a role in the narrative of the complaint, emphasizing the increased risk and need of shelter throughout these months. Furthermore, the Men’s Shelter is described as an environment in which the homeless men could be subjected to violence. The lawyers articulate, “Because of this long-standing and well-known pattern of violence, many homeless men are afraid to seek assistance at the Men’s Shelter” (1979, 3). The scene the plaintiff’s lawyers set is one in which the basic human needs of warmth, shelter, and food are not being provided to the homeless men of the city. The rationality behind this lawsuit highlights the lack of fulfillment of these basic needs. This can be interpreted as both the strength of the argument establishing the Right to Shelter and, as we trace the rationality of the crisis further, a weakness in gaining other protections for homeless men and other populations.

Table 5 illustrates the constitutional, statutory, and regulatory frameworks that were utilized in the *Callahan v. Carey* complaint to justify the obligation the NYC government had in providing shelter for homeless men. Jurisprudence operates in a unique terrain in which there are legal frameworks that hold the government accountable. In other words, as Kirchheimer articulates, the state judicial system is an authoritative bargaining arena. The legal provisions that the *Callahan v. Carey* lawyers refer to give the plaintiffs in this case, homeless men unable to provide for themselves, considerable agency and power in establishing a particular right. In true Foucauldian fashion, we cannot overlook the power dynamics at play within the *Callahan v. Carey* case. Homeless men are a population without influence, or great ability to exercise power, and through a legal articulation of their rights, can demand the provision of shelter from the city government. The Right to Shelter is the NYC government being obligated through the court system to provide a service. However, as we will see, there are multiple attempts and techniques the government uses to install contingencies throughout history.

**Table 5.***Constitutional, Statutory, and Regulatory Obligations for Providing Aid and Support in NYC*

Legal Framework	Relevant Provision	Obligation
New York Constitution	Article XVII, §1	Provide adequate aid, care, and support to the needy to restore them to self-care or self-support.
New York Social Services Law	§§ 131(1) and 131-a	Provide aid, care, and support to the needy in New York City.
New York Code of Rules and Regulations (NYCRR)	Title 18	Administer aid, care, and support to the needy.
New York Social Services Law	§ 62(1)	Provide assistance to anyone in New York City in need of public assistance who cannot provide for themselves.
New York City Administrative Code	§ 604.1.0(b)	Provide shelter applicants with food, lodging, and basic hygienic services.
New York Social Services Law and NYCRR	§ 131-1, Title 18	Provide protective services to adults who cannot protect their own interests.
United States Constitution	Fourteenth Amendment	Provide equal protection under the law.
New York Constitution	Article I, § 6	Provide information to applicants and recipients of public assistance about programs and benefits available.
New York Constitution	Article I, § 11	Provide equal protection under the law.
United States Constitution, New York Constitution, NYCRR	Fourteenth Amendment, Article I, § 6, Title 18, § 351.1(b)	Provide public assistance information to applicants and recipients.
New York City Charter, Administrative Code, NYCRR	Various provisions	Operate or participate in the operation of the Men's Shelter and provide essential services.

Note: Own elaboration, based on Callahan v. Carey Complaint (1980).

### Callahan v. Carey Decision

On December 5th, 1979 New York State Supreme Court Justice Tyler issued the first decision in

the *Callahan v. Carey* case in a response to a motion to dismiss the case from the defendants' lawyers arguing that "controversy is non-justiciable and that the complaint fails to state a cause of action" (1979, 1). Non-justiciable means that the issue presented in the case is not suitable for judicial decision-making and that it is a matter outside the court's authority. The argument that the case fails to state a cause of action presents the belief that there is no valid legal basis for the lawsuit. This decision from the New York State Supreme Court Justice illustrates the validity of the legal argument being made in *Callahan v. Carey*. This decision is historic, given it was the first time the City and State governments were obligated to provide shelter for homeless men in NYC.

The Justice's language in this decision is revelatory about the categorization of homeless men that was presented in the case complaint. The Justice writes in the first sentence, "This is an application by three destitute and homeless men [o]n behalf of all the destitute, homeless derelicts roaming the neighborhood of the Bowery" (1979, 1). Clearly, what stands out is the outdated language of destitute and derelict that illustrates the condition of these men: the neglect, abandonment, and the inability to take care of themselves. Furthermore, in this decision, the Justice incorporates quotes from city officials which illustrate a new dimension to the rationality behind this categorization. Barbara B. Blum, the Commissioner of the State Department of Social Services states, "the group in question is extremely difficult to define" (1979, 2).

In other words, the government attempts to use a lack of categorization to justify the lack of services. The Justice articulates that the group of homeless men represented in *Callahan v. Carey* "falls within no specific category calling for public assistance, and that it is 'largely composed of individuals with histories of alcohol abuse, drug abuse, mental disorder or combinations thereof. These conditions are chronic and seriously preclude and prevent independent functioning'" (1979, 2). Ultimately, the Justice in the *Callahan v. Carey* decision reinforces the category of homeless, socially dysfunctional men, and portrays the city government's rationalization as a pretext to avoid providing services to this group. The manipulation of categories by the plaintiff's attorneys, the Justice, and the government is beginning to emerge as a rationality that can be used in a variety of contexts to benefit different interests.

This decision also highlights the rationality of crisis and the recognition of the extreme risks of homelessness during the winter. Justice Tyler writes that “the failure to presently provide such relief [shelter] will cause serious and permanent injury to some of the derelicts and possibly death to others during the winter cold” (1979, 1). The tangible consequences that arise due to lack of shelter are front and center in the Justice’s decision. Importantly, the city government shelter officials recognize these dangers as the Justice writes, “It can thus be observed that every public official, from Governor Carey and Mayor Koch down to the Director of the Men’s shelter, is vitally concerned that no New Yorker (including the Bowery derelicts) freeze to death by reason of exposure to the cold of the winter, or starve to death due to deprivation of food” (1979, 2). The rationality of the crisis can be characterized by a black and white depiction of the options: the city government provides shelter, or the homeless men suffer extreme risks due to cold weather and are in danger of death. Notwithstanding, from this stripped back illustration of the homeless crisis, the Justice recognizes the challenges in granting shelter to all the homeless men when he writes, “The difficulty is finding the necessary lodgings to accommodate them” (1979, 2). *Callahan v. Carey* is grounded in a sense of immediate danger for the homeless men; it crafts a state of emergency that incites urgent action to prevent further deaths. This rationality pressures the government to act, but there is less attention paid to the thorough execution of the Right to Shelter. This execution and management is the challenge that the Justice acknowledges in his decision, and is a theme that comes up time and again surrounding the Right to Shelter.

Lastly, in the *Callahan v. Carey* decision, the court established that the state and city officials have a non-discretionary obligation, under U.S. and New York State Constitutions, to provide basic necessities — such as shelter and meals — to homeless men in NYC. This responsibility is framed as a requirement to prevent severe harm or death, especially during the winter months. The Justice writes, “the Bowery derelicts are entitled to board and lodging” and emphasizes that it is “incumbent on those public officials responsible for caring for the needy to find such lodgings” (1979, 3). Moreover, the court’s decision stresses that this obligation is not merely a matter of policy choice but a constitutional requirement. Obligation serves as a distinct rationality that frames the responsibility of state and city officials as non-negotiable and rooted in legal mandates. The court articulates that the obligation to provide shelter and care is not just a temporary measure, but a continuous legal and moral duty to safeguard the most vulnerable populations. This

rationality extends beyond charitable discretion, transforming the provision of shelter from a humanitarian option into a constitutional requirement. The language of the decision makes clear that obligation is not merely an administrative task, but a fundamental responsibility embedded in the governance structure.

Callahan v. Carey Consent Decree

The *Callahan v. Carey* Consent Decree is a binding court-ordered settlement that established the legal right to shelter for homeless men in NYC. The consent decree was the result of negotiations between the plaintiffs and defendants who, as was established, were the state and city government officials, including Governor Hugh L. Carey and Mayor Edward I. Koch. The consent decree is a unique culmination of the *Callahan v. Carey* case because both sides agreed to terms that were laid out and then became legally enforceable; the key points are summarized in the table below. The following analysis will explore this foundational legal document and illustrate how the categorization of homeless men, the rationality of crisis, and the obligations outlined in the decree establish particular rationalities that allow contestation between the government and civil society.

Ultimately, we must return to Foucault’s framework of governmentality to ask how this perspective of the Right to Shelter allows us to understand politics and governance as an interplay and exercise of power. In other words, “these loci of opposition and vectors of contestation are revealed not as pure exteriority but as intrinsic, albeit contested elements in games of power” (Walters 2012). I contend that the themes of categorization, crisis, and obligation that I have developed throughout the course of this chapter are vectors of contestation that reveal the nuanced governmentalities within the Right to Shelter and their evolution throughout time.

**Table 6.**  
*Key points in the Callahan v. Carey Consent Decree*

Requirement	Description
Right to Shelter	The City must provide shelter and board to every homeless man who applies, provided he meets the need standard for home relief program or requires temporary shelter due to physical, mental, or social dysfunction.

Shelter Standards	Shelters must meet certain minimum standards, including: <ul style="list-style-type: none"> <li>- A clean bed, mattress, pillow, and bed linens.</li> <li>- Lockable storage for personal items.</li> <li>- Laundry services available at least twice a week.</li> <li>- Adequate security, hygiene, and first aid.</li> </ul>
Intake Centers	The City must operate central intake centers 24 hours a day at specific locations (e.g., Men's Shelter, 8 East Third Street, and 529 Eighth Avenue).
Satellite Intake Centers	Additional intake centers must operate in specific borough locations (e.g., Harlem Hospital Center, King County Hospital). Satellite centers must provide transportation or fare to enable men to reach shelter facilities.
Emergency Shelter Capacity	The City can temporarily exceed shelter capacity during emergencies (e.g., snow emergencies, excessive cold), as long as specific conditions are met (e.g., compliance with building and health codes, limited duration of up to 30 days per year).
Shelter Facility Capacity	New shelter facilities must comply with space requirements outlined in the decree, and any modifications to existing structures must be disclosed to plaintiffs' counsel at least 30 days in advance.
Monitoring and Compliance	The City must appoint monitors to ensure compliance with the decree's shelter care provisions, submit regular reports on the status of shelter facilities, and grant plaintiffs' representatives access to shelters and intake centers for inspections.
Transparency Requirements	The City must provide daily reports to plaintiffs' counsel on shelter applications, the number of men sheltered, and any shelter denials, as well as the reasons for those denials.
Public Information	The City is required to provide applicants for shelter with clear written information about other public assistance benefits they may be eligible for.
Additional Services	Shelters must provide group recreation (minimum of 10 hours per week) and ensure that residents can receive and send mail, access pay telephones, and leave shelters at reasonable hours.

Note: Own elaboration, based on Callahan v. Carey Consent Decree.

The first section in the consent decree, "Provision of Shelter," most clearly identifies the population that is entitled to shelter. According to the consent decree (1981),

The City defendants shall provide shelter and board to each homeless man who applies for it provided that (a) the man meets the need standard to qualify for the home relief program established in New York State; or (b) the man by reason to physical, mental or social dysfunction is in need of temporary shelter (2).

This articulation establishes a wide-sweeping entitlement to shelter, but is particular in its language, establishing contingencies. First off, homeless men are the category of people that are granted the Right to Shelter in the 1981 consent decree. As we will see later, this requires litigation to establish the entitlement for women and families as different categories of the population.

Second, this phrasing sets the groundwork for eligibility requirements, which further sub-categorizes populations. Within the consent decree, the Right to Shelter was contingent upon whether or not a man met “the need standard to qualify for the home relief program.” The Home Relief Program, which was replaced by the Emergency Safety Net Assistance (ESNA) in 1997, was a public assistance program that provided cash aid to single adults and childless couples who were in financial need but did not qualify for other federal programs (Emergency Safety Net Assistance (ESNA) - Overview - Benefits Plus, 2024). In order to qualify for the Home Relief Program one had to demonstrate financial need, be ineligible for other welfare programs, and be unable to support themselves. The consent decree, in categorizing which part of the population was entitled to shelter, created the groundwork for eligibility requirements, a topic that has been contested over and over again throughout time.

Third, the phrasing of the second part of this provision is notable in its broadness. According to the consent decree, even if a homeless man cannot prove or demonstrate the need standard, he is entitled to shelter if he falls in the category of “physical, mental or social dysfunction.” What does it mean to designate social dysfunction as a category of people? As the New York State Supreme Court Justice alluded to in his decision, categorically defining social dysfunction is challenging as there is no objective burden of proof for this. This phrasing creates another opportunity for contestation of which populations are entitled to the Right to Shelter.

The vast majority of the *Callahan v. Carey* consent decree is concerned with outlining the rules and regulations of how shelters should be managed. Some of these particular details include the

frequency with which residents of the Bowery Lodging Houses must be given a new towel; the size of a lockable storage unit; or the times in which showers are available at the Men’s Shelter. While this isn’t an exhaustive list, it goes to show the focus on the management of shelter. These details are a counterpoint to the rationality of crisis articulated in prior case documents in which the very lives of people were at stake. Nonetheless, the consent decree attempts to incorporate contingency plans in case of crisis or unexpected events, “Short term emergency shelter may be provided to a number of persons in excess of the capacity of the facility provided that all of following conditions are met” (1981, 11). The six conditions can be seen in Table 7 below. What must be highlighted is the mixture of bureaucracy and crisis. In other words, the consent decree attempts to provide detailed guidelines of how the government needs to manage shelter, but the homelessness crisis the Right to Shelter responds to does not necessarily follow this logic. The rationality of crisis is another vector of contestation in regards to governance in that it demands attention and solutions, but lacks the order of a problem that can be managed following concrete rules and regulations. The consent decree is emblematic of an immense challenge governments face in managing, or better yet, governing crises in that, intrinsically, these are unexpected events that operate out of order and reason.

**Table 7.**  
*Emergency Shelter Conditions*

1. Snow emergencies, excessive cold or other similar circumstances create an emergency need for additional space;
2. The operator is able to meet the food and shelter needs of all persons in residence;
3. The facility remains in compliance with applicable local building, fire protection and health and sanitation codes;
4. The operator advises plaintiff’s counsel of the maximum number of persons to be cared for during an emergency situation in any facility as soon as possible after an emergency situation develops;
5. The operator provides shelter to additional persons no more than 30 days in any calendar year; and
6. The operator maintains records which document adherence to these conditions.

Note: Own elaboration, based on *Callahan v. Carey* Consent Decree.

