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The **MJRMS** is an online student-run academic journal affiliated with the WUSC McGill local committee. Our main goal is to complement WUSC's work on campus by raising awareness about refugee and migration issues. We also serve as a platform for undergraduate and graduate students who wish to publish their work and highlight important issues regarding refugees and migration.

La **RERMM** est une revue scientifique étudiante en ligne sous le parrainage du comité local mcgillois de l'EUMC. Notre but premier est de soutenir le comité local de l'EUMC à l'Université McGill à promouvoir les droits des réfugiés et des migrants. De plus, nous sommes une plateforme qui aide les étudiant.e.s au 1er cycle et aux cycles supérieurs à publier leur recherche sur les réfugiés et la migration.

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“Not Gay enough”: Credibility Assessment of Queer Muslims in the Dutch Asylum Procedure

Linn Pfitzner

Abstract

This paper examines the experiences of queer applicants from Muslim-majority countries in the Dutch asylum procedure. Building upon previous research about homonationalism and the cultural contingencies of queer identities, it posits that Dutch asylum authorities draw on Western ideas of queerness which do not reflect the lived experiences of Muslim queer applicants. The presence of homonationalist argumentations in Dutch legal discourse, whereby acceptance of the Western queer community is mobilised to justify the exclusion of migratory identities, is examined through reference to dominant discourses of “coming out,” becoming aware of one’s sexuality, and speaking about it. These homonationalist ideas represent an insensitivity towards non-Western queer identities that may create lacunae in the protection for gender and / or sexuality non-conforming applicants who, contrary to European and international law, are denied protection.

Introduction

On July 28th 1951, the member states of the United Nations signed the Convention Relating to the Status of Refugees (“Refugee Convention”) into being, recognizing the right to asylum and the responsibilities arising thereunder for all signatory parties. Pursuant to Article 1(A)(2) of the Convention, a refugee was to be defined as a person 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.”[1] Following the United Nations High Commissioner for Refugees (UNHCR) Guidelines on International Protection No. 9, refugees fleeing on the basis of their sexual orientation and/or gender identity (SOGI) are covered by the “membership of a particular social group” criterion embodied in that definition.[2] Although not legally binding, these guidelines have given rise to EU legislation which enshrines the refugee definition cited above in European law. Specifically, the Qualification Directive sets out common criteria for establishing refugee status in accordance with the Refugee Convention. Article 10(1)(d) of this Directive recognizes that one’s gender or sexual orientation may be a legitimate source for fear of persecution.[3] Whilst these rules must be implemented by the EU Member States (MS),

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[1] “Geneva Convention Relating to the Status of Refugees” (189 U.N.T.S. 137, Geneva, 1951).
[2] UNHCR, “Guidelines on International Protection No. 9” (Geneva, 2012). https://www.refworld.org/docid/50348afc2.html
[3] “Directive 2011/95/EU of 13 December 2011 on Standards for the Qualification of Third-country Nationals or Stateless Persons as Beneficiaries of International Protection, for a Uniform Status for Refugees or for Persons Eligible for Subsidiary Protection, and for the Content of the Protection Granted” (Qualitative Directive, OJ L337/9, Brussels, 2011).

the assessment of queer refugee claims at domestic levels continues to generate legal and societal debate.[4]

One particularly salient critique is that the use of dominant Western lenses of queerness by immigration authorities neglect other lived queer realities from different parts of the world.[5] Particularly, queer Muslim refugees have difficulty asserting their queerness with immigration authorities, who often rely on outdated methods which fail to exhibit cultural sensitivity in order to determine an applicant’s sexuality.[6]

Notes on Terminology

To permit meaningful engagement with previous literature on the topic and avoid confusion, the present section will elaborate on the central terminology used in this paper. I will primarily make use of the term “asylum applicant” to refer to individual persons applying on the basis of SOGI. With “refugee,” I denote individuals whose asylum claim was successful. For reasons of conceptual clarity, I will refrain from using the general term “migrant” since this captures a diversity of motives for leaving one’s country of origin which will be of no relevance in the present context. I employ “queer

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[4] Edward J. Alessi, Sarilee Kahn, Brett Greenfield, Leah Woolner, and Dean Manning, “A Qualitative Exploration of the Integration Experiences of LGBTQ Refugees who Fled from the Middle East, North Africa, and Central and South Asia to Austria and the Netherlands,” *Sexuality Research and Social Policy* 17, (2020): 13-26. https://doiorg.proxy.uba.uva.nl/10.1007/s13178-018-0364-7; Alexander Dhoest, “Learning to be Gay: LGBTQ Forced Migrant Identities and Narratives in Belgium,” *Journal of Ethnic and Migration Studies* 45, no. 7 (2019): 1075-1089. https://doi.org/10.1080/1369183X.2017.1420466

