

# QUEER SETTLERS: QUESTIONING SETTLER COLONIALISM IN LGBT ASYLUM PROCESSES IN CANADA

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## **Abstract**

*Refugee and forced migration studies have focused primarily on the refugees' countries of origin and the causes for migration. Yet it is also important to also critically investigate the processes, discourses, and structures of settlement in the places they migrate to. This has particular significance in settler states like Canada in which research on refugee and forced migration largely ignores the presence of Indigenous peoples, the history of colonization that has made settlement possible, and ways the nation has shaped its borders through inflicting control and violence on Indigenous persons. What does it mean, then, to file a refugee claim in a state like Canada in which there is ongoing colonial violence against First Nations communities? In this article, we will explore what it means to make a refugee claim based on sexual orientation and gender identity in a settler-state like Canada. For sexual and gender minority refugees in Canada, interconnected structures of colonial discourse and regulation come into force through the Canadian asylum and resettlement process. It is through this exploration that ideas surrounding migration, asylum, and settlement become unsettled.*

## **Résumé**

*Les études sur les réfugiés et les migrations forcées ont porté principalement sur les pays des réfugiés d'origine et les causes de la migration. Pourtant, il est également important d'aussi étudier de manière critique les processus, les discours et les structures de peuplement dans les endroits vers lesquels ils migrent. Cela a une signification particulière dans les états coloniaux comme le Canada où la recherche sur les réfugiés et la migration forcée ignore en grande partie la présence des peuples autochtones, l'histoire de la colonisation qui a rendu le peuplement possible et les moyens par lesquels la nation a façonné ses frontières en usant de pouvoir et de violence sur les populations autochtones. Quel est le sens, alors, de déposer une demande d'asile dans un état comme le Canada où persiste la violence coloniale contre les communautés des Premières Nations? Dans cet article, nous allons explorer ce que cela signifie de faire une demande d'asile fondée sur l'orientation sexuelle et l'identité de genre dans un état colonial comme le Canada. Pour les réfugiés d'orientation sexuelle et d'identité de genre minoritaires au Canada, les structures interconnectées du discours colonial et de la réglementation entrent en vigueur dans le cadre de processus d'asile et de réinstallation. C'est grâce à cette étude que les idées entourant la migration, l'asile et le peuplement sont déstabilisées.*

Political and media attention on sexual and gender minority refugees has risen within Canada in the past ten years. This attention has focused primarily on anti-queer violence and the particularly oppressive conditions that push sexual and gender minority persons to seek asylum in Canada. While there has been some work of significance done by researchers on hetero-normativity and the Canadian asylum process, less work has been done on the historical and ongoing colonial structures that sexual and gender minority persons must navigate as they make a refugee claim in Canada. A guiding question in this article is to explore what it means to make a refugee claim based on sexual orientation and gender identity in a settler state like Canada, where there is ongoing colonial violence against First Nations communities and other racialized bodies. What are the implications? For sexual and gender minority refugees in Canada, all of these different but interconnected structures of settler-colonial discourse and regulation take effect through the Canadian asylum and resettlement process.

In this article, I approach in-state sexual and gender minority refugee asylum in Canada using a post-colonial theoretical lens. It is through this exploration that I hope to unsettle notions of migration, asylum, and settlement to critically investigate the refugee asylum process for sexual and gender minority refugees.<sup>1</sup> This article is not a complete review of the field of refugee and forced migration studies, queer migration studies, or post-colonial studies, but instead highlights significant literature and arguments. Because asylum encompasses a large range of legal, political, and social processes, much too broad to fully analyze for the scope of this article, this literature review focuses only on the level of the in-state refugee process, especially as it relates to sexual and gender minority refugee claims in Canada. The literature selected ranges from qualitative and legal studies on the in-state refugee process in Canada to cultural critiques of in-state asylum and immigration by post-colonial and critical race scholars. By basing the selection of literature on the defined parameters of in-state refugee claims, I hope to provide a concentrated and focused argument on the importance of a post-colonial critique on forced migration and refugee studies as it relates to sexual and gender minority refugees. Using a post-colonial framework to analyze in-state sexual and gender minority refugee claims in Canada allows us to go beyond hetero-normative and racial settler frameworks to look at the larger political, social, and legal forces at play in Canada's refugee system and its settler state.<sup>2</sup>