Above all else, the *Callahan v. Carey* consent decree is a binding agreement that articulates the obligations the government has towards homeless men in providing shelter. The decree establishes concrete expectations for the shelter standards, clear rules for how the City must accept applications for shelter, and even a system to monitor the compliance of the regulations established in the decree. It cannot be overstated how, within the dialogue of power relations, the consent decree is a mechanism that enforces an obligation upon the government. Within the understanding of rights as a political instrument, we can see how a right can be an obligation the government has to protect the interests of a particular population. Nevertheless, according to Ben Golder's understanding of rights, we must pay close attention to the contingencies that arise to circumvent these obligations. As such, this is another vector of contestation the following section will explore further. This analysis of the *Callahan v. Carey* case has set up the foundation to understand how the Right to Shelter operates and the rationalities working under the surface. The following sections will trace the transformation and evolution of the Right to Shelter along these rationalities and the way they have been contested between the government and civil society.

### **Understanding the Right to Shelter as a Contested Practice**

Throughout this chapter, I have attempted to use genealogical principles to gain greater intelligibility of the emergence of the Right to Shelter in NYC. The concept of emergence is intimately linked with genealogy in that it rejects the assumption that a practice has an objective origin or purpose and, instead, suggests practices emerge because of, or despite, a variety of influences, and continues to transform throughout time. Foucault's language to discuss emergence in *Nietzsche, Genealogy, History* revolves around the theme of contestation and subjugation. Foucault (1998) writes,

[W]e should avoid accounting for emergence by appeal to the final term [...] These developments may appear as a culmination, but they are merely the current episodes in a series of subjugations [...] In placing present needs at the origin, the metaphysician would convince us of an obscure purpose that seeks its realization at the moment it arises. Genealogy, however, seeks to reestablish the various systems of subjection: not the anticipatory power of meaning, but the hazardous play of dominations (376).

In other words, if one were to conceive the origin of the Right to Shelter and apply it to the migrant crisis of 2022, one would erroneously assume that the purpose of the Right to Shelter was to serve

migrants. According to Foucault, practices, like the Right to Shelter, do not have an “intrinsic [...] purpose” (Walters 2012, 145). The question that must be explored is how the practice of granting shelter in NYC, through the Right to Shelter, was “forced into being” (Walters 2012, 145). Walters describes this analytic focus, genealogy as struggle, which “reminds us of the forgotten contests, the contingencies, the good fortune... the fact that things could have turned out very differently” (Walters 2012, 146). Throughout the following section I will explore how the Right to Shelter emerged and transformed under a “particular state of forces” (Foucault 1998, 376). The Right to Shelter has provoked an array of disputes between the government and the interests of homeless people that have shaped this practice over time. Crucially, I argue that the Right to Shelter is defined by contestation and struggle, which is a feature that made it possible for new arrivals to have access to shelter in the migrant crisis of 2022 to 2024.

Using documentary analysis of the *Callahan v. Carey* case, I have empirically identified three rationalities that characterize the Right to Shelter: the categorization of populations, the logic of crisis, and the obligation of the government to provide shelter. These are, in fact, governmentalities, techniques of government, used to implement and conduct populations through the Right to Shelter. The following section will build upon this framework by empirically and historically analyzing how this practice has influenced power and provoked contests. I will begin with an exploration of the subsequent court cases *Eldredge v. Koch*, *McCain v. Koch*, *Cosentino v. Perales*, and *Boston v. City of New York*, which fought to establish the Right to Shelter for homeless women and families; categories of the population not defined in the *Callahan v. Carey* consent decree. Subsequently, I will explore attempts made by the Giuliani and Bloomberg administrations to undermine the Right to Shelter through eligibility requirements. Here we see different techniques the government has used to shirk its obligation in providing shelter, which were contested through jurisprudence and by the city council of NYC. This is “a genealogy that is framed amidst the sights and sounds of battle,” figuratively speaking of course (Walters 2012, 146). These different battles define the Right to Shelter and shaped this practice into what it was when new arrivals needed shelter in NYC in 2022.

As I have been keen to point out, the *Callahan v. Carey* consent decree uses language that established the entitlement to shelter for homeless men. Despite Mayor Koch’s public commitment

to applying the Right to Shelter equally between men and women, it became clear that this was not the case in the years after the consent decree (Coalition for the Homeless, 2023). The key issue was that women were lacking protection of the shelter standards set by the consent decree. As a result, the Coalition for the Homeless attorney Robert Hayes brought another class action lawsuit in 1982 against the city called *Eldredge v. Koch*, in which the plaintiffs were homeless women and the defendants were the mayor of NYC and the Commissioner of the city's Human Resources Administration.

The 1983 decision by State Supreme Court Justice Arnold Guy Fraiman describes the fact that women's shelters lack the correct number of showers and toilets and there is no rationale by the government for not offering equal services. Justice Fraiman writes (1983),

The City of New York cannot enter into an agreement (which, in essence, is what a consent decree is) that purports to set standards for shelters for the homeless, that is applicable only to shelters housing men, unless a rational basis exists to exclude women from its terms. No such basis has been urged or suggested by defendants and, indeed, none exists. Clearly, women have as equal a need as men for adequate sleeping, recreation and toilet facilities. While the fact that the Callahan decree was entered into in connection with an action brought by homeless men might explain the limitations of its terms to men's shelters, such limitation was purely fortuitous. For the reasons indicated, it is equally applicable to women's shelter (1).

This judgment by the Justice illustrates the underlying techniques the government used to develop contingencies in the Right to Shelter. The category of men and women was used as a mechanism to avoid the standards set within the consent decree. The consent decree is described as an agreement made by the City which alludes to the obligation, but also the supposed willingness by the government to provide adequate shelter. The lack of a "rational basis" in not providing appropriate standards for women illustrates the power dynamics at play within the Right to Shelter. Using Foucault's language, these are disciplinary techniques employed by the government against the homeless women population. The subjectification of men and women as different categories of governed subjects is in full display. Nevertheless, the state judicial system serves as an important battleground of contestation surrounding women's Right to Shelter.

Ensuing court cases surrounding the entitlement to shelter for homeless families puts on display the disciplinary techniques used by the government and moments of subjugation. In 1983, a Legal Aid Society attorney, Steven Banks, filed the lawsuit *McCain v. Koch* which sought to protect the entitlement to shelter for homeless families. In 1986, there were systems and programs in place to assist families in emergency need of shelter. The City Department of Social Services operated an Emergency Assistance Unit which worked to find “hotel accommodation for homeless families” and gave “allowances for such accommodation for six months” (*McCain v. Koch* N.Y. App. Div. 1986). Nevertheless, the lawsuit brought by the Legal Aid Society argued these regulations were not being practiced appropriately. The table below illustrates the conditions of the eight plaintiffs in the case. The ruling in 1986 called for improving shelter conditions and gave court directives barring the City from requiring homeless children and families to sleep on floors and benches in intake centers (Coalition for the Homeless, 2023).

What is important to highlight here is how the Right to Shelter encompasses a “series of subjugations” (Foucault 1998, 376). The eight families that are described below are a microscopic example of the “forgotten contests” that exist within the Right to Shelter (Walters 2012, 146). We cannot forget; we must remember the Downs family being forced to leave their apartment due to unsanitary conditions and the bureaucracy they faced seeking temporary shelter. We must remember how the Perez family sought an apartment for five months to no avail, ultimately being forced to sleep on a Coney Island beach with their six year old son. We must remember the Moses family’s stay in a rodent-infested hotel, with no heat, causing the two year old daughter to be hospitalized for pneumonia. These are just a few of the stories captured by the judge’s ruling in *McCain v. Koch*, and while many more contests are truly forgotten, I contend this struggle to remember defines the practice of Right to Shelter.

**Table 8.**  
*Conditions Faced by Homeless Families in NYC Shelters represented in McCain v. Koch*

Family	Shelter Condition	Specific Issues
Sanders Family	Temporary shelter terminated after a short period; subsequent denial of	Homeless due to a fire; faced denial of shelter without explanation; AFDC benefits cut due to lack of permanent

	emergency shelter.	address.
Downs Family	Unsafe hotel shelter, inadequate for families with children.	Forced to leave apartment due to unsanitary conditions; shelter allowance cut upon moving in with relatives; faced pressure to find permanent housing.
Rodak Family	Denial of emergency shelter on multiple occasions.	Evicted for nonpayment; repeated shelter requests denied.
Perez Family	Forced to sleep on the beach and in a park with asthmatic child.	Rejected multiple times for emergency shelter; ultimately forced to stay in unsanitary and unsafe environments.
McCain Family	Placed in unsanitary, unsafe hotel (Martinique Hotel).	Lived in rodent-infested rooms with exposed electrical hazards and broken infrastructure.
Moses Family	Moved between substandard, unsafe hotels with rodent infestation (Martinique and Granada Hotels).	Exposed to repeated fires, lack of heating, and violent threats in surroundings; 8 young children who contracted illnesses due to poor shelter conditions.
Frazier Family	Lived in dangerous conditions at Regent Hotel.	No furniture, forced to eat on the floor.
Salterwhite Family	Overcrowded, unsafe condition in Conca D'Oro Hotel.	Six children and two adults crowded in two double beds, forced to sleep on the floor.

Note: Own elaboration, based on McCain v. Koch Judge’s Ruling, 1986.

The *McCain v. Koch* ruling, while it sought to improve shelter conditions for homeless families, did not achieve a legally enforceable Right to Shelter. As a result, the Legal Aid Society brought other litigation to protect the interests of these families. In *Consentino v. Perales* the court determined that children could not be removed from their families and placed in foster care solely because the family lacked housing (Coalition for the Homeless, 2023). It wasn’t until 2009 through the case *Boston v. City of New York* that the Right to Shelter for families was a legally binding entitlement. The case complaint highlights how Ebony Boston and her five year old son became homeless following her mother’s eviction due to severe depression. With no other housing options, Ms. Boston’s father refused to let the family stay in his Section 8 apartment due to lease concerns. The City denied Ms. Boston’s shelter request, and claimed she could live with her father, even upholding an appeal, forcing her and her son to spend nights without shelter. After many back and

forth requests for shelter assistance, Ms. Boston was placed in a temporary shelter in Queens, despite her son attending school in Staten Island. This was a significant burden on the family, forcing them to wake up at 5 am to make it to school from their shelter in Queens. The complaint describes how Ms. Boston faces risks of further shelter denials, disruption of public benefits, and inadequate shelter arrangements. All these details serve to show how embedded shelter is with other facets of life. Children’s schooling, the public benefits bureaucracy, the repeated denials of shelter all prevent Ms. Boston the opportunity for getting back on her feet. Having a place to sleep at night is the most basic of needs, and the city government was clearly undermining this entitlement.

The final judgment in *Boston v. City of New York* requires New York City to provide safe, sanitary, and timely emergency shelter for eligible homeless families. It mandates thorough eligibility investigation, including support for families in obtaining necessary documents, and emphasizes that families cannot be denied shelter due to third-party non-cooperation, such as when a family member refuses to provide shelter. Similarly to the consent decree, the final judgment pays special attention to administration procedures. The table below characterizes the rules elaborated within the court judgment. While these regulations may seem dense and bureaucratic, that is the quality I am trying to illustrate. I identify the administration of shelter as the crux of the contestation within the Right to Shelter. In essence, these administration procedures are the governance of the Right to Shelter and while the court system attempts to mandate certain regulations there will always be gray areas as opportunities for discipline by the government.

**Table 9.**  
*Key Requirements in Boston v. City of New York Judgement*

Provision	Description
Investigation of Housing Options	The City must investigate whether families seeking shelter have alternative housing. Families must cooperate by providing reasonably available information and documents. The City will support families by providing guidance and assistance in gathering necessary information from third parties.
Consideration of Circumstances	All relevant facts must be considered during eligibility evaluations, including safety and overcrowding of available housing. Decisions must

	be based on the totality of circumstances, with attention to domestic violence, medical, or child welfare issues in the family seeking shelter.
Domestic Violence Evaluation	If a family member may be a victim of domestic violence, they must be referred to a trained worker, whose assessment will guide the eligibility process. All other eligibility investigations will pause during this evaluation.
Written Notice of Eligibility	Families seeking shelter are entitled to a written notice indicating eligibility or ineligibility, as per applicable law.
Reapplication Rights	Families found ineligible can reapply for shelter at any time, and any subsequent shelter provision will comply with applicable law.
Shelter Termination	Termination of shelter for homeless families with children must follow applicable legal procedures.
Public Benefits Eligibility	A permanent address is not required for public benefits eligibility, including cash assistance, food stamps, and medical assistance.
Access for Legal Representatives	Legal representatives have access to family shelters and intake centers for client assistance and may speak with any family seeking legal aid.
Data Transparency and Reporting	The City must publish disaggregated monthly and quarterly reports on the DHS website, detailing shelter eligibility data, including the number of families who reapply and are later found eligible. These reports are required to start within 180 days of the judgment entry.

Note: Own elaboration, based on *Boston v. City of New York* Judgment, 2008.

Lastly, one of the clearest disciplinary techniques by the government in its practice of Right to Shelter is the implementation of eligibility requirements. In 1995, when George Pataki was the governor of New York, a new regulation 18 NYCRR 352.35 was issued establishing shelter eligibility rules. Concretely, to qualify for shelter, applicants needed to complete an assessment and develop an independent living plan with social services; shelter access could be denied if one failed to comply with assessments or engaged in disruptive behavior; shelter users needed to meet public assistance requirements, including participating in employment training and applying for other benefits to lessen dependency on temporary housing. There were subsequent attempts to employ shelter rules and regulations through an administrative procedure in 2005 under the Bloomberg administration called 05 ADM 07, and Department of Homeless Services Procedure 12-400 in 2011. Through these eligibility requirements, or better said bureaucracy, the government was disciplining those in need of the Right to Shelter. Notably, these rules target homeless

individuals that are most vulnerable, specifically those suffering from mental illness and other health problems.

Mental illness and social dysfunction was a topic that was brought up in court in an affidavit from Ezra Susser, a Professor of Clinical Psychiatry and Clinical Public Health at Columbia University in 2011. Dr. Susser's testimony puts in conversation the standard of need described in the Callahan v. Carey consent decree with the proposed Procedure 12-400. The consent decree articulates the right to shelter for any man who "by reason of physical, mental or social dysfunction is in need of temporary shelter" (1981, 1). However, Procedure 12-400 allows the "denial of shelter to homeless persons who fail to complete an assessment of their need for shelter" and allows the City to deny "shelter for applicants whose mental or physical impairment prevents them, in the opinion of City employees, from completing the assessment" (2011, 2). This affidavit demonstrates how the government attempts to undermine the intentionally broad definition of social dysfunction in the 1981 consent decree. Dr. Susser (2011) writes in the affidavit

Social dysfunction falls outside conventional definitions of mental disorder. [...] 'Normal' persons can become socially dysfunctional when exposed to stressors such as homeless[ness] [...] Denying shelter to people with social dysfunctions raises the risk of doing great harm — causing serious, long-term mental disorder with possibly life threatening consequences — to socially dysfunctional homeless people (6).

