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Neoliberal agendas and asylum for women and sexual minorities

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Abstract

While the refugee convention was not written to protect women and LGBTI people, subsequent treaties and directives recognise the violence they experience as legitimate grounds for claiming asylum. However, to meet the threshold for persecution, it is expedient for women and LGBTI asylum seekers to present themselves as abject victims of brutal and backward regimes, reinforcing dichotomies between refugee-producing and refugee-receiving countries. Such narratives obscure the misogyny, homo- and transphobia prevalent in the West, potentially appropriating migrants' rights for neocolonial agendas.

This phenomenon has been identified by theorists within feminism, black feminist theory, queer theory, and post-colonialism. However, move to the field of practice and the surest way to secure refugee status is invariably to tell a story that resonates with decision-makers; one in which an oppressed individual is given sanctuary in the pro-gay and female-friendly West. To tell a more nuanced story would jeopardise the individual's claim, and women and LGBTI people already struggle to meet the requirements for refugee protection in a system that was not designed for them. This paper explores this difficulty in bridging theory and practice in relation to gender and sexual orientation based asylum claims.

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1. Introduction

This paper asks whether, in the context of neoliberal politics, there is a tension, or even an unbridgeable divide, between policy and practice when promoting the asylum claims of women and sexual minorities.

Due to length constraints, the paper inevitably falls into usage of the kinds of simplistic terminology that it aims to interrogate. For example, it uses LGBT as a shorthand for the many different articulations of sexual and gender identity that are the basis of persecution and the reason why people seek asylum in the West. Similarly, terms such as the West, minority, and increasingly 'woman' need to be deconstructed and destabilised in any fuller consideration of the questions asked here.

Secondly, as context, while these arguments have wider application, the examples come mainly from European countries and in particular the UK where all the author's research has taken place.

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I start by explaining how this question came to concern me. My academic work as a feminist has focussed on questions of gender, equality and culture. The theoretical work of writers I have come to admire centres on challenging binaries – binaries between cultures and ethnic groups in particular – and challenging homogenising concepts of culture. However, when working at the level of policy and practice, I have found it difficult to apply those frameworks.

Outside academia, I have worked for or been involved in refugee and migrant rights organisations for many years, and have been particularly concerned with the rights of women seeking asylum. This is where I first saw a tension between theory and practice. Last year I took up a position as a research fellow on the SOGICA project – a European Research Council project about the claims of LGBT asylum seekers in Europe. I identified a similar tension in this context. To simplify, it seemed increasingly apparent that for the claims of women and sexual minorities to succeed, the refugee-producing country must be portrayed as brutal and intolerant, in contrast to the sanctuary-providing West and in a way that reinforces the kinds of narratives that at a theoretical level I would reject.

Below I discuss how key feminist and queer theory work has challenged imperialist deployments of women's and gay rights, then look at how asylum processes operate for women and sexual minorities and the difficulty of rejecting these narratives in practice based on my own experience.

2. 'Saving women' and 'saving gays'

Feminists and women writers have explored how women's rights have and are being used to serve neocolonial and neoliberal agendas and in a way that does not serve all women. This work dates back at least 40 years to The Combahee River Collective Statement, and continues today with Sara Farris' coinage of the term femonationalism to describe the exploitation of feminism by nationalists to serve an anti-Islam agenda and the participation of feminists in this project. In between a broad body of theory and theorists have challenged and interrogated homogenising discourses and narratives that contrast a free Western and westernised female subject with an abject other – latterly embodied in the form of the veiled Muslim woman. Naming these is to risk oversimplifying a substantial body of work whose only common feature is to highlight how apparently egalitarian and 'progressive' movements reinforce dominant power relations.

A subsequent body of literature has developed that identifies the way that LGBT rights are used to reinforce boundaries between a civilised and uncivilised world, most famously perhaps Jasbir Puar's work 'Terrorist Assemblages' and her concept of 'homonationalism', but there are many others. In this body of work, a common feature is that LGBT human rights agendas play a critical role in defining a racialized other whose lack of progress towards a Western model of the citizen-consumer is proved by the rejection of sexual and gay equality.

So far, this paper has said nothing new. However it is noticeable that these two by now extensive bodies of work have barely intersected or been compared to the author's

knowledge.² By treating these two discourses as separate silos, we reinforce the very binaries that writers in this field seek to challenge. And while these areas of theory and debate have developed along different paths and over different time periods, they share a great deal: They each draw attention to positionality – in particular the position of minorities within minorities, whether they are women or LGBT people – and highlight the deployment of particular agendas to serve the interests of power, capital and the state. They share an emphasis on certain themes including essentialism, identity and performativity.