### *Interrogating Imperialism and Colonialism in Refugee and Forced Migration Studies*

Interrogating refugee or forced migration research in the context of historical and ongoing colonialism and imperialism is an unruly task. The first reason for this difficulty is that refugee or forced migration studies remain a largely unstructured and diverse collection of work that span several disciplines; second, relatively few studies connect intersecting theories and historical processes of colonialism to processes of forced migration. This is a missed opportunity in forced migration and refugee studies, as it falsely places the phenomenon of forced migration and asylum into a box outside of larger social, economic, and political processes stemming from the legacy of colonialism and imperialism.

The legal process and protocol of asylum, as well as the definition of "refugee," is a relatively recent development, first created by the 1951 Refugee Convention and recurrently modified in the interim. Despite this recent development, the economic, social, and political forces that cause persons to be displaced and that regulate the traffic of individuals to find asylum in other states have deep historical links with past and present colonial structures. In not situating refugee and forced migration research in historical and ongoing processes of colonialism, the phenomenon of forced migration and refugee asylum appears ahistorical. We may live in a complex world in which multiple factors come together to affect refugee migration, asylum processes, and the settlement of refugee diasporic communities, but this world has been made through the historical and ongoing processes of various and intersecting colonial and imperial histories and processes. Colonialism in its many different historical, social, and geographic forms did not end with the official end of the old empires, but instead continues to reproduce itself through ongoing dichotomies, hierarchies, and norms, as well as through the unequal exchange of power and resources. To investigate refugee and forced migration without understanding the historical and contextual mechanisms of imperialism and colonialism creates a post-colonial amnesia and a further silencing of ongoing colonial violence.

As much as forced migration studies may be a wide and diverse field, so too is post-colonial studies. Post-colonialism was first conceived by political theorists and historians as the historical period after colonial occupation and the establishment of independent states. Since then, the term has widened to incorporate more than the historical period after colonialism. Post-colonialism is now seen by the majority of post-colonial theorists as the cultural interactions between the colonized and the colonizers from the moment of colonization onwards. Post-colonial

studies interrogates the effects of colonialism, while recognizing the specificity of each case in which it is deployed.<sup>3</sup> The “post” in post-colonial is regarded by most post-colonial theorists as a challenge to the implied chronological separation between colonialism and its aftermath. Instead, post-colonialism should be seen as more of an “unbroken term” to the long history of colonial consequences.<sup>4</sup> Within post-colonial studies, immigration has played a prominent role, especially in understanding how the regulation of colonizer and colonized persons’ movement and settlement solidified national borders and created the modern state. Within Canada, post-colonial theorists work to critique and understand the ways in which settler colonialism continues to shape both Indigenous sovereignty and access to settlement and citizenship for immigrants.

Legal and qualitative studies of refugee and forced migration that have interrogated processes, structures, and discourses of imperialism and colonialism have shown how ongoing imperial processes shaped practices and policies of migration and asylum through globalization and global inequality, through the creation and controlling of geographical, political, and social borders, and through the global and national regulation of citizenship and rights.<sup>5</sup> This research has brought much-needed critical attention to refugee and forced migration studies by grounding it in intersecting colonial and imperial legacies. These different legacies of imperialism and colonialism intersect globally, nationally, and locally in the structural, discursive, and material factors that shape refugees’ lives. Migration and settlement cannot be adequately theorized outside of spatialized relations of imperial and colonial power.<sup>6</sup> Therefore, histories and theories of colonization and imperialism are critical in studies of forced migration and settlement. This involves not only recognizing difference in histories and experiences, but also the different historical and contextual networks that draw people into collectives and “create micro-circuits of power, locating some in positions of influence and marginalizing others.”<sup>7</sup>