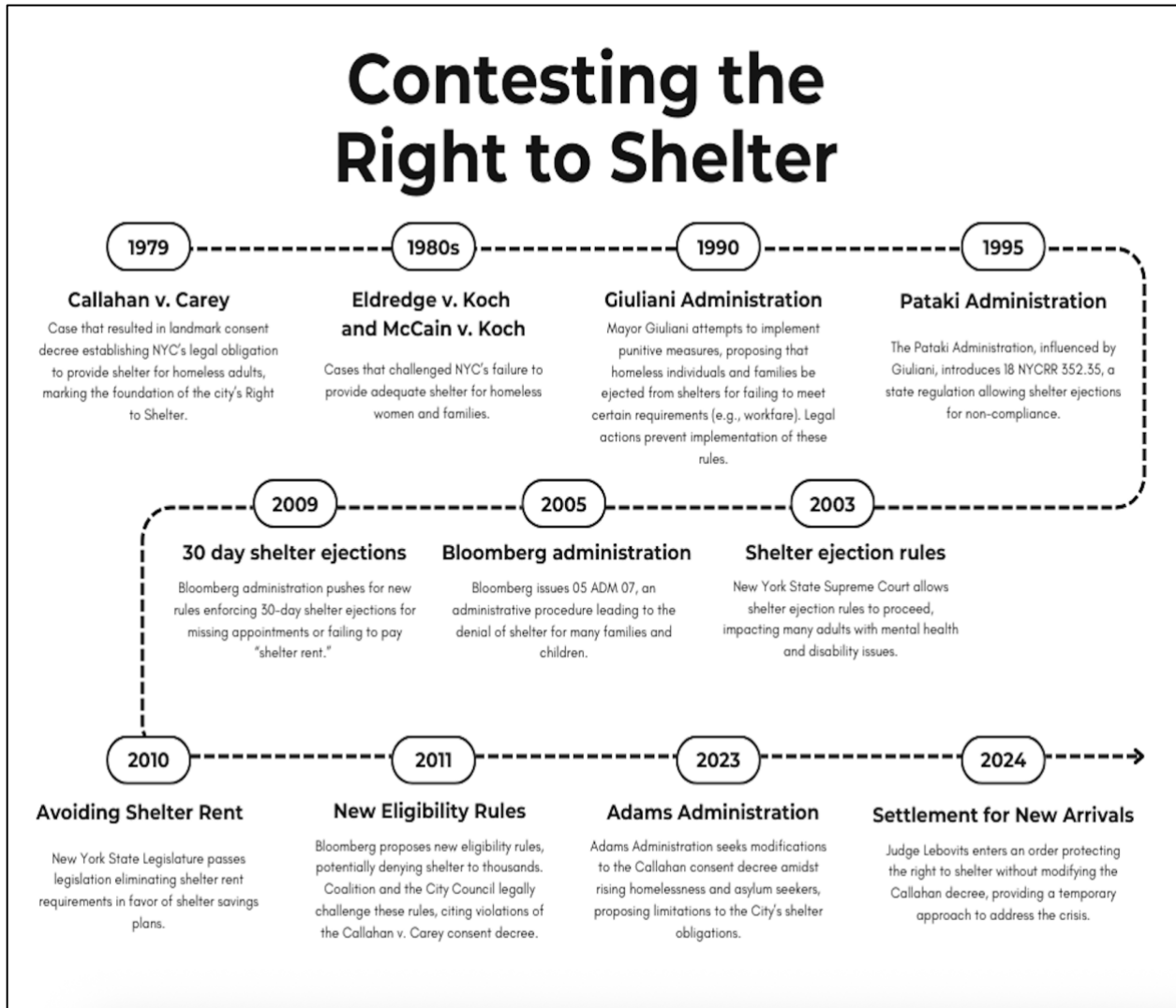
All three rationalities I have explored prior are present in this discussion about eligibility requirements and its impact on homeless people. The categorization of socially dysfunctional was a broad definition in the consent decree, which provoked the government to seek ways to undermine this obligation, which ultimately exacerbates the crisis homeless people find themselves in.

To conclude this chapter, it is essential to highlight how the Right to Shelter has evolved as both a legal and social construct, shaped by distinct rationalities and contestation throughout time. This chapter has traced the emergence of the Right to Shelter through the lenses of crisis, categorization, and obligation, each acting as a rationality that has been applied, challenged, and adapted over time. Crisis conditions sparked the original court decisions that framed the need for shelter as an urgent and non-negotiable matter, making the provision of shelter appear indispensable in the face of life-threatening conditions. This initial impetus not only underscored the essential nature of

shelter, but also set a precedent for categorizing certain populations as entitled to care according to their vulnerability.

Additionally, the categorization of populations and obligation of the government have remained central to how the Right to Shelter is administered and contested. While categorization was initially used to justify shelter services for single homeless men, subsequent litigation, including cases like *Eldredge v. Koch* and *Boston v. City of New York*, expanded these entitlements to women and families. Each legal challenge further demonstrated the interplay of power within the Right to Shelter, as the government attempted to redefine or limit the populations eligible for aid. This analysis reveals how the Right to Shelter remains a flexible, contested, and adaptive practice of governance; one that continues to evolve in response to the shifting discourse of crisis, social pressures, and legal mandates. Understanding these foundational elements allows greater perspective and understanding of how the Right to Shelter adapts to new governance challenges such as the influx of new migrant arrivals between 2022 and 2024.

**Figure 8.**  
*Timeline of the Contestation of the Right to Shelter*



Note: Own elaboration.

## **Chapter 3: Governance of Right to Shelter from 2022 to 2024**

### **Overview:**

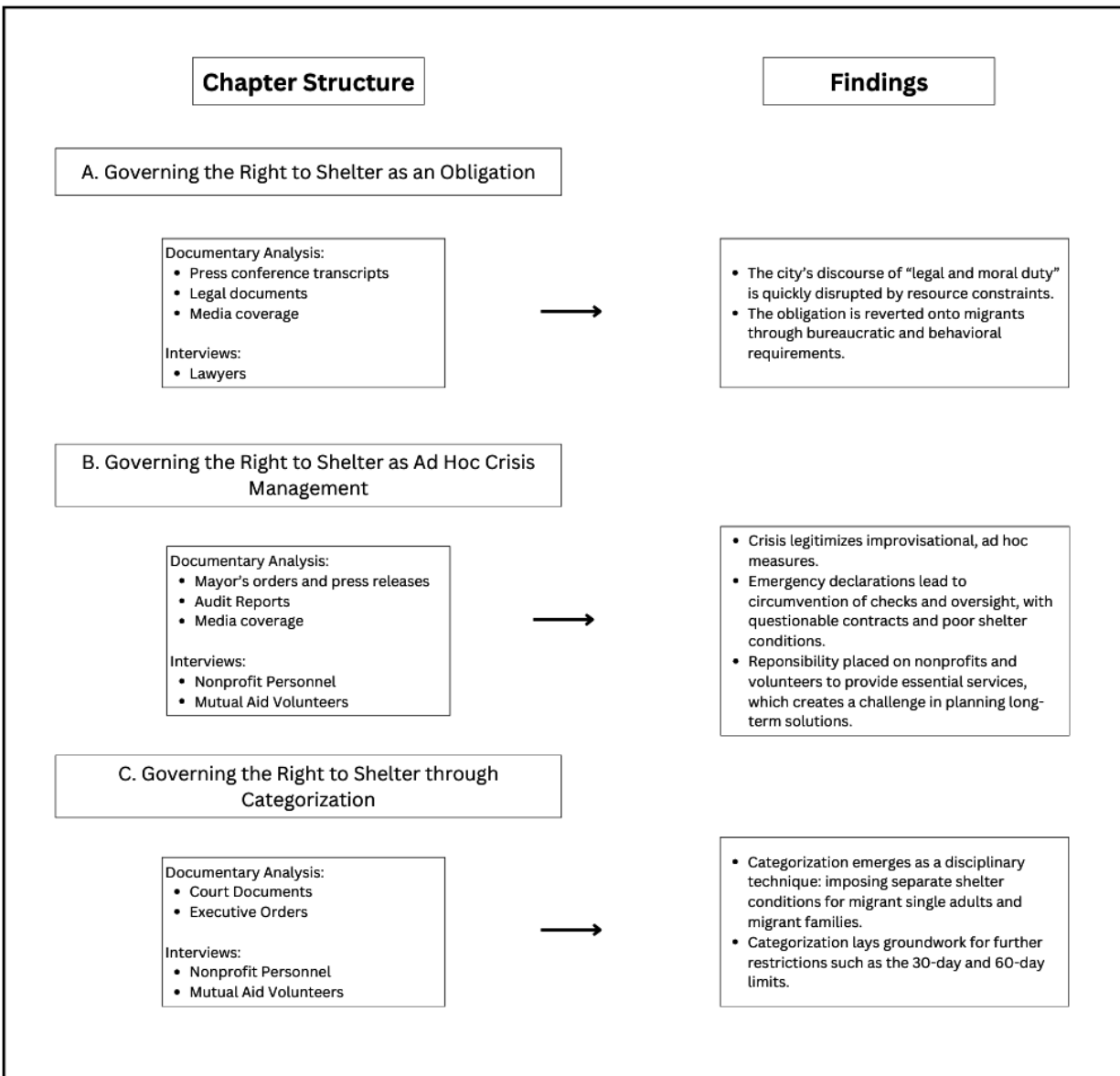
In Chapter 2, I identified three rationalities – or governmentalities – that shaped the emergence and continued transformation of NYC’s Right to Shelter: obligation, crisis, and categorization. These three rationalities are lenses through which we can understand how this practice is implemented in contemporary governance. In other words, building on these historical insights, Chapter 3 turns to the period from 2022 to 2024 to examine how these governmentalities continue to steer the implementation and governance of the Right to Shelter amid the influx of migrant arrivals.

The following chapter begins with a chronological narrative of the city government’s response to migrant arrivals and the transformation of the Right to Shelter over two years. This sequence of events sets the scene and introduces the governmental actions that I will be analyzing. I then organize the chapter around the three rationalities from Chapter 2. In the section “Governing the Right to Shelter as an Obligation,” I consider how city officials framed their obligation to provide shelter, showing the tensions between a legal duty and the city’s shifting capacity and willingness to honor it. In the section “Governing the Right to Shelter as Ad Hoc Crisis Management,” I explore how a narrative of crisis justified ad hoc governance: makeshift shelters, emergency executive orders, and contract decisions taken with minimal oversight. In the section “Governing the Right to Shelter through Categorization,” I investigate how categorization produced new policies that separated migrants from other shelter-seekers and facilitated the creation of shelter time limits.

I develop a thick description of the governance through these different themes and employ a mixed method approach that combines documentary analysis and interviews. The documentary analysis digs into an array of official texts such as press conference transcripts, legal filings, mayoral executive orders, and government press releases. These documents allow me to trace the government discourse and the governmental actions. Complementing this, I conducted interviews with lawyers, nonprofit personnel, and mutual aid volunteers. Their firsthand perspectives and narratives reflect how these policies were experienced by a diverse array of actors. By combining an analysis of official records with the on-the-ground experiences and insights of different profiles,

I demonstrate how each of the rationalities identified in Chapter 2 continue to operate this current period. The rationalities of obligation, crisis, and categorization are frameworks through which the city manages, justifies, and restricts the Right to Shelter. This chapter underscores how the Right to Shelter is a political instrument that the government can manipulate through different governmentalities that ends up restricting the new arrivals access to essential services.

**Figure 9.**  
*Chapter organization and methods*



Note: Own Elaboration.

## **How the city government responded from 2022 to 2024**

As the spring of 2022 turned to summer, more migrants arrived in NYC and the Right to Shelter began to garner recognition from the city government. Mayor Eric Adams acknowledged the obligation the city had to shelter asylum seekers when he said, “We’re going to follow the law. The law states that we’re a right to shelter state, and we’re going to follow the law” (*Transcript: Mayor Eric Adams Provides Update on Asylum Seekers*, 2022). At this early stage, the city government was focused on upholding the Right to Shelter commitment and articulating the obligations of the city government. Mayor Adams acknowledged how NYC stood apart in its cultural diversity, giving migrants communities to receive them, while also being a state that institutionally refuses to turn them away. Nevertheless, by August 2022, Texas Governor Greg Abbot’s busing program continued to send more migrants directly to NYC and Mayor Adams began to characterize the influx of new arrivals as a crisis (Rivoli & Rajamani, 2022).

By September 2022, the city government was struggling to uphold the Right to Shelter, with reports of at least 60 men not receiving beds one night (Russo, 2022). Only two months after Mayor Adams articulated his commitment to follow the law, he was quoted in *The New York Times* saying “the city’s prior practices, which never contemplated the busing of thousands of people in New York City, must be reassessed” (Newman, 2022). Out of this context, the city government announced the development of Humanitarian Emergency Response and Relief Centers (HERRCs). Mayor Adams says,

This is not an everyday homelessness crisis, but a humanitarian crisis that requires a different approach. [...] This emergency response represents what we know must be done during this humanitarian crisis, as we continue to seek assistance from our federal and state partners to continue this work (*Mayor Adams Announces Humanitarian Emergency Response and Relief Centers*, 2022).

Nevertheless, the HERRCs were poorly managed, with reports of tent shelters being flooded and the city government having to relocate sites. Within a span of two months, from August to November 2022, a HERRC tent shelter in Orchard Beach was moved to Randall’s Island, and then subsequently closed, where migrants were finally relocated to the Watson Hotel in midtown Manhattan. By February 2023, there were 7 HERRCs in the city, mostly located in hotels. As of

November 2024, there were 17 HERRCs across NYC (*What You Need to Know About Shelter if You're a New Arrival to New York City*, 2024).