My argument is that these two narratives of salvation (of women and sexual minorities) underpin – and necessarily underpin – claims of asylum in the West. It is in the asylum claims of women and sexual minorities that we most clearly see these rescue narratives play out – more so than in other types of asylum claim.

3. Asylum

The Refugee Convention was not designed to protect women and LGBT people from persecution. The archetypal refugee is a single male political activist fleeing state persecution. If we look at how asylum is conceived and operates, we can see it epitomises the thinking and narratives that the writers previously mentioned interrogate and deconstruct. Asylum as a concept is based on a hierarchical world order of refugee-producing and refugee-receiving countries, states that persecute their citizens and states that offer sanctuary, individuals who are persecuted and those who offer them protection. An antagonistic legal system, such as exists in the UK, exacerbates this dichotomising approach.

While claiming asylum is complicated, difficult and traumatic for everyone, women and LGBT people are likely to face and share particular problems. Their persecution is often by private actors, members of their family or local community which the state either condones or ignores; even if the state is not the direct persecutor, it is not a source of protection. Their reasons for fleeing may include an inability or unwillingness to conform to gender or sexual norms and roles. They may experience similar forms of violence (including honour violence, forced marriage, or corrective rape), and they will often have experienced sexual violence. Because of this they may be stigmatised by others and experience shame. They may be isolated from their ‘communities’ both in their country of origin and in the receiving country’s diaspora. In their experiences of asylum, there are commonalities – for example, they are particularly vulnerable to abuse in detention. And because their experience of persecution generally happens in private and/or in the home, they are likely to have difficulty in providing evidence for their case. Many women and LGBT people are not aware that they can claim asylum on the grounds of identity-based persecution and therefore claim late which means they have problems establishing credibility. Both groups are subject to stereotypes which may affect their ability to establish credibility, or conversely find it expedient to conform to stereotypes to establish credibility.

² One writer who does bring the two fields of theory together is Sarah Bracke in her analysis of rescue narratives in Dutch politics. In this paper, I borrow the title of Bracke’s article in referring to the ‘saving women’ and ‘saving gays’ narratives.

The other similarity – a procedural one – is the basis on which women and sexual minorities make their claims. As already stated, the Refugee Convention was not designed to protect them or address the kinds of persecution they generally experience, and neither gender, gender identity nor sexual orientation are bases for claiming asylum. Women and sexual minorities are generally recognised through the Particular Social Group category, Which requires that individuals share a fundamental or immutable characteristic and are perceived as being different by the rest of society. The safest way to do this is present a narrative of an individual who is different because she doesn't conform to the patriarchal, misogynistic, homophobic, or transphobic values and practices that prevail in her country of origin. Prove that difference, and they may be accepted into a more progressive and modern society.

4. Victims of culture?

This brings us to the paper's main argument: At a theoretical level, the kind of simplistic narrative outlined previously has been robustly interrogated in feminist, queer, and post-colonial theory. Move to practice and the actual claims of women and LGBT asylum seekers, and the safest way for advocates under pressure to do their best for their clients is to conform to stereotypes and depict individuals as victims pure and simple. To do otherwise would be to jeopardise their clients' interests. This discourse is, therefore, not only perpetuated by neoliberal elites, states and officials; it is also rehearsed repeatedly in the stories that women and LGBT asylum seekers and their advocates tell in order to secure refugee status. As Giametta argues, the vulnerable [LGBT] asylum seeker is required 'to culturalize the "phobias" (i.e., homophobia, transphobia) and in so doing to denounce the "incivility" of their countries' (Giametta, 2017, 152). To be granted asylum, women must do likewise and present as victims of their culture.

We see this play out in asylum appeals in the UK. For example, in the case of a Lesbian woman from Albania, part of the appellant's case was 'that she cannot return to Albania because she fears for her life. Although homosexuality is legal in Albania, culturally it is unacceptable. It is seen as a vile and disgusting thing'. Furthermore, the judge heard 'Many men, especially those from the north-east still follow the traditional code – the Kanun – dating from medieval times. They regard women as chattels'.³ Cases involving Female Genital Mutilation show similar narratives: In the asylum appeal of a Nigerian women two years ago, FGM is described as 'barbaric', and an 'appalling practice'.⁴ In an earlier case of a Sierra Leonean woman it is characterised as a 'deeply-embedded part of that country's culture and traditions'.⁵

Such examples suggest that, strategically, it may sometimes be expedient for women and sexual minorities claiming asylum and those who represent them to reinforce stereotypes and prevailing perceptions of their identities and cultures and tell a story of persecution that the decision-maker and/or the judge recognises. Leti Volpp recognised this as long ago as 2002 when she asked: 'Can we balance the strong tension between helping an individual person and the broader effects of employing stereotypes?' Volpp is correct in pointing out

³ MK (Lesbians) Albania CG [2009] UKAIT 0003

⁴ E (Female Genital Mutilation and Permission to Remove) [2016] EWHC 1052 (Fam)

⁵ Fornah v Secretary of State for the Home Department [2005] EWCA Civ 680

that perpetuating these narratives does have broader effects that are damaging in both the short and longer term.