Often the causes for forced migration lie in the past and ongoing effects of imperialism. For example, research on social conflict as well as political and social persecution has shown that often the roots of oppression, inequality, and social unrest are located in the historical legacies of imperial rule as colonized lands and Indigenous communities were arbitrarily divided, exploited, and placed on a social, economic, and political hierarchy. These processes continued in the “post” colonial world as the unequal exchange of resources and power did not end with colonialism but instead were further reproduced through globalization. As Edward Said argues, imperialism did not end with the dismantling of the classical empires, but instead laid the

foundations for the global world. Western imperialism, the expansion of European and American power around the world, was already a form of globalization.<sup>8</sup> Global economic super-powers in the twentieth century, such as the United States, have simply redrawn old colonial maps of power and exchange in the interests of economic and capitalistic expansion.<sup>9</sup>

These “maps” or paths of power and exchange between different states effect migration routes and settlement processes of refugees as they negotiate state and global economic, social, and political structures in migrating and engaging in settlement. As Catherine Dauvergne notes, worldwide regulation of migration is a product of the twentieth century in which the world was firmly divided by geographic, economic, and political borders.<sup>10</sup> Dauvergne argues that you cannot think about migration without thinking about the construction of national borders and state sovereignty.<sup>11</sup> Yet, even before modern regulation of borders and citizenship by separate states, the world was already divided along colonial and imperial lines of power and exchange. The creation of nation states and the system of international law and state sovereignty were informed by historical and ongoing colonial structures. Often the borders open to refugees to cross and claim asylum are directly affected by historical and ongoing economic, social, and political relationships between certain states.

A case in point is Chowra Makaremi’s work on Rwandan refugee claimants in France.<sup>12</sup> France’s responsibility for the tribal and ethnic inequality and division of Hutus and Tutsis during the colonial era, and its actions and inactions during the Rwandan civil war, come face-to-face with the ever-increasing border control by France to refugees from the global South. Rwanda refugees seeking asylum in France continue to be caught in the colonial crossfire as they were forced to migrate from Rwanda because of ethnic and political conflict (that owes its creation to French colonial rule) with neighbouring countries. Yet when these Rwandan refugees finally make it to France and claim asylum, they are denied entry because they do not fit into France’s definition of what a “legitimate” refugee should be. As Makaremi shows in her interviews with Rwandan refugees, an individual’s failure to fully explain ethnicity, nationality, and often non-linear migration routes are seen as proof by the French border guards as illegitimacy. By enforcing a narrow definition of ethnicity, as well as not taking into consideration the complexity of cultural and tribal affiliations within Rwanda and the effects of trauma that Rwandan refugees have experienced because of ethnic genocide, their stories did not fit into a clean and clear narrative, which caused their claim to be discredited by French border guards.

In addition, the global inequality between the former colonial states and the old colonial empires has meant that more often than not, asylum seekers from former colonized states are not able to take a direct migratory path to claim asylum in countries like France, and instead must relocate numerous times over a period of several years before they are able to gain enough economic and social support to seek asylum.<sup>13</sup> Through this entire process, intersecting colonial histories and legacies come together, directly affecting the lives of refugees. These colonial histories intersect on multiple levels: from past colonial rule either informing or being directly responsible for the causes that force individuals to migrate, through the often non-linear migration of asylum seekers to the global North because of ongoing economic, political, and social inequality, to the policing of refugee claimants at the border by cultural and racist insensitivity and xenophobic nationalism.

### ***Seeking Refuge in a Settler State: What Are the Implications?***

The definition and grounds upon which a refugee claim is made are informed by nationalistic ways of thinking about who is a legitimate refugee and who is a “bogus” refugee.<sup>14</sup> While the original refugee definition from the 1951 UN Refugee Convention has expanded to encompass a wider range of refugee persons, refugee claimants are ultimately defined as legal or illegal, legitimate or illegitimate, largely by the state. The state not only plays an important role in constructing categories and hierarchies of belonging, but also serves as the political and cultural production of refugee identities in the public sphere.<sup>15</sup> This production of identities happens during the refugee claim determination process and throughout the refugees’ settlement.