About a year after migrants first began arriving in NYC, in March 2023, the Adams administration presented a new plan to govern the influx of asylum seekers called “The Road Forward: A Blueprint to Address New York City’s Response to the Asylum Seeker Crisis.” This plan intended to shift from an emergency response to a sustainable, long-term approach through the creation of the Office of Asylum Seeker Operations (OASO). The idea behind this office was to manage advocacy, oversee relocation and long-term housing opportunities, support workforce development, and centralize legal assistance for asylum seekers. One notable development from this blueprint was the establishment of an arrival center for migrants in the Roosevelt Hotel.

Despite the ambitions to develop a comprehensive, laid out plan by the city government, the governance of the migrant crisis continued to be ad-hoc and disorganized. *The New York Times* quotes City Council member Lincoln Restler saying, “We all understand that a crisis like this requires a creative approach [...] We’d just like to see more managerial deliberation” (Bellafante, 2023). By June 2023, the city reported there were a record 100,000 people staying in shelters (Newman, 2023). This prompted the Adams administration to implement a 60-day shelter limit in September 2023 for single adult migrants, in which they were expected to find alternative housing or reapply for shelter. This 60-day limit was lowered to 30 days in the same month. By October 2023, a 60-day shelter limit was applied to migrant families. In March 2024, after negotiations between the city government and the Legal Aid Society, a settlement was reached in which the shelter limits were upheld unless migrants could show extenuating circumstances. In other words, after two years, the Right to Shelter was made contingent for migrant populations.

How can we make this sequence of events and the governance of the Right to Shelter intelligible? The following chapter will analyze this governance in greater detail, beginning with the obligation the city government had to provide shelter. I will demonstrate how the rationality of obligation provoked the government to implement the HERRCs, but at the same time provoked the discourse of crisis. Fundamentally, the government employed a response to migrant arrivals that revolved around the logic of the crisis. I will demonstrate how a crisis is a subjective rationality that

provokes an ad hoc governance and ultimately disciplines migrant populations. Lastly, the management of the Right to Shelter continues to revolve around categorizing populations. This ultimately facilitates the contingency of the Right to Shelter, in which limits were imposed for migrant single adults and families.

What does it mean for these government techniques and responses to be steeped in history? What implications does this have for this investigation's understanding of rights as a political instrument? How is this case study useful for our understanding of migration governance, and what lessons can we take from it? The following chapter will put these questions under empirical and critical reflection.

### **Governing the Right to Shelter as an Obligation**

“Under Mayor Adams, New York City is committed to meeting our legal and moral obligation to provide shelter to all who need it,” said Gary Jenkins, NYC’s Commissioner for the Department of Social Services (*Transcript: Mayor Eric Adams Provides Update on Asylum Seekers, 2022*). In July 2022, a press conference involving Commissioner Jenkins, Manuel Castro, the Commissioner of the Mayor’s Office of Immigrant Affairs, and Mayor Eric Adams was held after reports that the city had failed to uphold the Right to Shelter for migrant families. This press conference is useful to analyze the discourse surrounding the Right to Shelter at this early stage of the influx of migrant arrivals. Notably, the city officials mention that around 3,000 asylum seekers had arrived in NYC, while the Comptroller’s office reports around 1,000 asylum seekers were in city funded shelters (*Transcript: Mayor Eric Adams Provides Update on Asylum Seekers, 2022*; Office of the New York City Comptroller Services, 2024). Nevertheless, the city had welcomed only a small fraction of the over 200,000 migrants that would come to NYC.

In July 2022, the city government simultaneously demonstrated a commitment to upholding the obligation of the Right to Shelter but also set the groundwork of the crisis rationality which would undermine it. Commissioner Gary Jenkins articulates the specificity of the legal mandate,

The fact is, when a family presents to our shelter, if they present by 10:00 pm, we are required by state law to house that family in a conditional placement by 4:00 am. Because of the large increase of families coming into our system, we did not meet that mandate for

four families that was going in Monday into Tuesday morning [corrected Sunday into Monday] (*Transcript: Mayor Eric Adams Provides Update on Asylum Seekers*, 2022).

These details connect to the discussion of the management of shelter that was explored in the analysis of the consent decree in Chapter 2. In other words, within the obligation the government has, there are also concrete expectations and guidelines for the management of the shelter services. This illustrates the layers within the rationality of obligation in that it even applies a temporal expectation on the government to provide shelter. At this point in time, the city government is seemingly transparent about this, acknowledging the responsibility towards upholding these requirements.

Furthermore, the city government recognizes that the Right to Shelter is a practice they are obligated to provide regardless of immigration status. In this press conference, there were several questions asking whether or not the government had data on the percentage of asylum seekers within the shelter system. In response to one these questions, Commissioner Jenkins says,

As you know, we don't ask for an individual's immigration status because they have a right to come into our shelter system. We have that conversation with them during the assessment. And we are going to continue to build capacity. We don't have that luxury to say, "No, you can't come in." We're going to always find a way and find a bed for those families to come in (*Transcript: Mayor Eric Adams Provides Update on Asylum Seekers*, 2022).

Again, this is a city official saying that the Right to Shelter leaves the government no alternative than to provide shelter for migrant families. This practice exists *because* the government has no alternative, and has this obligation to provide shelter. The rationality of obligation illustrates the subjective nature of rights. The genealogy of obligation allows one to see the contested nature of this governmentality throughout time and provides us a critical perspective to see the power of the government in implementing this political instrument. Ultimately, the Right to Shelter case demonstrates how governments can manipulate rights, despite legal or moral obligations. Governments can extend rights to migrant populations, but just as quickly withdraw them.

The governmentalities of obligation and crisis allow the government to manipulate the Right to Shelter practice in disciplinary ways for migrant populations. Manuel Castro, the Commissioner

of the Mayor's Office of Immigrant affairs, sets the groundwork of the crisis mentality, "This is a historic moment, not in any time, in modern history. So many asylum seekers have come to our city and we have met this moment. Almost over 3,000 asylum seekers have arrived, and we have provided emergency shelter" (*Transcript: Mayor Eric Adams Provides Update on Asylum Seekers*, 2022). In other words, there is clear language highlighting the unprecedented nature of the challenges the government is facing. Despite articulating a commitment to provide shelter, it is justified because of an emergency. What happens when the emergency becomes too great, however? The genealogy of crisis and obligation in Chapter 2 illustrates how these rationalities play off of one another giving the government opportunities to contest the Right to Shelter. What is different in 2022 is that migrant populations are behind the crisis.

Within the framework of governmentality, I am seeking to identify the subjectivity behind government action. Mayor Adams gives us insight on this when he says,

There are two concepts to law. There is the letter of the law and the spirit of the law. This administration operated in the spirit of the law. And this administration is made up of human beings. Human beings drop the ball sometimes. And this administration is made up of human beings. [...] But to critique an administration that is compassionate to house 3,000 people, four families that should have been there, there was no reason for us to cover up. (*Transcript: Mayor Eric Adams Provides Update on Asylum Seekers*, 2022)

The very mayor himself alludes to the fact that there are subjective individuals orchestrating the governance of the Right to Shelter. At the same time, he uses human nature to justify shortcomings in the provision of shelter to migrant families.

The mayor is saying, despite our best intentions, sometimes governments fail to uphold their obligations because governments are composed of subjective and flawed individuals. The mayor is right here. Governance is flawed and subjective, and this investigation is focused on identifying how particular rationalities influence government action in the face of concrete challenges. The mayor reveals how he views the provision of shelter for migrant families when he describes his administration as "compassionate." What does it mean to extend compassion towards migrants when, in theory, the Right to Shelter isn't a practice based on good will, but a legal obligation? As

we will see, these subjective attitudes will influence the governance of the Right to Shelter and migrant arrivals.

In summary, as migrants began to arrive in NYC from the spring to the summer of 2022, the city government acknowledged its responsibility for providing shelter services. There is clear discourse surrounding the obligation the government had towards migrant families due to the legal mandate of the Right to Shelter consent decree. The governmentality of obligation gives insight into the power the government has in wielding the Right to Shelter as a political instrument. While there is institutional discourse committing to sheltering migrants, there are also emerging contingencies. Migrants are recognized as a population the government is *obligated* to give shelter to, despite not being NYC residents or US citizens. Additionally, the government stresses the unprecedented nature of the circumstances, describing the provision of shelter as an emergency measure. We must remember that in July 2022 NYC had welcomed a mere fraction of the migrant arrivals that would come. However, the government officials had already begun to set the groundwork and reveal the rationalities that would guide the governance of the new arrivals. How will the government, as it has throughout history, seek to contest its obligation?

#### How Lawyers View the Obligation of the Right to Shelter

I conducted interviews with lawyers Joshua Goldfein and Mark Hess to better understand the legal obligation of the Right to Shelter. Joshua Goldfein is an attorney for the Legal Aid Society and was involved in negotiations with the city in implementing the shelter limits for new arrivals. Mark Hess is a housing attorney for the New York Legal Assistance Group and has extensive experience defending tenants' rights and preventing evictions, keeping his clients out of the shelter system. Joshua Goldfein and Mark Hess brought decades of experience working in NYC and were well positioned to articulate how migrant arrivals impacted the governance of the Right to Shelter.

Joshua Goldfein articulates the obligation within the Right to Shelter consent decree by emphasizing the provision of shelter was something the government agreed to:

The Callahan consent decree is on consent, meaning the parties agreed to it. It's a decree that the court ordered and the judge's signature is on it, it's a court order. And it is a very unusual court order in that it established an entitlement. [...] Callahan consent decree does

not have a sunset date, provision, nothing. It's just the city agreed there's a right to shelter for single adults, period. End of story.

These comments indicate a lack of flexibility in implementing the decree on the part of the government. Joshua Goldfein's understanding of the consent decree highlights how the court was responsible for keeping the government accountable for upholding the Right to Shelter, regardless of the circumstances. Furthermore, the passing of time is very relevant because there is no expiration to the Callahan consent decree. The terms the government agreed to in 1981 must be kept in 2024. The passing of time, the genealogy of this obligation impacts the governance of migrant arrivals from 2022 to 2024.

Additionally, another key point from this quote is the articulation of the *entitlement* to shelter. What is the difference between an entitlement and a right?<sup>1</sup> This question is fundamental to this investigation's exploration of rights as a political instrument. One way to think about this difference is that rights are broad and universal, that are intended to apply to all individuals regardless of circumstance. Rights have a moral aspect to them and are derived from laws and constitutions that protect inalienable freedoms (Yates, 1994). Entitlements, on the other hand, are specific benefits or services provided to individuals who meet certain eligibility criteria. Entitlements are managed by government programs and are conditional on certain factors (Yates, 1994). Nevertheless, we must go beyond technicalities and philosophical deliberations and focus on entitlements and rights *in practice*.

The governmentality of obligation suggests there is a blurry and perhaps insignificant difference between rights and entitlements. If we are to conceive of rights as political instruments that governments use to control and conduct populations, there is ultimately nothing concrete or objective *obliging* governments to uphold rights. Whether it is a humanitarian, moral stance or a legal mandate articulating the provision of a basic need or service, there will always be contingencies. The NYC government discourse engages the Right to Shelter as a "legal and moral obligation," as is stated by Commissioners Jenkins (*Transcript: Mayor Eric Adams Provides*

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<sup>1</sup> In Spanish, there is no difference between entitlement and right, there is only *derecho*. This provoked me to think more deeply about the subtle differences between these two words and ask questions, such as, shouldn't all rights be entitlements? What factors make an entitlement for a certain population and not another? What mechanisms create rights and entitlements?

*Update on Asylum Seekers*, 2022). However, the obligation to provide shelter is ultimately undermined by the rationality of a crisis.

Mark Hess describes how the contingencies in the Right to Shelter have become more and more visible over the years:

There's been other violations of the quote Right to Shelter and the consent decree over the years, whether it's the city not having enough shelter beds available. Whether it's even getting down to the nitty-gritty of when someone goes into an intake center and when they're actually provided a bed, and is the city promptly following up on that obligation? Those obligations are kind of degraded, in my view, pretty readily, especially over the last few years pretty often.

Here, Mark Hess is referring to the management of the Right to Shelter, in which there are time limit expectations placed on the government to find shelter. This connects with the discourse of the government officials addressing their inability to find new arrivals placements in the shelter system. Mark Hess is questioning whether the city regularly upholds this obligation and suggests the universal Right to Shelter has been improperly managed prior to the influx of new arrivals in NYC.

Furthermore, Joshua Goldfein highlights how the city government ties the Right to Shelter to compliance with public assistance rules:

There's a regulation that requires people who are in shelter to comply with public assistance rules. And there's a process for people to have their shelter suspended if they don't comply with those rules, for instance.

This regulatory mechanism reflects a governmental strategy where social rights are not absolute but contingent upon behavioral expectations. The process of suspending shelter for non-compliance is a form of discipline, transforming an entitlement into a conditional benefit. This conditionality is not neutral, and the Right to Shelter becomes an instrument through which the government can manage, regulate and exclude certain populations for fundamental services.

The obligation within the Right to Shelter has evolved over time, since it was established in the *Callahan v. Carey* consent decree. In the 1980s this was framed as a legal duty of the state to

provide shelter, but over time, this obligation has been manipulated to shift responsibility onto shelter recipients. Instead of an unconditional right, obligation is now imposed on those seeking shelter. This shift reflects a governmentality where social services are structured to impose discipline and reinforce norms of particular behavior. This subversion of the obligation placed upon those seeking shelter is especially harmful for migrant populations who may have language barriers and lack the regular status to access public assistance. In summary, linking shelter eligibility to public assistance compliance shifts the burden of obligation onto individuals, undermining the foundational premise of the *Callahan v. Carey* consent decree. The genealogy of obligation reveals how the state reconfigures shelter as a privilege contingent on certain behaviors, rather than a fundamental right.

### **Governing the Right to Shelter as Ad Hoc Crisis Management**

As was explored in Chapter 2, the Right to Shelter is articulated in the consent decree with an emphasis on the *management* of the provision of shelter. The consent decree and the following court cases laid out precedents of how the government must administer shelter. In other words, the practice of Right to Shelter is intimately linked with *how* the government responds to emergency conditions, and there are clear guidelines to what must be done. This brings us back to the discussion of migration governance in Chapter 1, in which I put in conversation the implications of migration management: a technocratic administration of human mobility. Ultimately, this is a fundamental aspect of governance: how do governments *manage* unforeseen events and what tools and techniques do they use to navigate these moments? The following section seeks to answer this question, paying close attention to how the discourse of crisis, promoted by the city government, influenced the management of the Right to Shelter.

