



BOOK REVIEWS

David AB Murray, *Real Queer? Sexual Orientation and Gender Identity Refugees in the Canadian Refugee Apparatus*, Rowman & Littlefield International, Toronto, 2015, ix + 183 pp, ISBN 978-1-7834-8439-3, hbk

In the proliferation of public attention on the sexual orientation and gender identity (SOGI) refugee in Canada, David AB Murray's *Real Queer? Sexual Orientation and Gender Identity Refugees in the Canadian Refugee Apparatus* is a compelling and significant critical examination of how this category is (re)produced and its relationship to a larger discourse of Canadian homonationalism, where tolerance for non-heteronormative identities becomes the yardstick by which States measure their 'progress'. The question of the title – 'Real Queer?' – is central: who is deemed a credible SOGI refugee, and how is credibility constructed? How do people make themselves recognizable to the Canadian refugee apparatus, and what parts of their identity must they erase for this to happen?

Murray works within the context of claimants awaiting decisions from the Immigration and Refugee Board, while residing in the greater Toronto area, to answer these crucial questions. He argues that the 'queer migration to liberation nation' narrative is at the heart of how the SOGI refugee category functions in the Canadian refugee apparatus. This narrative operates as a hegemonic discourse across multiple scales and sites to create 'a particular formation of sexual citizenship [that] now operates as a cornerstone of what it is to be Canadian' (p 3). In chapter 1, Murray first complicates – or 'queers' – this homonationalist narrative through individual refugee claimant narratives that all elide in multiple ways the assumptions packaged into the category of the SOGI refugee. Chapter 2 sets up the central dichotomy between 'authentic' and 'bogus' SOGI refugees, and explores how refugees must learn to navigate these narratives. This learning process is most literally put forth in chapter 3, where the refugee claimants of a Lesbian Gay Bisexual Transgender Transsexual Queer (LGBTQ) community centre put on a play and, at multiple levels, fit into particular roles. Chapters 4 and 5 shift in scale to look at how 'official' channels of documentation and refugee hearings reproduce assumptions of SOGI identity institutionally. In the final chapter, Murray steps back to understand how home is conceptualized by claimants, and in doing so returns to the 'queering' of narrative that was taken up in chapter 1.

The greatest strength of *Real Queer?* is its integration of ethnographic work into a broader framework that examines how homonationalist discourses are constructed.

Murray's ability to work with multiple scales and sites is one of the great achievements of this book, and underscores how the 'queer migration to liberation nation' narrative is reconstituted in diffuse ways that echo a Foucauldian understanding of governmentality: how Canadian citizens reproduce these homonationalist discourses in multiple areas of their lives that are beyond direct government surveillance, yet nonetheless further particular nationalist aims. Murray begins with the scale of the human body in chapter 1; moves to the scale of the community in chapter 3; and finally 'studies up' to the institution of the Immigration and Refugee Board in chapter 5. As well, he interrogates the taken-for-granted assumption that as refugee claimants move out of their countries of origin to Canada, so too their ideas of where 'home' is move with them. By highlighting how claimants remain in communication with people from their countries of origin, and may still want to return there, such assumptions are disrupted. Even though the stories are physically recounted in Canada, the voices telling them are transnationally situated through their connections to spaces outside Canada.

Significantly, Murray weaves together the constructions of hegemonic nationalist discourse with its contestations. He does not limit himself to what would otherwise have been a somewhat one-sided understanding of how power operates in sexual and gender identity discourses. Certainly, Murray does argue persuasively that the homonationalist discourse central to the Canadian refugee apparatus is based on a Euro-American understanding of 'queerness' that takes white, middle-class experiences and universalizes these understandings to all LGBTIQ identities. Yet, the contestations to this universalized discourse are also put forth, and highlight how SOGI refugee claimants can both work within the structure of the Canadian refugee apparatus and push against it. The individual narratives in chapter 1 and discussions of home in chapter 7, in particular, interrogate both the assumed narrative of moving from the 'savage' country of origin to 'civilised' Canada, as well as the presumed intentionality with which claimants *choose* Canada as the country of refuge. Even as SOGI refugee claimants alter their own stories to fit into the narrative of the 'authentic' refugee because they cannot afford to 'fail' this performance (p 77), they nonetheless resist such forms of control in other spheres of their lives.