A case that illustrates this point is in Wenona Giles and Penny Van Esterik’s work with women refugees in Canada. “When women become defined as refugees, who they are is usually tied to notions of the relationship of backwardness and victimization.”<sup>16</sup> By essentializing refugee women’s experiences and connecting them to notions of barbarism, Canada becomes the “white knight” in providing asylum to marginalized and oppressed women from the global South. Yet this victimization and essentializing of women refugee’s identities and experiences ignores confrontations of racism, sexism, homophobia, and classism in education, wage work, and the social and legal services many of these women face while living in Canada.

In addition to the dichotomizing and essentializing refugees’ identities and experiences, Giles and Van Esterik’s work shows us the importance of focusing on how national colonial histories inform refugee subjectivities and their experiences.<sup>17</sup> Too often refugee and diasporic studies have

focused primarily on the refugees’ countries of origin and the causes for migration, yet it is important to also critically investigate the processes, discourses, and structures of settlement in the places they migrate to. Or to put it another way, one must not only ask where refugees have come *from*, but where have they come *to*.<sup>18</sup> This has particular significance in settler states like Canada, in which research on refugee and forced migration largely ignores the presence of Indigenous peoples, the history of colonization that has made settlement possible, and how the nation has shaped its borders through inflicting control and violence on Indigenous persons and non-Northern European immigrants.<sup>19</sup> What does it mean, then, to file a refugee claim in a state like Canada in which there is ongoing colonial violence against First Nations communities and other racialized bodies? What are the implications? How do refugees engage in settlement in an internally colonized state? These questions need to be interrogated further.

For the past century, Canada has sought an international leadership position and an international identity as defender of human rights. Canada received special recognition by the United Nations for its extraordinary and dedicated service to refugees.<sup>20</sup> Yet even with these accolades of peacemaking, a dedication to multiculturalism, and an active involvement in refugee rights on an international level, the legal and settlement process of making a refugee claim within Canada are very much tied to racial, gender, class, and sexual dichotomies and hierarchies that stem from ongoing settler colonialism. Canada’s national identity and its regulation of immigration is informed through ongoing settler colonialism in which the erasure of Indigenous persons and the control of non-white immigrants go hand-in-hand with the creation of the Canadian state and the solidifying of its borders. Investigating refugee settlement in a settler state involves looking at whiteness and national mythologies of white settler colonialism in Canada.

White settler colonialism involves the historic process of settlement of Europeans on non-European soil. Its foundation rests on the dispossession and marginalization of Indigenous populations. Through this process, a racial hierarchy is created in which white Northern European settlers are at the top.<sup>21</sup> This racial hierarchy is intertwined with national mythologies, discourses, and practices in which national citizenship and “legitimate” settlement or ownership of the land falls along distinct racial, gender, sexual, and class lines. The story of the land becomes a racial story in which European settlers are seen as the bearers of civilization, transforming and ultimately saving the land from its so-called primitive or savage past.<sup>22</sup>

This racial story informs migration as non-white and working-class whites were and continue to be seen as



invaders or threats to the nation. Refugees are depicted as cheaters of the immigration system, uncivilized and “fresh off the boat,” and that image creates an othering effect for refugees in which they are made into non-legitimate citizens who do not belong to the established, settled, and civilized Canadian nation. This othering of refugees remains, so that even after years of settlement in Canada, the refugee label is used to “distance people further away from the nation and point them to another place of belonging.”<sup>23</sup> Equating refugees with cheating citizenship and being uncivilized reinforces the “claim of the national space by reifying both the refugee and the nation as separate entities—each having a priori a life of its own.”<sup>24</sup> Not only are the complexities of refugees’ experiences ignored, but the whiteness of Canadian settlement is maintained through the othering of refugees as inherently separate to the nation. Race, therefore, plays a significant factor, as the colour of one’s skin affects how “successfully” refugees can fit in or look as though they “belong” to Canada.