The rationalities of crisis and emergency are embedded in the Right to Shelter practice of NYC. The governance of new arrivals in NYC gives us the opportunity to critically reflect on how the provision of essential services is perceived and constructed by the city government. Services are justified only when there are extreme conditions that merit government action. Fundamentally, this case study reveals the weak foundation upon which the Right to Shelter practice is built: a legal mandate that seeks a temporary solution to a crisis, instead of a systemic, sustainable solution.

In September 2022, the city government began to open Humanitarian Emergency Response and Relief Centers (HERRCs) in order to uphold the Right to Shelter mandate and support the new migrant arrivals in NYC. This was one of the first steps the government took in response to the migrants coming to NYC, and as the name suggests, the rationality of crisis pervades throughout. HERRCs were intended to be places where newly arrived individuals and families could be connected to services. As the city government articulated, “Humanitarian relief centers will become the first touch point for arriving asylum seekers, helping people by immediately offering shelter, food, medical care, case work services, and range of settlement options...” (*Mayor Adams Announces Humanitarian Emergency Response and Relief Centers*, 2022). This was an emergency response to the demands of migrant populations arriving in the city. As you can see from Image 1 below, these shelters were makeshift and temporary, providing only the most basic needs.

**Image 1.**

*Photograph of a Humanitarian Emergency Response and Relief Center*



Note: Image from NYC Government website (*Mayor Adams Announces Humanitarian Emergency Response and Relief Centers*, 2022).

The logic of crisis plays into the humanitarian aspect of the HERRCs and undermines the obligation the government has to provide shelter. The discourse surrounding the implementation of the HERRCs was one of morality. When implementing the HERRCs for the first time, Mayor Adams said, “Now, more than ever, it’s clear that we are again dealing with a humanitarian crisis created by human hands. While other leaders have abdicated their moral duty to support arriving asylum seekers, New York City refuses to do so” (*Mayor Adams Announces Humanitarian*

Emergency Response and Relief Centers, 2022). The moral duty to support asylum seekers is a much weaker mechanism to enforce government action than a legal obligation.

Approximately two weeks after Mayor Adams announced the HERRCs, he declared a state of emergency. This state of emergency allowed the government to circumvent the normal procedures for opening shelters that includes a review process (Newman & Fitzsimmons, 2022). The discourse of crisis and emergency leads to an ad hoc governance that does not serve the best interests of either new arrivals or New York City residents.

One of the first HERRCs was haphazardly established in a beach parking lot in the Bronx. One week later, however, the city decided to move this HERRC to Randall's Island due to the risk of flooding (Donaldson & Pretsky, 2022). Randall's Island is typically a destination for sporting events and has little to no infrastructure, in addition to being isolated from the rest of the city. By mid-October, the Randall's Island shelter was installed with 500 beds for single men. However, a month later, migrants at the Randall's Island shelter were moved to the Watson Hotel in Manhattan. These details are symbolic of the governance of new arrivals in which shelters were established with minimal forethought or planning. The government actions in upholding the Right to Shelter mandate were ad hoc, meaning shelters were created on a case by case basis, depending on the perceived needs of the migrant population arriving in NYC.

The conflicting nature of governmental responses becomes especially evident through the audit of DocGo by the New York City Comptroller's Office. DocGo, contracted by the city's Department of Housing Preservation and Development (HPD) for \$432 million to provide temporary housing and support services for asylum seekers, including accommodations, food, security, and case management, illustrates the problematic nature of ad hoc governance (New York City Comptroller, 2024). The audit exposes significant shortcomings in DocGo's provision of services, including over \$11 million in unallowable or unsupported costs, indicating a lack of fiscal oversight and planning. Additionally, the report highlighted severe deficiencies in shelter conditions, with mold and damaged ceilings present in 80% of the 189 audited rooms (New York City Comptroller, 2024).

The audit findings underscore a critical misalignment between agency expertise and the responsibilities assigned, highlighting the chaotic and conflicting nature of crisis-drive governance. This misallocation of funds and unmet needs ultimately harm vulnerable populations and erodes public trust. In summary, HPD’s mismanagement of the DocGo contract in executing the Right to Shelter for migrant arrivals illustrates the ad hoc response to crisis. This audit reveals conflict within government operations and demonstrates an approach that prioritizes short-term, reactionary solutions over long-term systemic approaches (New York City Comptroller, 2024).

How Crisis Impacted Nonprofit Organizations and Civil Society

It took almost one year, from the spring of 2022 to the spring of 2023, for the city government to lay out a plan for governing the influx of new arrivals to NYC. This plan was called the “The Road Forward: A Blueprint to Address New York City’s Response to the Asylum Seeker Crisis.” Once again, the logic of crisis is central to the government response, yet now there is institutional awareness about the need for sustainable solutions. Table 10, below, lays out the operational measures the city government intended to take. Instead of just responding to the arrival of migrants through emergency measures, the city attempted to implement initiatives that would resolve longer term issues.

**Table 10.**  
*Initiatives Outlined in NYC Government Plan “The Road Forward”*

Initiative	Description
Office of Asylum Seeker Operations (OASO)	Central office to coordinate activities, support city agencies, and manage advocacy for resources at state and federal levels.
24/7 Arrival Center	A centralized facility replacing the Port Authority bus terminal, offering reticketing, shelter intake, legal information, and medical triage.
Relocation, Long-Term Housing, and Resettlement	Initiatives for relocating asylum seekers within and outside NYC, including housing through partnerships with faith-based organizations.
Workforce Development	Programs to assist asylum seekers with work authorization, job training, OSHA certification, and connecting to mentors.

Legal Services	Creation of a centralized legal support framework and the Asylum Seeker Legal Assistance Network (ASLAN) for navigating immigration processes.
Collective Responsibility	Engaging faith-based organizations, community-based organizations (CBOs), philanthropists, and volunteers to provide services and advocacy.
Interstate & Intercity Coordination	Building coalitions with other cities and localities to share resources, dispel misinformation, and advocate for federal action.

Note: Own elaboration, based on Section 2: Plans for Steady State Operations in New York City from “The Road Forward: A Blueprint to Address New York City’s Response to the Asylum Seeker Crisis.”

The “Collective Responsibility” initiative represents the multi-actor governance framework that I explored in Chapter 1. The participation of civil society plays a significant role in migration governance and I conducted interviews to gain deeper insight into this (Cuttitta et. al. 2023). As such, I interviewed community-based nonprofit personnel and mutual aid volunteers to better understand the governance of new arrivals. A repeated theme that came up throughout my interviews was the balance of a crisis-oriented, ad hoc government response with a sustainable, long term approach to solving problems. My interviews ultimately provide valuable description of the participation of civil society in responding to the migrant arrivals.

Nonprofit Organizations

I interviewed the director of a community based organization in Brooklyn called Mixteca, which provides services to the Latinx immigrant community. One of the key points that was made when reflecting on how migrant arrivals had changed the organization’s services was the distribution of providing basic needs with sustained, long term services. The director shares,

Because of the number of people we receive every single day, we were not able to do follow ups and to do other types of work that [are] needed. So we decided to only accept walk-ins on Wednesdays, Thursdays, and Fridays. For some people, on Monday, Tuesday and Saturday, we focus on follow-ups, mental health workshops, and many other services. Because we don’t want to be only responding to the crisis and not focusing on providing additional support.

This comment gives insight into how the rationality of a crisis inhibits forms of support that are longer lasting, proactive and not just reactive. It also illustrates the role that nonprofit organizations, and in turn civil society, played in complementing the government response.

When I asked the director of Mixteca her perspective on the government response I was given a very pragmatic answer. It became clear that for those actors involved directly in managing the influx of new arrivals, this discursive crisis that I have been pointing to is not just constructed,

I think at this point, nobody has the capacity to provide services to these larger numbers of people, [...] it's easy to point at someone [...] and say you are doing wrong. What I can say is that one of the criticisms that I have is like there is no plan in place, it is just reacting, but who has a plan in place to receive this number of people? So at the same time is [...] this could be done better. Of course. There are many challenges that people are facing, but at the same time we get I think I read something yesterday 200,000 people arriving in the city [...] Who has the capacity to provide services to 200,000 people in the city?

On one hand, the new arrivals in NYC required a government response that provided essential services. People needed shelter, food, and clothes, which are the most basic needs. On the other hand, as the director of Mixteca points out, the reaction to these migrant arrivals, when framed as a crisis, led to the lack of a well thought out course of government action.

I also spoke with the director of Organizing and Policy at another community-based nonprofit called Neighbors Together based in Brooklyn. This interview also gave insight into the balancing act of providing essential services with more systemic advocacy efforts. I was told how the influx of migrant arrivals impacted Neighbors Together's Community Cafe, which provides daily meals to people in need,

In the last year alone, we saw a 63% increase in the number of meals that we're serving. We used to on a really busy day, pre-COVID, [provide] 200 meals served regularly. Now we're at like 500 meals served. So we're [...] serving so many more people and meals.

This illustrates how community based organizations took on the burden of providing essential services to new arrivals through services such as soup kitchens. However, similar to Mixteca, Neighbors Together also recognized the deeper issues at play,

Housing is such a huge stressor for so many people here that [...] we're organizing around housing and most of our campaigns have to do with legislation or policies that we want to see changed or improved.

This dual focus highlights how frontline organizations are not only stretched thin meeting immediate humanitarian needs, but are also compelled to engage in policy advocacy to address the structural causes of precarity that affect both long-term residents and new arrivals.

These interviews complement the genealogical analysis of the Right to Shelter that identify it as a practice that responds to crisis-like conditions. Fundamentally, the Right to Shelter is a practice of government that offers an essential service. This helps us understand how the city government's response to migrant arrivals, which operated through the Right to Shelter mandate, would revolve around the rationality of crisis, and ultimately employ ad hoc measures. The role civil society plays, in particular nonprofit organizations, in complementing the government's response, give valuable perspective to the flawed foundation of the Right to Shelter practice. It was created as an instrument for providing a service in the most dire of circumstances. The governance of new arrivals revolved around this instrument, and as such it lacked the attention to long term solutions.

### Mutual Aid Volunteers

Mutual aid is a form of voluntary and collective action where people come together to meet shared needs through direct support and resource sharing. The volunteers I interviewed give a non-institutional perspective of the governance response and gave insight into the essential services that were needed by migrants. These interviewees represent the many NYC residents that contributed their time and resources to supporting the new arrivals. One mutual aid volunteer gives a description of the ways in which he helped,

I was delivering water during heat waves. [...] There was a HERRC shelter at Stockton Street that didn't have functioning showers, and many of the men were [...] Muslim so just, you know, kind of a cultural issue surrounding [...] not feeling clean. So one of the things that we were trying to do was get showers operational. And there were a few people that I was working with that were helping to get kind of camping showers set up there, but also trying to get access to work with the city, to turn on, you know, kind of like live water pumps that were nearby.

Once again, this illustrates how the emergency shelters the city constructed were temporary solutions and lacked significant infrastructure. Civil society had to participate to help meet these basic needs.

This volunteer describes how one of the issues with the HERRCs was that they lacked kitchens and one of the ways mutual aid volunteers responded to this was creating spaces in community gardens, where migrants could cook and have barbecues. This anecdote draws a parallel with the court cases I analyzed in Chapter 2, in which the provision of shelter is only one of a whole array of needs the homeless have. Whether it is cooking food or taking children to school, shelter connects to other essential facets of life. Through the Right to Shelter practice the government has an obligation in attending to these needs, yet through the ad hoc establishment of emergency shelters migrant arrivals were left without these fundamental services.

Another volunteer gave his description of the shelters put up for migrant arrivals. Again, what stands out is the make-shift nature of these spaces,

A shelter opened across the street from where I live [...] On the roof I can see baby cots. I can see the men sleeping. The Stockton shelter had opened without a running shower there because it was designated as a respite center, a place to sleep, they had designated the Kosciuszko Pool as the place where the men could shower between very, very early hours in the morning. [...] There were two bathrooms on the bottom floor, as it is a converted commercial building. The Stockton shelter is four floors of commercial space that now sits above a Blink Fitness.

This description highlights how shelters lacked the fundamental services like sufficient toilets and showers given that the very buildings were never designed to be for lodging people. These details put in perspective the sheer volume of new arrivals and how the emergency measures the city government took to follow the Right to Shelter led to these conditions.

The mutual aid volunteers gave descriptive insight into the shortcomings of the government response. Civil society was forced to complement government action with the provision of basic services. These interviews reveal the shortcoming of the government's governance of new arrivals through the ad hoc management of the Right to Shelter. However, the interviews from

civil society give critical insight into how strategies for protecting rights go beyond the State. When the government response fell short, the services the nonprofits provided and the volunteer work from mutual aid members to create places to cook and install functioning showers filled a fundamental role. This interaction between government and civil society reveals a complex social process that can be understood as governance.

We can return to our analysis in Chapter 1 that points to the multitude of actors involved in migration governance. This thesis introduces how these actors – government, nonprofits, and individual community members – influence the practice of the Right to Shelter. Ultimately, we must keep a critical eye in understanding how civil society employs strategies in response or in cooperation with government action. Rights are a political instrument in creating the obligation or a normative framework for providing certain services for populations, but they are by no means the be all and end all. The services civil society offer in an emergency response don't fall under the category of rights, because these actions are not political; they are social, relational, and community driven. The interviews with mutual aid workers and the nonprofit directors illustrate how rights have influence over government, but there are other strategies employed by non-governmental actors that operate outside of a rights-framework governmentality.

### Genealogy of Crisis

The governance of the Right to Shelter in NYC has long been entangled with the rationality of crisis, shaping its legal foundations and its practical implementation. As seen throughout this investigation, the Right to Shelter emerged from a legal mandate designed as an emergency response mechanism, rather than a sustainable solution for housing insecurity. The genealogy of crisis allows us to see how the provision of shelter was rationalized as an urgent, temporary intervention and how this has led to consequences on how the city government managed the Right to Shelter for new arrivals.

The response to the influx of migrant arrivals exemplifies the limitation of a governance practice rooted in an emergency logic. The establishment of HERRCs reinforced a crisis framework that prioritized short-term, makeshift solutions over long-term housing strategies. The city's reliance on ad hoc measures, such as repurposing commercial buildings and contracting inexperienced

service providers like DocGo, further reflects how crisis rationality enable improvisational governance. This approach undermined the stability and quality of shelter and facilitated the circumvention of standard procedures, as seen in the emergency declaration that waived oversight requirements.

Furthermore, this crisis-oriented governance placed immense pressure on civil society, particularly nonprofit organizations and mutual aid groups to fill gaps in service provision. My interviews with nonprofit leaders and volunteers reveal how the city's reactionary approach hindered the ability to build long-term support systems. Rather than a coordinated migration governance, the emergency management forced organizations to oscillate between immediate relief efforts and long-term advocacy to address systemic deficiencies.