However, the necessarily limited scope of the book circumscribes the spaces in which 'queerness' is represented. Murray is critical of the adjudicators' assumption of 'one' LGBTIQ culture in Toronto, and argues that these assumptions elide racial, gendered, sexual, and ethno-national differences that produce multiple communities. However, Murray, too, remains within these 'legitimate' sites and communities in his analysis, looking at how sexual orientation and gender identities are performed in recognized spaces. A more nuanced examination of non-'legitimate' LGBTIQ culture could better highlight the ways in which identities are moulded and changed in different spaces that move beyond the ones portrayed in the book. Similarly, Murray draws attention to his own position as a white Canadian man, and the limitations this may impose on his research (this fact is most uncomfortably brought to the fore in chapter 3, where he is cast as the IRB member). Bearing this in mind, a team with multiple researchers of differing sexual orientations and gender identities; socio-economic status; and racial and ethno-national backgrounds could open new areas for research.

Finally, I was most drawn to how narratives of the 'authentic' SOGI refugee relied on the erasure of claimants' identities as 'colonized, racialized peoples' (p 55) and fed

into 'a neo-liberal free market ideology whose inherent exclusions are harder to name'.¹ This is a salient point in the instrumentality of the 'queer migration to liberation nation' narrative – that is, what does this narrative *do* beyond the Canadian refugee apparatus? What beliefs and practices does it reify, and how do these practices overflow beyond Canada's nation-state borders? Glimpses of answers to these questions appear throughout the book but are a crucial area for future research.

Murray's *Real Queer? Sexual Orientation and Gender Identity Refugees in the Canadian Refugee Apparatus* has set itself up as a critical volume for both queer and refugee theorists, and has admirably bridged these two areas of research through the contestation of parallel, and intertwined, hegemonic narratives. Even as the construction of the hegemonic 'queer migration to liberation nation' narrative is persuasively set up, the agency of individual actors in resisting such discourses also remains centre stage.

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Christine Köhler, *Opferschutz im Bereich des Menschenhandels: Eine Analyse der völker- und europarechtlichen Vorgaben zum Aufenthalt (Victim Protection in the Field of Human Trafficking: An Analysis of International and European Legal Provisions on Residence)*, Duncker & Humblot, Berlin, 2016, 262 pp, ISBN 978-3-428-14742-7, pbk

A right to reside in the country of destination is the best residential option for human trafficking victims, since victims can be treated as legal persons and can assert their rights in court (p 21). In *Opferschutz im Bereich des Menschenhandels*, Christine Köhler employs human trafficking, refugee, and human rights laws to successfully answer the question whether international and European regulations oblige European Union (EU) Member States to grant residency to victims of human trafficking. Based on Köhler's PhD dissertation, the book analyses different residential options for third-country victims of trafficking in the EU Member States, a group that the author describes as belonging to the end of the trafficking chain.

The book deals with trafficking for forced labour, including, and emphasizing, trafficking for sexual exploitation as a subset of labour trafficking. Köhler considers it crucial to find out if international and EU laws, especially *non-refoulement* provisions, merely objectively require Member States to grant residential status to victims, or if they owe victims this right subjectively. Objective obligations issued to Member States are binding, but States have discretion over how to integrate them into their national laws. With subjective obligations, they must grant victims the opportunity to individually choose to claim such rights to residence within their national laws, which thus strengthens the rights of victims (p 53).

¹ Jinthana Haritaworn, *The Biopolitics of Mixing: Thai Multiracialities and Haunted Ascendencies* (Ashgate 2012) 3, quoted in David AB Murray, *Real Queer?* 55.

Before plunging into a three-chapter, structured analysis, Köhler highlights the so-called human rights approach to fighting human trafficking in the introduction. This later serves as the criterion for evaluating residency provisions. According to Köhler, the human rights of trafficking victims can be violated before, during, and after the crime. Such violations occur beforehand when rights, such as economic and social rights or discriminatory prohibitions, are violated, thus making an individual vulnerable to traffickers. Human rights are violated during the crime of trafficking when victims, for example, are subjected to torture, or are kept in slave-like conditions. After the crime, victims' rights to liberty and security, and the right to respect for private and family life, for example, are violated when they are placed in custody in countries of destination. Köhler argues that the focus should be on States' duties, so as to make States share the responsibility for violations caused by private persons, especially those violations committed during the trafficking phase. States have both a negative duty not to commit certain acts and a positive obligation to guarantee protection, thus a component of performance. She argues that this is the best approach to fight human trafficking since it is the only approach that takes account of the complexity of the crime.