### ***Research on Sexual and Gender Minority Refugees***

Ethnographic research on refugee and forced migration emphasizes the importance of viewing migration, asylum, and settlement as a process, not an event, and the diversity of today’s refugees. Yet, despite attention to the diversity of refugees’ experiences and migratory processes, little attention has been paid to the role of sexuality in migration and asylum. Until very recently, sexual and gender minority migrants or queer migrants were ignored by dominant migration literature.<sup>25</sup> Much of the literature on refugee and forced migration continues to render sexuality invisible by having heterosexuality as the “unmarked but taken-for-granted premise” for migratory relationships, desires, and processes.<sup>26</sup> Sexuality and migration are together disciplined by social institutions and practices that normalize and naturalize heterosexuality and heterosexual practices through migration and citizenship processes.<sup>27</sup> An example can be seen in Jon Binnie’s research on the hetero-normativity of U.S. and British immigration regulations that exclude lesbian and gay couples from full citizenship rights and have historically limited sexual and gender minorities from entering the state.<sup>28</sup>

Yet focusing on just sexuality and its relation to the state is not enough to understand the complexity and intersectionality of sexual and gender minority refugees. Scholars need to look at how wider unequal global relations inform and regulate migration and the experiences of sexual and gender minority refugees, as well as the historical and current colonial and imperial structures and discourses that shape migration and settlement. This is especially the case when talking about migration of sexual and gender

minorities from the global South to the global North. John Hawley has argued that the rising anti-queer violence occurring in many “post” colonial states in the global South are products of the ongoing violence brought on by colonialization and Western imperialism, and that the majority of anti-sodomy and anti-homosexuality laws that continue to be enforced owe their birth to colonialism.<sup>29</sup> However, despite pioneering and innovative research on the diversity of queer migrant lives, the majority of these works still organize around a narrow narrative of individuals moving from repression in the global South to freedom in the global North.<sup>30</sup> The danger of this linear narrative is that sexual and gender minority refugees’ experiences can become appropriated to serve nationalistic foreign policy objectives, and their subjectivities and histories become represented within settler-colonialist racist understandings of culture and sexual/gender identity.<sup>31</sup> This not only silences the voices and complex experiences of sexual and gender minority refugees, but also ignores how sexualities are used for imperialistic, militaristic, and nationalistic aims.

As Cruz-Malave and Manalansan write, “Queer sexualities and cultures have often been deployed negatively to allay anxieties about ‘authentic’ national belonging in our massively migratory contemporary world and positively by nation-states in order to project an image of global modernness consistent with capitalist market exchange.”<sup>32</sup> This does not mean that violence against sexual and gender minorities, and the routes they take to escape and resist persecution, should not be considered an important issue. Sexual and gender minority refugees often describe their experiences in their struggles against oppression and persecution, as well as how migration to another location or community has given them opportunities, dignity, and freedom that they could not find elsewhere. Sexual and gender minority refugees undertake considerable odds in moving across state borders and making a refugee claim. It is therefore important to recognize their agency in making a refugee claim and how they work within the refugee system to tell their stories and speak their truths.<sup>33</sup>

Their stories cannot be simply reduced to an example of Western dominance or exploitation of their lives to fuel nationalistic and imperialistic desires. The difficulty arises, though, when the search for freedom from homophobic persecution in their countries of origin become the only elements of sexual and gender minority refugee migration that are addressed in forced migration research and refugee policy.<sup>34</sup> What is needed, then, is a far more intersectional approach to looking at migration and settlement for sexual and gender minority refugees.

When investigating refugee and forced migration of sexual and gender minorities, we must resist oversimplifying

complex migration processes and instead look at how globalism and imperialism have routed cultures and lives, as well as understanding the counter-hegemonic routes that many sexual and gender minorities have deployed to redirect power and discourse as they engage in migration and the refugee process.<sup>35</sup> Researchers need to investigate the political, economic, and social structures that not only regulate migration and the refugee process but also enforce and reproduce oppressive sexual norms that are gendered, racialized, and classed.<sup>36</sup> This involves paying attention to whiteness and the racialization, gendering, classing, and sexualization of discourses of inclusion and normalcy, both as these play into defining the in-state refugee process and reaffirming particular sexual, racial, gender, and class politics.<sup>37</sup>

### ***Sexual and Gender Minority Refugees in Canada***

In 1991, Canada was the first Western nation to grant refugee status on the basis of sexual orientation.<sup>38</sup> In 1993, the Supreme Court of Canada ruled in (*AG*) v *Ward* that sexual orientation should be included in the parameters of a “particular social group” under the 1951 UN Convention of the Status of Refugee within Canadian refugee law.<sup>39</sup> By 1995, the Canadian refugee tribunal became the first to have adjudicator training and in-house human rights information on the status of sexual and gender minorities in different countries.<sup>40</sup> Yet, despite this progressive legislature within Canada, hetero-normativity and cultural bias within the refugee decision-making process continues to victimize, marginalize, and ultimately penalize sexual and gender minorities when attempting to gain asylum in Canada.