Ultimately, this genealogical analysis of the crisis rationality reveals how the government manipulates its obligation to provide shelter as a discretionary moral act instead of an enforceable right. By employing crisis as a governmentality, the city government ensures that shelter remains precarious - constantly subject to shifting political priorities, administrative limitations, and public discourse. This case study underscores the broader implications of crisis governance and rights frameworks. When essential services are structured around emergency responses, they remain fragile and reactive to unforeseen circumstances. The city's struggle to accommodate new arrivals should not be understood merely as an administrative, logistical challenge but a consequence of a governance approach that treats shelter as an instrument of crisis management.

### **Governing the Right to Shelter through Categorization**

A crucial dimension of the ad hoc governance of the new arrivals is that, through the Right to Shelter practice, the government began categorizing migrants as a separate population. The rationality of crisis justified the implementation of emergency shelters that were specifically for new migrant arrivals. This created discord within NYC residents and also, through the HERRC shelters for migrants, the Right to Shelter began to be undone as a universal entitlement and obligation of the government.

The director at the nonprofit Neighbors Together who has extensive experience working with NYC residents in vulnerable situations spoke to the sentiment the ad hoc governance provoked. She shared,

I feel like it's a divide and conquer strategy that the city has used, pitting people against each other, when really, the people to blame are [not] the new arrivals themselves, and [it's] a failure of our systems and our government [...] The mayor is using the influx of new arrivals as a way to undo the Right to Shelter law, which is deeply, incredibly dangerous.

This observation speaks to how the governance of new arrivals through the Right to Shelter began to cause a division between resident and migrant populations. The HERRC shelters were an ad hoc measure that was specifically designed for the category of migrants. Our genealogical understanding of categorization helps us see how the Right to Shelter is a political instrument that facilitated this approach to separating populations.

As the director of Neighbors Together further explains:

[The government] has set up a parallel shelter system for migrants in New York City. And that's problematic, like why don't we all have the same rights, we should all have the same rights and I'm not saying financially it's feasible forever, but I think it's a problem to have one tier and then another tier of the same services. So I just think it's really short sighted and not well thought out.

This reflection has important implications for this investigation's understanding of rights as a political instrument. Through the governance of the Right to Shelter there are contingencies being made that undermine this entitlement. Crucially, the governmentality used to install contingencies is through the categorization of populations, a disciplinary technique that I have shown has been used throughout history. This time, however, migrants were the subjects being disciplined, and the contingency was successfully implemented.

The Adams administration's shelter limits reflect this trajectory. As in past attempts to introduce contingencies in the Right to Shelter, the administration justified new restrictions by invoking crisis and categorization. Migrants were subjected to a 30-day limit for single adults and a 60-day limit for families, after which they had to reapply for shelter and demonstrate efforts to regularize their immigration status and secure housing.

The following section will analyze how the Adams administration rationalized these shelter limits, demonstrating how crisis discourse and population categorization function as governmental techniques. The categories at play – distinguishing not only single adults from families but also migrants from NYC residents – expose how migration governance operates, how the rights of migrant populations are manipulated, and how rights can serve as disciplinary political instruments.

### Emergency Executive Order and Letter Petitioning to Modify Callahan Consent Decree

On May 10, 2023, Mayor Adams issued an executive order changing requirements of the Right to Shelter. Similar to the state of emergency in October 2022, which changed the regulations for creating shelters, this executive order sought to modify the obligations articulated in the Callahan Consent decree. Notably, the executive order justifies these changes with the “thousands of asylum seekers [who] have been arriving in New York from the Southern border, without having any immediate plans for shelter” and characterizes the “unprecedented humanitarian crisis” (Emergency Executive Order No. 402, 2023). The Executive Order changed the rule which required shelter seekers to receive a bed in a set amount of time. Furthermore, it permitted the city to avoid providing family units a bathroom, refrigerator and kitchen.

On May 23, 2023, the city submitted a letter to the Supreme Court of New York attempting to modify the consent decree. The city pointed to a paragraph in a court document called the Final Judgment on Consent, which gave the opportunity to amend the consent decree with the permission of the court. The letter rationalizes these modifications “[g]iven the antiquity of this matter, commenced nearly 44 years ago” (New York City Law Department, 2023). These letters represent the city government’s attempt to undermine its obligation that was very clearly stated in the consent decree.

This letter proposes two concrete changes to the 1981 consent decree. The first change is to eliminate the category of “homeless man” and turn it into “homeless single adult.” While this modification attends to this issue of gender that was contested in the *Eldridge v. Koch* case, it also creates a separation between single adults and families. Given the shelter limits that were to come, which were shorter for single adults, there seems to be a disciplinary motive behind this

articulation. Regardless of motive, the rationality of categorizing is still a central interest for the government, and throughout time has been a technique used to subjectify populations through the Right to Shelter.

The other proposed change to the 1981 consent decree is more obvious in implementing a contingency to the government’s obligation. The proposed modification is new language to the consent decree and says,

The obligations to provide shelter to both homeless adults and to adult families shall be stayed when the City of New York, acting through the New York City Department of Homeless Services (“DHS”), lacks the resources and capacity to establish and maintain sufficient shelter sites, staffing, and security to provide safe and appropriate shelter (New York City Law Department, 2023).

Clearly, the government is seeking to shirk the obligation to provide shelter when the conditions are too costly or there is an emergency. The genealogical analysis of the Right to Shelter in Chapter 2 helps us appreciate how the obligation to provide shelter is the foundation to this practice. There have been many times throughout history in which the city lacked resources and capacity yet the Right to Shelter obligated the government to overcome these obstacles.

While the language being changed in the Consent Decree makes no mention of asylum seekers or migrants, the letter rationalizes these changes due to the influx of migrant populations. Table 2 below summarizes the points made in the letter. The city government is interested in weaving a narrative that argues that migrants requiring shelter in NYC leads to the need to change the Right to Shelter. The rationale is that Right to Shelter was never intended for migrant populations and needs to be modified to protect city resources and the rights of NYC citizens.

**Table 11.**  
*Facts proposed in May 23, 2023 letter to Supreme Court of New York*

Justification	Summary
1.	Starting in April 2022, NYC saw an unprecedented influx of asylum-seekers due to political maneuvers by out-of-state actors. New arrivals arrived without housing or resources.

2.	By October 2022, over 17,000 asylum seekers entered the DHS shelter system, with many arriving via uncoordinated buses from Texas and El Paso at unpredictable hours.
3.	By May 15, 2023 over 65,000 asylum seekers had arrived, with more than 44,000 still in City shelters, and the numbers continue to rise daily.
4.	The crisis is national and international in scope, yet NYC bears the brunt of the burden. This unprecedented demand on shelter resources was unforeseen under the Callahan judgement.
5.	Despite the challenges, NYC has responded compassionately to the welfare of asylum-seekers who endured severe hardships before arriving in the city.
6.	NYC made extraordinary efforts, including declaring a state of emergency and opening HERRCs.
7.	In May 2023, NYC shelters over 93,000 individuals, including asylum seekers and the homeless, representing a 75% increase in the DHS shelter population in one year.
8.	Efforts to share the burden with other NY State localities face resistance, legal challenges, and limited success, leaving NYC’s shelter capacity overburdened.
9.	NYC’s overextension jeopardizes the ability to maintain infrastructure and services for all citizens, despite having done more for asylum seekers than any other jurisdiction.

Note: Own elaboration based on City of New York Letter to Supreme Court.

What I want to highlight here is that the Right to Shelter has been contested time and again. It has never been a convenient practice for the city government and, as was explored in Chapter 2, this has led to attempts to create contingencies. Nevertheless, the language of the Right to Shelter consent decree was intentionally broad and the obligation it articulates for the government has stood the test of time, until migrants began to arrive in NYC. Through the governmentalities of crisis and categorization the city government implemented time limits for migrant populations in the shelter system. This is a disciplinary measure that has had significant adverse effects.

#### The Impact of Shelter Time Limits on Migrants

The NYC Comptroller's Office released a report examining the implementation and impact of the city’s “60-Day Rule,” a policy introduced by the Adams administration in October 2023 to limit the shelter stays of newly arrived asylum-seeker families with children (New York City

Comptroller, 2024). The policy, which came into effect in January 2024, was presented as a means to encourage self-sufficiency and reduce the shelter population by requiring families to find alternative housing within 60 days. However, the Comptroller's investigation uncovered that the policy was rolled out in a disorganized and inequitable manner, with inadequate written guidelines, insufficient support systems, and limited resources for impacted families.

The report highlights how the policy disproportionately destabilized families with children by failing to provide effective case management, critical information about rights and exceptions, and pathways to stable housing or legal status. Between January and April 2024, the policy displaced 9,873 families, totaling 37,118 individuals, including nearly 18,000 children (New York City Comptroller, 2024). The rollout was marked by significant administrative failures, including a lack of clear policies, inadequate case management, and the omission of critical information regarding exceptions and rights in the notices provided to families. Families with school-aged children, particularly those in elementary grades, faced frequent relocations due to their exclusion from long-term shelters, further disrupting their education and stability. These disruptions not only impacted schooling but also hindered parents' efforts to maintain employment and access immigration services, ultimately delaying pathways to work authorization and legal status (New York City Comptroller, 2024).

The intensive case management that was promised as part of the policy was limited to superficial exit planning meetings, with no substantial support in securing stable housing, legal representation, or employment. The City's failure to provide comprehensive immigration screenings or assist with applications for vital programs like Temporary Protected Status (TPS) and asylum resulted in prolonged and more precarious living conditions for migrant families. Data highlights the inadequacy of the policy's execution: while the total shelter population for families with children decreased by just 5.7% between December 2023 and March 2024, no measures of self-sufficiency or long-term outcomes were tracked (New York City Comptroller, 2024). This haphazard implementation underscores a focus on reducing shelter populations rather than supporting the holistic needs of migrant families, leaving many in vulnerable and exploitative situations.

Furthermore, the settlement imposing time limits on shelter stays for migrants disproportionately affected individuals from African nations, particularly Mauritania and Senegal. Despite not being

the largest groups in the shelter system, migrants from these countries received the highest percentages of eviction notices—44% and 32%, respectively, out of 14,000 notices issued between July and October 2023 (New York Focus, 2024). This disparity arises partly because the policy initially targeted single adults, who constitute 90% of the Senegalese and Mauritanian shelter populations (New York Focus, 2024). In contrast, migrants from South and Central America are more likely to travel with families, making them less susceptible to the policy's immediate impact (New York Focus, 2024). Consequently, the shelter limits have had a punitive effect on specific populations, exacerbating vulnerabilities among African migrants.

The impact of the shelter limits was highlighted in one of the interviews I conducted with a mutual aid volunteer. He told me he had five suitcases in his apartment belonging to migrants who needed a safe place to store their belongings while they reapplied for shelter at the Roosevelt Hotel:

Basically, they took these families from the shelter they were at to the Roosevelt Hotel where they would receive reassignment. Every single time that this happened, people would be leaving their suitcases behind. Often time they would get lost. [...] The thing that we consistently found, just in terms of practical work, was that people would lose their stuff all the time. [...] People have no opportunity to really rebuild because they can't even keep their stuff.

Furthermore, the burden of moving across the city was placed on migrants in a way that was counterproductive to the purported aims of the city government. The intention of the shelter limits was to incentivize new arrivals to take steps to move out of the shelters, yet the time limits caused practical challenges in allowing new arrivals to settle.

The shelter limit policy reveals the governmentality of categorization by imposing punitive measures on specific populations. As a result, African migrants and families with children had unique needs that were inadequately addressed. The policy's implementation disciplined these groups through structural disadvantages, such as inadequate case management and frequent relocations that disrupted education and employment stability. For African migrants, literacy barriers and the policy's focus on time limits for single adults exacerbated their vulnerability, resulting in disproportionately high eviction rates (New York Focus, 2024). Families, especially those with elementary school-aged children, faced relentless moves that destabilized their children's education and prevented them from establishing roots or pursuing work authorization.

The governmentality of categorization is further evident in the logistical burden placed on migrants to reapply for shelter, often at the expense of losing their possessions, compounding their precarity. The repetitive relocation process, framed as an incentive toward self-sufficiency, instead caused instability as migrants struggled to maintain continuity in their lives. By failing to account for the structural and practical realities facing these populations, the policy disciplined them into cycles of displacement rather than enabling them to transition out of the shelter system. This approach reflects a broader tendency to manage and control populations through administrative frameworks that perpetuate, rather than alleviate, systemic inequities.

### Settlement to Implement Shelter Limits

As I have been showing, the Right to Shelter underwent a transformation from 2022 to 2024 as migrants arrived in NYC. These changes culminated on March 15, 2024 with a settlement between the city government, Legal Aid Society, and Coalition for the Homeless. This settlement was characterized as an achievement that benefited both migrants and relieved the city's operative and financial constraints. After five months of negotiations, the settlement was seen as a compromise that upheld the Right to Shelter but granted the city flexibility in managing the crisis.

A transcribed settlement conference in the Supreme Court of New York held before Justice Gerald Lebovits outlined the changes to the Right to Shelter. The Legal Aid Society attorney Joshua Goldfein, whom I interviewed, articulated that this modification fundamentally upholds the Right to Shelter,

It requires that anybody who needs a bed when they arrive will get one. If they are under 23 years old, it will be for 60 days. If they are 23 or older, it will be for 30 days. [...] During that time, when they arrive, people will be informed of what resources exist to help them move to independence. And then towards the end of their stay, they'll get another notice that tells them here is what we have to offer you. We have a reticketing program, as the City calls it, we have the ability to help you get to another place (New York Supreme Court, 2024).

In essence, the Right to Shelter for migrant populations has these new limitations. During the stay in the shelter, the city government will attempt to connect new arrivals to resources and help them

move out of city services. By the end of the 30 or 60 days migrants will have to reapply for shelter if they have nowhere else to go.

The Legal Aid attorney characterizes the emergency shelters as fundamentally different than the shelters in the past. This alludes to the ad hoc approach of this settlement. The attorney says,

The City will operate sites that will allow people to have shelter that may be different than the shelters we've seen before. That's the world we have been living in since this started. In the Callahan consent decree there are very clear guidelines about what a shelter is supposed to look like. [...] But we understand that in emergencies, such as we saw after Hurricane Sandy, where when many people show up that the City was not expecting, that they have to adjust. And this is one such emergency, so the agreement specifies the kinds of alternate shelter placements that the City can make in this system that they have decided to accommodate the influx of new arrivals (New York Supreme Court, 2024).