Köhler claims that a human rights approach to combating human trafficking gives the phenomenon a clearer image as an inhumane crime, as well as highlighting the position of the victim, which, she argues, is neglected when trafficking is approached primarily as a crime (p 56). This argument continues into the first chapter where, after presenting an historical overview and addressing causes, forms, and the definition of trafficking, Köhler claims that uncertainties, such as the ambiguous elements constituting the definition of trafficking in the Palermo Protocol, can be clarified when interpreted through a human rights approach. However, she then goes on to praise the Palermo Protocol for its broad definition, which expands the circle of both victims and perpetrators, and its consideration of the many acts and stages of trafficking. Köhler laments the fact that critics are against the expansion of the definition to include other forms of trafficking. They would argue that other forms of trafficking cannot be compared to trafficking for prostitution; she argues that other forms of trafficking are comparatively severe, and even if not, the rights of victims of less severe forms of exploitation still deserve protection since their personal autonomy has also been taken away.

The second chapter illustrates and evaluates the residential options in trafficking treaties and the EU secondary instruments available to trafficking victims in EU Member States. Köhler describes the three main trafficking instruments in the EU, and considers them weak regarding observance of victims' human rights and the subjective rights bestowed upon victims. The 2005 Council of Europe Convention on Action against Trafficking in Human Beings (which of course applies well beyond the boundaries of the EU) obliges parties to grant human trafficking victims subjective rights to a recovery and reflection period to decide whether they will cooperate with authorities. According to the author, this provision was not meant to serve only States, since victims are empowered during this period to make an informed decision. However, like the EU Council Directive 2004/81/EC on residence permits for third-country victims, the Convention does not oblige parties to grant victims a temporary residence permit, even when they fulfill the necessary requirements, because the main reason for the issue of residence permits is to facilitate a successful prosecution. Thus, no subjective right to residence exists. The Palermo Protocol also merely *requests* States to consider giving residence permits to victims in light of adequate humanitarian and personal factors.

Moving away from the rather weak residence obligations of Member States contained in trafficking instruments, Köhler thinks the Qualification Directive 2004/83/EC has created more meaningful options for trafficking victims. She claims that it gives a subjective right of residence of at least three years to third-country nationals who qualify as refugees within Member States. But can victims of trafficking meet the requirements for refugee status? Köhler also explains that the Qualification Directive has brought victims who do not qualify as refugees, but may face danger such as torture in their country of origin, within the scope of subsidiary protection (p 128). This will enable them to benefit from a subjective right of residence of not less than one year.

The *non-refoulement* principle does not oblige States to grant residency to foreigners, but it may oblige them not to send a person to a country where the person could be persecuted. The third chapter considers situations under which human trafficking victims may seek protection under this principle. It focuses on article 33 of the CSRS1 (prohibiting the expulsion or return of refugees), article 3 of the ECHR50 (prohibiting torture and inhuman or degrading treatment or punishment), and article 8 of the same instrument (the duty to respect private and family life). The author often compares these provisions to EU law, especially the Qualification Directive. While this comparison paints a clearer picture of the victim's situation in the EU, and exposes the shortcomings of the Directive, it also suffers from repetition. In addition, it is worth mentioning at this point that by trying to summarize almost every subsection, which resulted in more than 20 'conclusion' subheadings in the entire book, Köhler makes vivid judgments, but exposes readers to many repeated facts.

Köhler's attempt at connecting refugee and human rights law to issues surrounding human trafficking can lead one to question whether or not this is stretching both the scope and importance of refugee and human rights laws too far. However, the limitations and overall difficulties in applying refugee and human rights laws in human trafficking cases, which the book addresses in some sections, could offer some answers to this question. In particular, it is stated that human trafficking victims can hardly meet or prove that they meet the criteria for obtaining protection under human rights and refugee law. Moreover, Köhler rightly emphasizes that, in most cases, it is not possible to prove that the State has reacted inappropriately in its deportation of human trafficking victims, especially within the reason of guaranteeing State interests.

Going through the book, one can easily grasp the importance of the human rights approach and see that it will be beneficial if victims' human rights are observed and brought within protection measures aimed at combating trafficking. One can also agree that having minimum standards and requiring States to make it possible for victims to have rights to residence within national laws will better protect victims and create more uniformity within EU Member States' national laws. However, these claims would have been better understood, and more concretely conveyed to readers, if typical case studies or examples portraying these variations and their effects were used.

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