Sharalyn Jordan writes that undertaking an asylum application within Canada for sexual and gender minorities “entails accessing and working within a refugee system that was not designed with sexual and gender minorities in mind.”<sup>41</sup> Western constructions of sexual and gender identity are often forced upon claimants that may not necessarily identify with or fit into these same constructs. As research on sexuality has shown, sexuality, sexual practices, gender, and sexual subjectivities are fluid and culturally positioned. Yet, for the purpose of granting asylum to sexual and gender minorities, Euro-American notions of sexual and gender identity and citizenship have been internationally enforced by Western states to define how sexual and gender minorities fit into the category of a “particular social group” under the 1951 convention. The history of the sexual rights movement in the West; the historically and culturally specific North American and Western European framework of the hetero/homosexual binary; the identification of one’s sexual practice as a primary identity and lifestyle; the attachment to specific U.S.-based political terminology, such as “being

open,” “coming out,” and the “closet” are all embedded in Canada’s determination of sexual and gender minority refugee claimants from other countries.

As most sexual and gender minority refugees come from culturally different backgrounds and are disproportionately low-income, the effort to prove to the adjudicators that they belong to a sexual and/or gender minority becomes heavily racialized and classed. Sexual exceptionalism works by first glossing over boundaries of gender, race, and class formations and then implicitly privileging white and Western gay norms.<sup>42</sup> Sexual and gender minority refugee claimants must “prove their authenticity of their sexual identity by reverse covering, emphasizing traits based on western stereotypes of sexual minorities.”<sup>43</sup> Often these stereotypes are “intricately linked with race” in which the “criteria used to ascertain whether or not the applicant’s identity and behavior meet the evidentiary requirements are based on racialized stereotypes and white gay norms.”<sup>44</sup>

The gay norm that serves as the basis for a “legitimate” or authentic gay identity is based primarily on a Western, white, wealthy, gay, male lifestyle. Boxing sexual and gender minority claimants into Western sexual identity categories, lifestyles, and discourses creates confusion and inconsistent rulings in the Canadian Immigration and Refugee Board (IRB) as refugees are left under the scrutiny of culturally insensitive and biased conceptions of sexuality. Nicole LaViolette, Alice Miller, Sharalyn Jordan, and Edward Ou Jin Lee and Shari Brotman<sup>45</sup> have all given evidence of IRB adjudicators rejecting a person’s claim because they looked “straight enough” by conforming to Western gender roles, had previous sexual relationships or ongoing partnerships with persons of the opposite sex, or did not show enough knowledge about (Western) gay and lesbian culture. In their work on refugee determination for sexual and gender minorities, Sharalyn Jordan and Nicole LaViolette<sup>46</sup> show how IRB adjudicators ask inappropriate and often traumatizing questions on a person’s sexual practices and make the claimants reveal their private feelings about having sexual intercourse with a member of the same sex.

Sexual and gender minority refugee claimants must prove their sexual and gender authenticity in refugee hearings or interviews. Sexual and gender minority refugees applicants work with and against Western narratives of lesbian, gay, bisexual, and transgender (LGBT) identities and lifestyles in order to be recognized as a member of a particular social group, while all the time their credibility is heavily scrutinized.<sup>47</sup> However, unlike for some social groups based on political or ethnic persecution, the burden of proof of persecution for sexual and gender minorities relies almost entirely on their testimonies. This involves requiring sexual and gender minority claimants to explicitly document often

hidden, heavily stigmatized identities and to disclose traumatic experiences that are deeply private. Sexual and gender identity is also seen as more “voluntary” than other identity categories making it appear as a disability that could easily be avoided if individuals learned how to hide it better.