Firstly, not everyone can shape their identity and biography to fit the stereotypes that the asylum regime wants to hear. The required narrative for gay asylum seekers is of a journey of discovery, during which the individual realises that they are gay, which explains why they have always felt 'different'. On reaching the safety of the UK, they are expected to embrace a stereotypically gay lifestyle of clubbing and finding partners on Grindr. Those who don't conform to this stereotype, are unsuccessful in their claims.

As an example, the lesbian woman from Albania previously mentioned lost her appeal in the UK, perhaps because, while she demonstrated that she came from a sufficiently backward culture, she did not perform her lesbianism satisfactorily: the tribunal stated: 'It seems to us that the very limited involvement by the appellant in the homosexual community and the fact that she has not engaged in any lesbian relationship since she has been in the United Kingdom may demonstrate some ambivalence in her position arising from a continuing inner conflict.'

it can also be psychologically damaging for asylum seekers to conform to such 'scripts'. One of the men Giametta interviewed – a gay man from Pakistan – said 'When I realised that I couldn't go back it was hard... you know. I was living in Pakistan for 20 and past years, so I have some great memories as well. I still miss my country, not everything is horrible there' (Giametta, 2015, 152). This is a man with refugee status; if he was still an asylum seeker, his lawyer would in all likelihood be advising him not to say anything to suggest that life in his country of origin wasn't so bad.

Moreover, by problematizing culture, not patriarchy or globalisation or neoliberalism, these rescue narratives avoid recognising the socio-economic factors and impact of economic factors that are crucial at every stage of the process of the journey from being an individual, a person, to becoming an asylum seeker. At the same time, a line is repeatedly drawn between different kinds of identity-based abuse in different parts of the world resulting in a hierarchy of mistreatment whereby the abuse of women and LGBT people in the West is only discrimination, while what happens elsewhere is the basis for asylum. As Audrey Macklin points out:

If the United States, or Canada, or Australia are refugee-acceptors, it follows that whatever they do cannot constitute persecution, because that would make them potential refugee-producers....The practical consequence of this effacement will be that gender persecution will be most visible and identifiable as such when it is committed by a cultural Other. So the commonality of gender oppression and homophobia is disguised by attributing abuse to culture (1995, 271).

Asylum is constructed on such absolutes and perhaps most clearly in relation to the claims of women and LGBT people.

The problem therefore is not only that strategies for pursuing asylum claims reinforce neocolonial agendas and discourse in a way that make many people uncomfortable, but

critically, such approaches only work for some claimants and only in the short term. In the long run, many more asylum seekers are disadvantaged by the reinscription of these narratives.

Yet making this argument must recognise that gender violence and LGBT persecution are real and serious problems in all the countries that women and LGBT refugees come from, and nothing should be done to undermine asylum as a project because the asylum 'system' and international human rights framework offer the only possible global forms of escape to most people. It is the only way that many people have any chance of escaping extreme brutality and ill-treatment. Arising from that, how can one develop an understanding of how asylum narratives may support neocolonial agendas, but at the same time ensure that advocates and NGOs campaigning on individuals' behalves do not have their work undermined by the kind of critique made here?

5. Conclusion

In conclusion I ask what are the alternatives? How might one 'operationalise' the more complex and satisfying explanations for why people claim asylum, using the sorts of theory provided by the queer scholars and feminist writers highlighted at the start of this presentation? Clearly it would include through greater agency and recognition of agency of those who are persecuted, and by addressing the causes of asylum and global complicity in this to bring about change. But that is a long term project. I return to my problem of how, confronted with the need to adhere to narratives that caseworkers and judges will recognise to promote the individual asylum seeker's best interests in the short term and with limited time and resources, an individual or her representative can do anything other than repeat the rescue narratives that ultimately many feel need to be dismantled.

In response to these realities, and within the current context of neoliberal politics and neocolonial narratives, strategies must necessarily be two- or many-pronged. On the ground, advocates and campaigners must continue to tell stories that are recognisable to decision-makers and the broader population while at the same time, the long-term theoretical and discursive work of dismantling essentialist frameworks continues and if that requires a certain amount of tension between theory and practice, this will not be a new challenge to asylum seekers and those who support them.

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