These measures are justified as temporary. One of the aspects that was lauded by advocacy organizations such as Coalition for the Homeless and Legal Aid Society is that the Callahan consent decree was not changed. The time limits being imposed on migrant populations is only due to the crisis conditions that have put the city government under extreme operative and financial strain. Once this strain abates, the Right to Shelter was to remain as it is.

I share this perspective because it speaks to the pragmatic quality of governance when unexpected events arise. This settlement was rationalized to give the city government greater flexibility. When announcing the settlement Mayor Adams says, “[T]he Right to Shelter was never intended to apply to a population larger than most U.S. cities descending on the five boroughs in two years. [...] Today’s stipulation acknowledges that reality and grants us additional flexibility during times of crisis, like the national humanitarian crisis we are currently experiencing” (*Mayor Adams Announces Agreement With the Legal Aid Society in Callahan ‘Right to Shelter’ Mediation, 2024*).

Nevertheless, I contend that this discourse of crisis led to changes in the Right to Shelter which disciplines migrants in unnecessary and avoidable ways. There is no denying that the number of migrants arriving in the city placed an extreme strain on city budgets and services. However, the genealogy of the Right to Shelter shows us that the governmentalities used to govern this practice

have been repeated throughout time, what changes is the population benefiting from the Right to Shelter. Genealogy gives us the perspective to understand the Right to Shelter practice outside of the context of crisis and how this rationality influences governance. Genealogy gives us the insight to understand how the government uses the Right to Shelter as a political instrument. Genealogy permits us to think critically about how the Right to Shelter is made contingent and how the government leverages its power.

### **Summarizing the Disciplinary Mechanisms of Obligation, Crisis, and Categorization**

The following flowcharts aim to concisely visualize the ways in which the rationalities of obligation, crisis, and categorization work to discipline new migrant arrivals. Returning to Foucault's theoretical contributions to this investigation, the analysis in this chapter aims to illustrate how particular governmentalities both conduct and subjectivize migrant populations through the Right to Shelter. In essence, what new subjectivities are created through the governance of the Right to Shelter and how are new arrivals disciplined through these subjectivities that are imposed upon them?

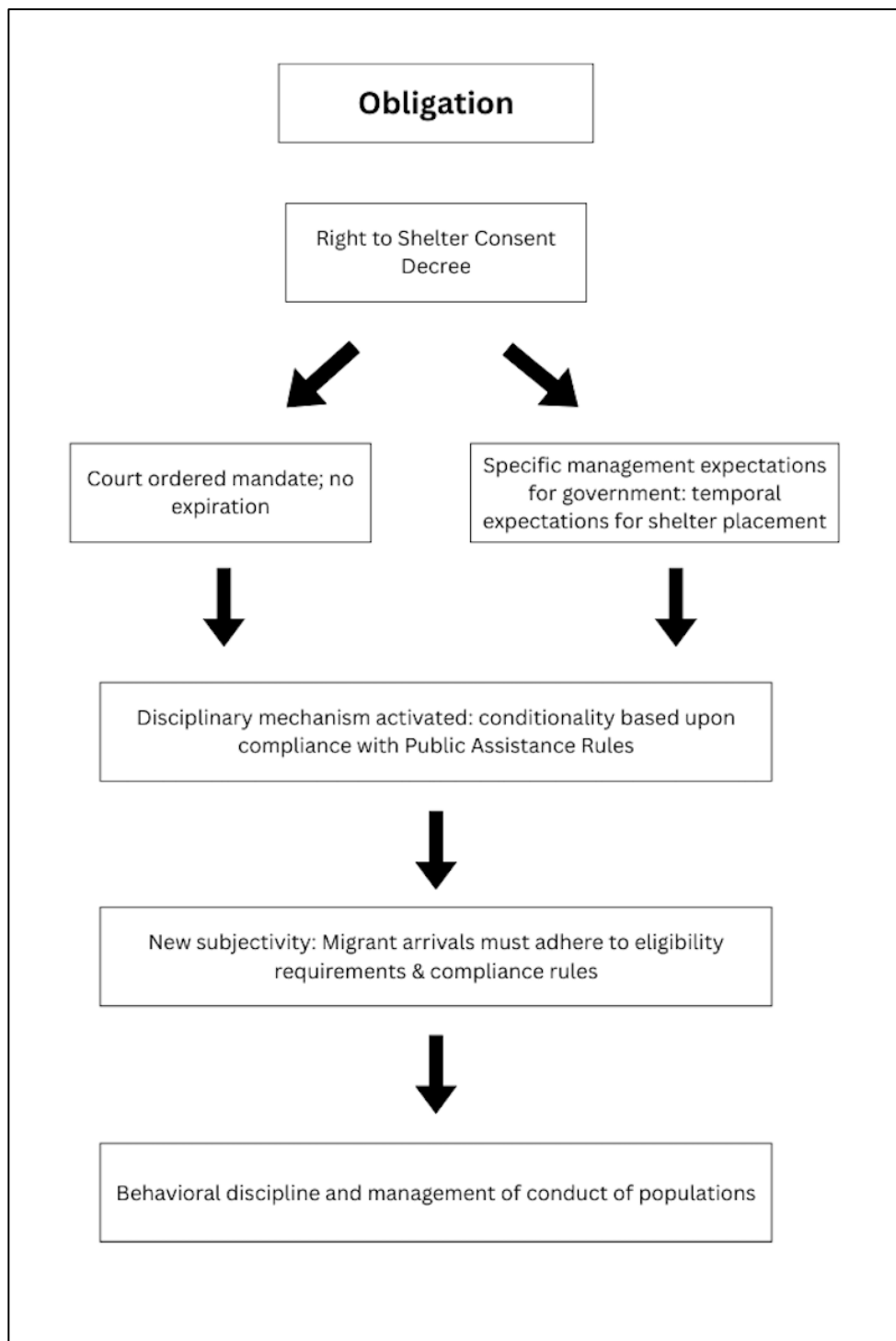
The first flowchart demonstrates how the legal framework of the Right to Shelter consent decree originally operates as an obligation for the government in providing shelter. It is a court ordered mandate with no expiration date and provides clear guidelines for how shelter should be managed. Nevertheless, this broad obligation gradually becomes contingent, as shelter is linked explicitly to adherence to behavioral conditions, such as public assistance rules. Non-compliance with these rules triggers disciplinary measures in the form of suspension from shelter services, corroding the obligation placed upon the government. Consequently, obligation on the government is reverted upon migrant populations, creating new subjectivities that most follow administrative and behavioral conditions. New arrivals are turned into a controlled and regulated population whose access to fundamental services depends on meeting government-imposed standards.

The second flowchart captures the disciplinary mechanism of the crisis rationality. Triggered by the unexpected and unprecedented influx of migrants, the city government invoked emergency conditions to justify a reactive governance, establishing HERRCs and circumventing standard

shelter procedures. The result of this ad hoc approach led to compromised infrastructure and shelters. Under the crisis rationality, shelter is managed as a discretionary humanitarian intervention, which provoked involvement from civil society actors in providing essential services. Through crisis governance, migrants became subjects defined by an emergency status and were forced to accept temporary and precarious conditions that led to instability in their everyday lives and attempts to integrate in NYC.

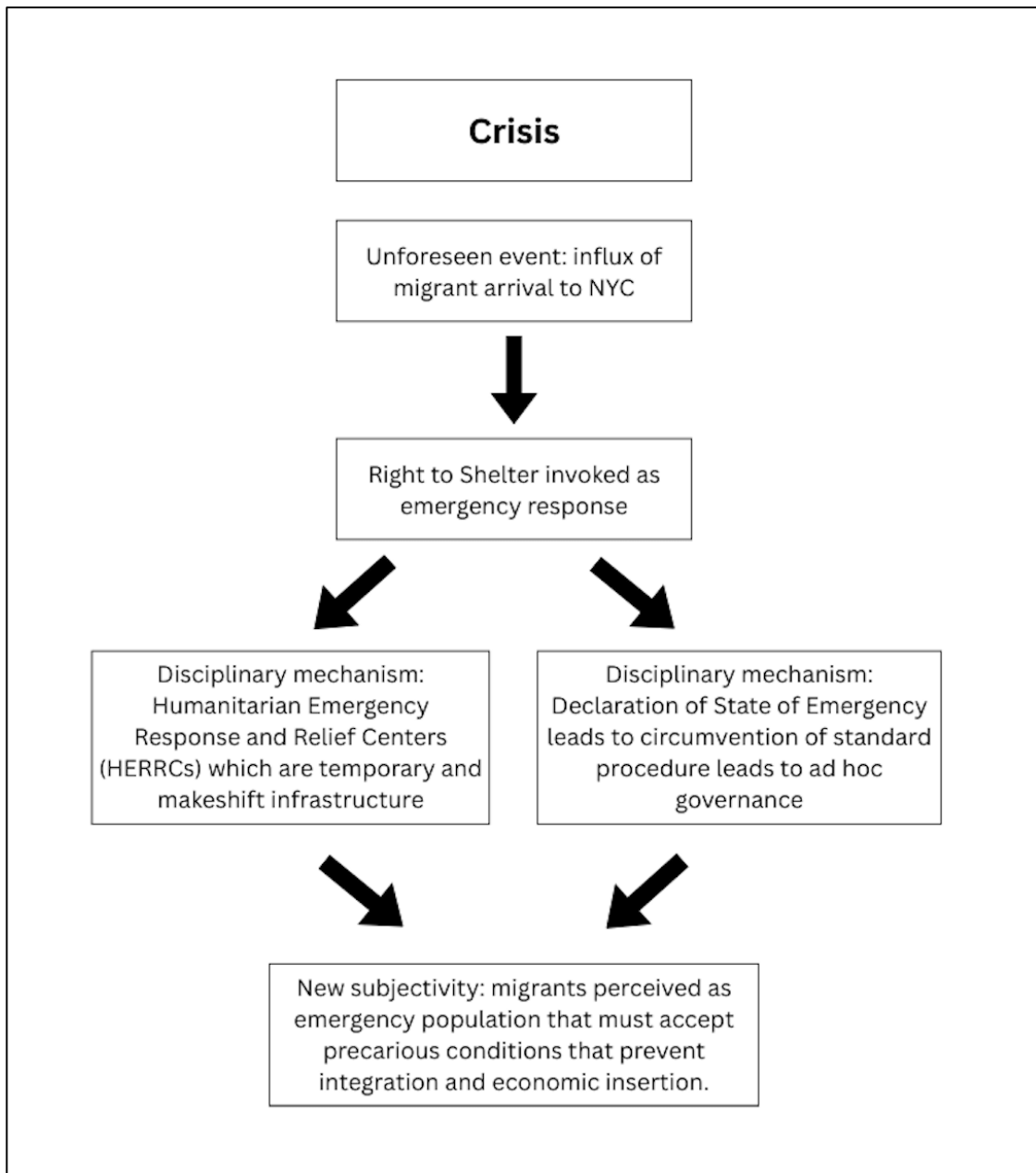
The third flowchart maps how categorization served a disciplinary mechanism in the governance of the Right to Shelter. Genealogically we can understand how the Right to Shelter has continually been managed through categorizing populations. When new arrivals reached NYC, they were categorized as a separate population, which led to a distinct and parallel shelter system specifically for migrants. This division was fundamental in allowing the imposition of shelter time limits, again according to category: 30 days for single adults and 60 days for families. These shelter time limits forced new arrivals to reapply for shelter, caused repeated relocations destabilizing lives and leading to loss of personal items, and punitively affected African migrants due to their greater likelihood of travelling alone and facing literacy barriers in English. Ultimately, the categorization rationality disciplined migrants through administrative surveillance and conditional access to shelter.

**Figure 10.**  
*The disciplinary mechanism of obligation in the Right to Shelter*



Note: Own elaboration.

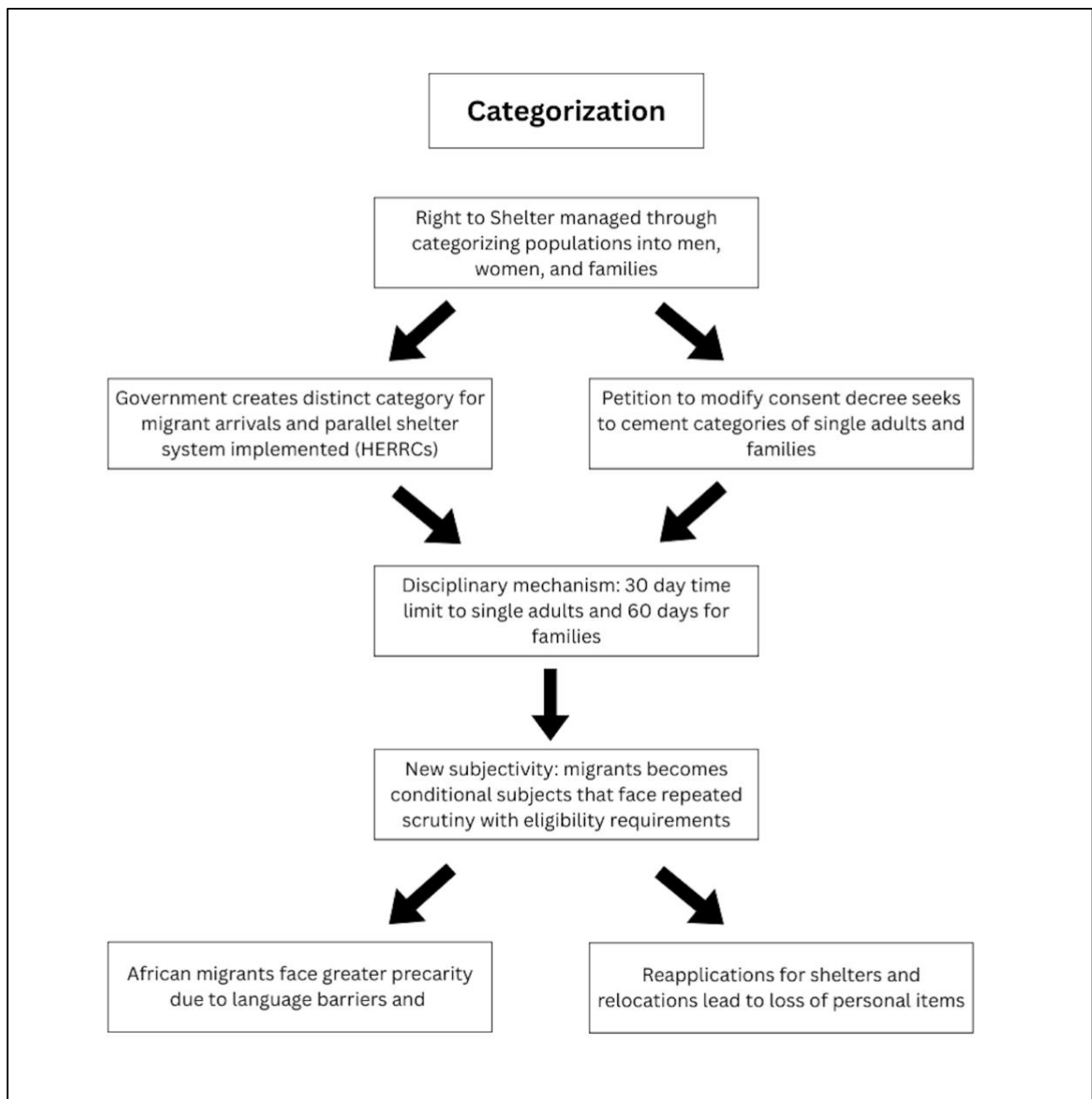
**Figure 11.**  
*The disciplinary mechanism of crisis in the Right to Shelter*



Note: Own elaboration.