In order to prove persecution, sexual and gender minority claimants may have to inferiorize and pathologize their ethnic, religious, or cultural communities in order to fit into Canada’s national fantasies of being a safe haven to marginalized populations. This not only silences the complexity of sexual and gender minorities’ experiences, but also ignores how Canada and the rest of the global North have been implicated in the violence worldwide towards sexual and gender minorities through economic, social, and political exploitation and inequality. Often culture is substituted for imperialism, as stereotypical and orientalizing images and metaphors are used to separate the racism, sexism, and homophobia in the global South from the “progressive,” “developed,” and “civilized” global North.

The same perils happen for sexual and gender minority refugees in Canada as their testimonies are dichotomized into a falsely linear story of their finding asylum in Canada. The Canadian Immigration and Refugee Board do not have to ask themselves how Canada and the global North have contributed to and often orchestrated massive social, political, and economic upheaval in the global South that in turn produces refugees. The IRB never have to ask how Canada’s policies and actions overseas have contributed to the marginalization and precarity of sexual and gender minority individuals. Never do they have to think about Canada’s responsibility and accountability to these persons, and instead can demand and judge those seeking asylum on the very narrow terms and assumptions that they define. The refugee hearing ultimately becomes a stage in which the refugee claimants must prove themselves as deserving recipients for the benevolence of the Canadian state.<sup>48</sup> The benevolent helper myth is further reproduced in the post-9/11 Canadian press as sexual and gender minorities are framed as agentless and helpless victims to their homophobic and culturally backward home countries.<sup>49</sup> “This simplistic framing of what is a complicated migratory process not only results in the silencing of more complex narratives dictated by sexual minority refugees themselves, but also produces a discursive erasure of the very real forms of heterosexism and homo/transphobic violence present in Canada today.”<sup>50</sup> Not only is it reproduced by mainstream media, but is also used by predominantly white and middle-class LGBT rights groups in Canada to further support nationalistic and imperialistic desires. Mainstream Canadian LGBT politics have taken form as a predominately white, middle-class, cisgender, and non-Native movement compatible with a

white settler society that ignores ongoing colonial violence against racialized and Indigenous sexualities and sexual and gender minorities. By evoking Canada as the saviour and safe haven to sexual and gender minorities from the global South, the ongoing sexual violence and oppression of settler colonialism against racialized minorities and First Nations populations in Canada is silenced. Although many sexual and gender rights groups in Canada challenge whiteness and settler homo-nationalism, that alone may not dismantle settler colonialism and its effect on sexual politics within Canada.<sup>51</sup> This results in a culturally racist construction of sexuality that reinforces white settler colonialism by erasing the historical and ongoing sexual violence against racialized and Indigenous persons within Canada.<sup>52</sup>

Philip Marfleet writes that the “circumstances of most refugees are determined by politicians and state officials who rarely show interest in migrations of the past—indeed, denial of refugee histories is part of the process of denying refugee realities today.”<sup>53</sup> As researchers, we need to ask how sexual and gender minority refugees’ histories have been used by the Canadian settler state for national political, economic, and social reasons. We need to further investigate how sexual and gender minority refugees have been silenced through the asylum and settlement process in Canada. We must also look at how refugees’ histories provide a counter-narrative to the uncluttered white-settler history of Canada by connecting refugees’ histories and experiences to settler colonialism. Within Canada, refugees are silenced in the national history and are brought forward only in nationalistic efforts to reassert a white settler history of the land.

In the asylum process, refugee testimonies are confined to particular scripts that refugees can use to their advantage, but are then they are often marginalized and traumatized by them. Outside of the asylum process, refugees’ plights are taken up by the national and political discourse to support xenophobic policies, while at the same time promoting an international image of humanitarianism. Refugees are silenced through the settlement process as they try to seek out the limited resources provided to them while having to face anti-immigrant, racist, and sexist public attitudes and stigmas attached to being a refugee.

The experience of sexual and gender minority refugees can be further marginalizing as they face racism within the predominately white lesbian and gay community, in addition to homophobia within their own ethnic/cultural diasporic communities. “Articulating the ways in which the present day experiences of sexual minority refugees living in Canada have been profoundly influenced by transnational histories of colonialism and imperialism will allow for a historicized and context specific analysis into the

particular consequences of dominant, interlocking systems of race, class, gender, ability and sexuality.”<sup>54</sup> By incorporating refugees as subjects of history, we can understand how their experiences provide a new insight into the national settler history of Canada. Further research is needed on how sexual and gender minorities engage in settlement in Canada and how their histories intersect and confront settler colonialism.

### Conclusion

At the 2013 Canadian Council for Refugees Spring Consultation in Vancouver, British Columbia, a workshop was held on building social bridges between Indigenous peoples and newcomers. Sitting in a circle of chairs inside a hotel ballroom, tribal leaders of the Penelakut First Nation spoke to a group comprising refugees and settlement workers. As the two leaders of the Penelakut First Nation spoke to the group about past and ongoing political and social persecution and violence brought upon their community by the Canadian government and settler colonialism, refugees from Eastern and Central Africa, the Middle East, and South Asia raised their hands to share with the group similar circumstances that led them to seek refuge in Canada. In each story, individuals spoke about a common understanding they felt with First Nations communities in Canada and expressed their embarrassment that they did not know that this kind of violence was happening here in Canada. Many spoke about how the information they received in the media abroad and from settlement services in Canada spoke nothing about First Nations communities. Canada was seen as a land of white, blonde-haired people that was prosperous and peaceful. Canada was a land of opportunity and freedom. But, as one person said at the end of the workshop, “Canada offered me a home when my home was taken away. But, as much as Canada has done for me, I must pay attention to what Canada has done to others. It is my duty as a refugee and as a Canadian.”

It is this thought on which I wish to end. As seen in this article, there is need to critically investigate the links between colonialism, forced migration, and in-state refugee determination around the world. In Canada, this need is ever more pressing as present immigration and refugee reform has sought to further discriminate and marginalize migrants from the global South. For sexual and gender minority refugees, current Canadian refugee reform has led to greater vulnerability for refugee claimants and biased decision-making in the Immigration Refugee Board. A case in point is the newly established Designated Countries of Origin in which Mexico was determined a “safe” country that protects human rights and therefore does not normally produce refugees. Yet what happens on the legislative level

is always very different from what happens on the ground. Often protection against persecution is obtainable only for a very select population who have the economic means to isolate and protect themselves from the state and the general public. Sexual and gender minorities are in significant danger of persecution in Mexico. While gay marriage is legal only in Mexico City, this does not translate to the protection of sexual and gender minorities in Mexico. Those who have access to gay marriage in Mexico City are a very select and wealthy few. Every month there are international reports of gang and state violence against sexual and gender minorities across Mexico, yet their refugee claims are being denied because of Mexico’s Designated Country of Origin status and having gay marriage legal in Mexico City. Further research is needed on how racial, sexual, and gender constructs inform refugee decision-making and processes of immigration. We must critically ask ourselves what the ramifications are of providing refuge in a settler-state and what it means to be a refugee in a state where there is a settler racial hierarchy that marginalizes refugees from the global South and silences ongoing violence towards Indigenous communities. It is by asking these questions that we may work toward unsettling underlying settler-colonialism in the refugee and immigration process, as well as build valuable and supportive relationships between refugee and Indigenous communities.

### NOTES

1. It should be stated that while I do critically investigate underlying colonial structures in forced migration and refugee determination, I do not condemn refugee protection for gay, lesbian, bisexual, and transgender persons as being futile or inherently wrong. The ability for states to provide asylum to those fleeing persecution based on their sexual orientation and gender identity should be honoured, supported, and protected. Likewise, I want to emphasize the tenacity, bravery, and agency of sexual and gender minority refugees in seeking asylum in places like Canada and Europe. But with this recognition of refugee protection and refugees comes the necessity for critique and investigation. It is by investigating links between colonialism, forced migration, and the in-state refugee determination process that I wish to open a much-needed conversation on refugee protection in a settler state and the implication this has for sexual and gender minority refugees.
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