**Figure 12.**

*The disciplinary mechanism of categorization in the Right to Shelter*



Note: Own elaboration.

## Conclusion

This investigation set out to critically explore how NYC's Right to Shelter evolved historically and functions as a political instrument in migration governance. The general objective of the thesis was to conduct a genealogical analysis of the Right to Shelter to explore the historical transformation that led to it serving new arrivals in NYC. In order to do so, each chapter was structured around three specific objectives. First, using governmentality as an analytic and theoretical framework, I situated the Right to Shelter as an instrument of migration governance. Second, through genealogical methods I analyzed the emergence and historical evolution of the Right to Shelter through court cases and government actions. And third, I evaluated the contemporary governance of migrant arrivals from 2022 to 2024 using interviews and documentary analysis to understand the governmental rationalities that were employed.

The migrants arriving in NYC between 2022 and 2024 had overcome enormous systemic obstacles. Whether it was the perils of migrating through the Darien Gap; the dangers of organized crime in controlling migration throughout the Americas; the externalization of borders that have transformed transit through Central America and Mexico. International frameworks to protect migrants' human rights wither in the face of restrictive immigration policies and the economic and security interests of Nation-states. Nevertheless, we cannot lose sight of the right to freedom of movement, the right to adequate housing, the right to security of person. This reveals an epistemological foundation for my research: a desire to construct knowledge about rights frameworks to see if they could still serve migrants. In other words, there was a motivation to understand if, as Foucault proposed, rights could be manipulated by populations to disturb the hegemonic domination of governments.

In some ways migrants did change the conduct of government through the Right to Shelter. There was a government response that, for the most part, did not allow new arrivals to sleep on the street; the Right to Shelter mandate provoked significant tension across the city, state, and federal governments; there was a clear response from civil society that provided essential services and mobilized resources for migrants. Nevertheless, this thesis was not able fully demonstrate whether new arrivals demonstrated counter-conduct through the Right to Shelter. This thesis faced certain

limitations in its scope. Due to ethical considerations and the lack of IRB approval from a United States academic institution, I did not conduct interviews with migrant populations. As a result, I was not able to fully explore in depth migrant subjectivities and their ability to exercise counter-conduct. I take this as an opportunity for future research to answer many questions I still have: Did the new arrivals exhibit agency in coming to NYC? What does agency look like in the eyes of subjective individuals? What moments or acts of resistance can be documented and narrated by new arrivals? Despite these limitations, I set my analytical gaze to document and interpret the techniques governments use to exercise their power over populations through rights frameworks.

In Chapter 1, I addressed the first specific objective by explaining Michel Foucault's governmentality as a foundational theoretical and analytic framework. Governmentality is understood as the manipulation of the conduct of populations through a variety of political tools. In essence, governmentality offers an understanding of governance that let me interpret how rights function as political instruments. By connecting Foucault's biopolitics and governmentality to migration governance, this chapter illustrated that the Right to Shelter is more than an abstract entitlement. Instead, it is a dynamic instrument shaping the conduct of migrants and influencing political and social discourses around migration in NYC.

Chapter 2 dove into the genealogy of the Right to Shelter, providing an analysis of its emergence and evolution over time. This methodological approach combined historical documentation, legal texts and interpretive analysis to uncover the emergent conditions, contingencies, and rationalities that shape the Right to Shelter. These rationalities were categorization, crisis, and obligation. By critically examining these rationalities, the chapter detailed how they structured the right itself, demonstrating its historical contingency and its capacity to adapt and extend beyond its original homeless demographic to encompass new migrant populations.

Finally, Chapter 3 analyzed the contemporary techniques and rationalities in the governance of Right to Shelter from 2022 to 2024, which were crucial to understanding how the Right to Shelter was managed in response to unprecedented migrant arrivals. This chapter combined documentary analysis of city policies, emergency declarations, and settlement agreements with qualitative insights from interviews conducted with attorneys, nonprofit workers, and mutual aid organizers.

This multifaceted approach uncovered the complex dynamics at play, revealing how crisis management, categorization, and obligations were strategically manipulated by the government.

From 2022 to 2024, the governance of new arrivals in New York City was marked by a shift from upholding the Right to Shelter as a universal entitlement to managing it as a contingent, crisis mitigation instrument. Early on, the city government adhered to the obligations established by the *Callahan v. Carey* consent decree, affirming its legal and moral commitment to provide shelter to all in need. However, as the influx of migrants escalated, discourse shifted to framing migration as a crisis, leading to ad hoc governance strategies. These strategies included the establishment of Humanitarian Emergency Response and Relief Centers (HERRCs) and the implementation of shelter limits, both of which exposed and exacerbated migrants' vulnerabilities.

Central to this governance were the rationalities of obligation, crisis, and categorization. These rationalities shaped responses to the influx, from initial emergency measures to policies that disciplined populations through temporary and often inadequate accommodations. The resulting governance practices highlighted the precarious balance between addressing immediate needs and striving for sustainable solutions. The following are three implications derived from the empirical analysis of the governance of new arrivals in NYC from 2022 to 2024.

First, migration governance must avoid crisis discourse. The framing of migration as a crisis reinforces reactive, punitive governance measures, as seen in NYC's handling of the Right to Shelter. The discourse of crisis justifies temporary solutions like HERRCs and shelter time limits, which fail to address systemic issues. When there are reactionary policies to forced migration, rights frameworks are impinged upon. A shift is needed to normalize migration and unforeseen events stemming from human mobility as inherent to governance, not exceptional disruptions. This change in perspective would encourage the development of sustainable policies that prioritize the well-being of all populations while ensuring that governments are prepared to manage inevitable strains without resorting to ad hoc measures.

Second, rights are contingent political instruments that can be used to discipline migrants. The Right to Shelter case underscores the contingent nature of rights when governed through political

and legal frameworks. While the Right to Shelter can be liberatory in guaranteeing a baseline service, it is also subject to manipulation, as seen in the shelter time limits imposed on migrant populations. This dual nature, revealed by a genealogical perspective, reveals how rights are historically contingent and strategically deployed. Acknowledging this contingency compels us to scrutinize rights not as fixed guarantees but as instruments shaped by power dynamics. This understanding is critical to advocate for rights that remain resilient and adapt to evolving circumstances.

Third, essential services are a prerequisite to human dignity. Shelter is not a privilege, but a non-negotiable necessity tied to human dignity. The city government's approach fell short in providing dignified and consistent accommodations, as exemplified by poorly managed HERRCs and the displacement caused by shelter time limits. Migration governance must prioritize the interconnectedness of essential services—housing, education, healthcare—and their role in preserving human dignity. Policymakers must resist framing shelter as a negotiable or contingent benefit and instead reinforce its status as a fundamental right, irrespective of population pressures.

The governance of NYC's Right to Shelter provides critical lessons for broader migration governance frameworks. It demonstrates the risks of ad hoc, crisis-driven responses and the potential for rights to serve as both tools that facilitate agency and mechanisms of control. Addressing these challenges requires a governance approach that distributes responsibilities among different actors in a society, avoids crisis driven narratives, and understands that rights are sensitive political instruments that can do as much harm as good.

Furthermore, the Right to Shelter demonstrates the burden and opportunity of local migration governance. This case illustrates how NYC was in a challenging position: the city government was responsible for providing shelter and essential services, but the immigration system, controlled by the federal government, was not providing the necessary support. One concrete example is work authorization; asylum seekers must wait 6 months after their application before being legally allowed to work. Thus, the city government had the obligation to provide shelter to new arrivals without the tools and policies that allowed economic integration. Local communities, and in

particular cities, face extreme challenges in responding to forced displacement and I argue for placing greater attention on and dedicating resources to local actors in migration governance.

### The Right to Shelter in the spring of 2025:

The spring of 2025 marks three years since the first migrants arrived in NYC on buses sent by the Texas governor. This thesis has analyzed the contemporary governance in NYC between 2022 and 2024, yet I write this in this in a world that is fundamentally different. In the spring of 2025, asylum applications are no longer being recognized in the United States, a green card holder, Khalil Mahmoud, has been detained in ICE facilities for speaking out against U.S. foreign policy, a man named Kilmar Abrego, lawfully residing in the United States, has been wrongly deported to El Salvador with no due process. These are mere snapshots of the myriad of ways in which rights are being infringed upon in the United States in 2025. There is no nuance in how the federal government is exercising its power over marginalized communities. What we are witnessing is discipline through deportation, discipline through attacks on freedom of speech, discipline through fear.

As this thesis began, this thesis will end, focusing on the local case of NYC. I will conclude by documenting the impact of the Adams and Trump administrations on the Right to Shelter through the spring of 2025. As Chapter 3 established, Adams introduced 30- and 60-day limits on shelter stays for migrants and sought court approval to suspend shelter guarantees for single adults. However, around the same time, in late 2024, Eric Adams was indicted for federal corruption charges (Goldenberg et al., 2025). Concretely, Adams was accused of trying to evade campaign finance contribution limits: fraud.

Amid this scandal, Adams began associating with Donald Trump, even hosting the ex-ICE chief for a dinner. Local outlets reported that he instructed top city officials not to criticize Trump or interfere with immigration enforcement despite NYC's status as a sanctuary city (Goldenberg et al., 2025; Honan, 2025). The mayor even has suggested opening an ICE office on Rikers Island, a jail complex from which ICE was banned under NYC's sanctuary laws in 2014. The City Council has subsequently sued to try and block this. These concessions from the NYC mayor have come

amidst Donald Trump's attacks on sanctuary cities, threatening to withhold funding from cities that don't cooperate with immigration enforcement. Allegations swirled that Eric Adams was seeking a pardon from the Trump administration in exchange for accommodating Trump's mass deportation plan. Notably in February 2025, the Department of Justice dropped the charges against Adams, fueling these accusations of an agreement between the mayor and the Trump administration to exchange immigration enforcement for his clemency (Rashbaum et al., 2025).

There is still work to be done in assessing how the Right to Shelter has continued to transform in response to migrant arrivals. The Adams administration has moved forward with closures of migrant shelters, reporting that between June 2024 and June 2025 the administration will have closed 46 migrant shelters (*Mayor Adams Announces New Round of Migrant Shelter Closures, Including One of City's Largest Facilities*, 2025). These closures are reported as achievements in that the shelter population has declined, as of January 2025, for 27 consecutive weeks. Nevertheless, this must be explored further to determine whether these migrants are finding long-term housing and what the impact of the Trump administration's mass deportation has had on this population.

Furthermore, the city's Asylum Application Help Center has assisted in completing approximately 95,000 applications for work authorizations and over 75% of the adults receiving city services have received or applied for work authorization. The Adams administration declares that their strategies have led to nearly \$2.8 billion in savings over three fiscal years (*Mayor Adams Announces New Round of Migrant Shelter Closures, Including One of City's Largest Facilities*, 2025). All these actions would seem to indicate the city government has maintained its responsibility in managing the new arrivals and helping them get economic independence. The importance of work authorization in the city government's response must be taken as a lesson for future cases.

There are different lines of inquiry that can be explored further in the future: one in which the NYC mayor is allying himself with restrictive immigration policies, and another which evaluates how the NYC city government has successfully managed the influx of new arrivals. The first invites us to ask, what does this case teach us about localities losing autonomy in the face of a

restrictive federal government? Governmentality serves us well in paying close attention to the interests and rationalities behind Adams' actions, as well as the influence of civil society in resisting the government. There are important questions about sanctuary: what is the relationship between normative, legal rights frameworks and a theological movement based in resistance to the State? As I alluded to earlier, local migration governance is a site of opportunity, but is also volatile, as we have seen through the contemporary management of the Right to Shelter. Efforts to leverage local governance to serve migrants in accessing jobs and essential services are fundamental amidst disciplinary federal immigration policies.

The second theme for future investigations deals with the management of the Right to Shelter and applying the challenges of governance analyzed in this thesis to other contexts throughout the world. How are essential services being provided by local governments and civil society in other contexts? If there is no legal rights framework, what techniques do governments or civil society use to fulfill basic needs for migrants? What can the delay in receiving work authorization for asylum seekers in the Right to Shelter case teach us about the need for policies that allow migrants to insert themselves into the workforce as quickly as possible? How can the private sector be leveraged in providing resources that support the dignity of forcibly displaced people and their human rights? These are questions that bring us back to the unique nature of the Right to Shelter and how it facilitated essential services for hundreds of thousands of migrants.

This thesis serves to shine a light on how local rights frameworks can clash with migration governance on a national and international scale. In other words, migration governance is full of multi-scalar actors and political instruments. More often than not, the actor exercising power over others is the government of the Nation-state – but when can localities protect their autonomy and their particular rights frameworks? If international human rights frameworks cannot penetrate Nation-state sovereignty and the exclusionary principles behind political membership, maybe local actors can provide some semblance of security.

We are facing a steep climb – one that does not necessarily head steadily upwards but instead is erratic and unpredictable – towards a world that protects migrants' human rights. In this metaphorical climb, there are small footholds, and the Right to Shelter is one of these. It is a

foothold that one might slip on, but nevertheless it is a point of leverage. Rights, especially when they are used in an unexpected manner, offer opportunities for resistance and, ultimately, change. Genealogy gives us the perspective to recognize the moments of disruption that came before and how they may lead us down an unanticipated path.

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