[5] Maya Hertoghs and Willem Schinkel, “The State’s Sexual Desires: The Performance of Sexuality in the Dutch Asylum Procedure,” *Theory and Society* 47, (2018): 691-716. https://doi.org/10.1007/s11186-018-9330-x; Thibault Raboin, “Exhortations of Happiness: Liberalism and Nationalism in the Discourses on LGBTI Asylum Rights in the UK,” *Sexualities* 20, nos. 5-6 (2017): 663-681. https://doiorg.proxy.uba.uva.nl/10.1177/1363460716645802

[6] In the present paper, I primarily use the term sexuality to denote queer sexuality. The same holds true for my use of the term sexual orientation.

Muslim applicants” to specifically denote individuals applying for asylum based on their sexuality from Muslim-majority countries, even if the individuals themselves do not identify as Muslim. I believe this to be warranted by the fact that what is at issue is not the individual’s religious beliefs themselves but rather the fact that they are read as “Muslim” in the context of the asylum procedure. With “queer,” I exclusively denote divergence from the heterosexual standard rather than queerness regarding gender. Owing to scarcity of cases available regarding claims based on gender identity, the present paper will exclusively focus on sexual orientation as a criterion for claiming refugee status. In addition, this allows for a more detailed analysis by narrowing scope. Analogously, I employ the term “SOGI” only when speaking about individuals applying for asylum on the basis of sexual orientation and/or gender identity generally and not with respect to my cases studied. Whilst realising that the term SOGI is not uncontested, I will nevertheless employ it as it is commonly used in international legal contexts (see for example the UN Global Report on UNHCR’s Efforts to Protect Lesbian, Gay, Bisexual, Transgender, and Intersex Asylum-Seekers and Refugees).[7] I do so mindful of the criticism voiced by scholars like Susan Stryker against the inclusion of (trans)gender in the LGBT acronym in light of frequent failures to factually include transgender individuals in research (an argument which can be similarly applied to SOGI).

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[7] UNHCR, “Protecting Persons with Diverse Sexual Orientations and Gender Identities: A Global Report on UNHCR’s Efforts to Protect Lesbian, Gay, Bisexual, Transgender, and Intersex Asylum Seekers and Refugees,” (Geneva, 2015). https://www.unhcr.org/publications/brochures/5ebe6b8d4/protecting-persons-diverse sexual-orientation-gender-identities.html

Narratives of queer asylum

National discourses on asylum and queer refugees have been studied in different contexts. In a German sphere, Mengia Tschalaer suggests that the success of a queer individual’s asylum application is contingent on their display of German morals of queer sexuality.[8] Vis-à-vis the UK, Thibault Raboin argues how, within the context of queer asylum law, the country is reimagined as a tolerant queer haven, with specific implications on what it means to be a “liberal” LGBTQ subject.[9] The irony of this becomes apparent in reference to the UK’s imperial past, whereby a direct link can often be made between homophobic laws still in place today in former colonies and their historical implementation by British imperial authorities.[10]

In the Netherlands, there exists a rich body of literature on the concept of “homonationalism”, coined by Jasbir Puar in 2007.[11] Though Puar offers no concise definition of the term in her original work, it is commonly understood to refer to the imagined dichotomy between narratives of queer liberation formulated by Western states and ideas of a Muslim “backwards Other”.[12] Homonationalism therefore denotes power

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[8] Mengia Tschalaer, “Between Queer Liberalisms and Muslim Masculinities: LGBTQI+ Muslim Asylum Assessment in Germany,” *Ethnic and Racial Studies* 43, no. 7 (2020): 1265-1283. https://doi.org/10.1080/01419870.2019.1640378

[9] Zein Murib, “LGBT,” *Transgender Studies Quarterly* 1, nos. 1-2 (2014): 118-120. In line with the above comment on the use of SOGI, the LGBTQ acronym is also strongly contested. The term “queer” in the present context is used as an umbrella term for individuals identifying as non-heterosexual or non-cisgender. Whilst the discussion cannot aim to capture all sexual or gender identities that may fall within its purview, this seeks to acknowledge that under international law, both marginalized sexual and gender identities can give rise to refugee claims. I will refrain from using the term LGBTQ in reference to my cases, since they do not discuss transgender applicants.

[10] Raboin, “Exhortations of Happiness.”

[11] Jasbir Puar, *Terrorist Assemblages: Homonationalism in Queer Times* (Durham, NC:Duke University Press, 2007).

[12] Fatima El-Tayeb, “Gays who Cannot Properly be Gay: Queer Muslims in the Neoliberal European City,” *European Journal of Women’s Studies* 19, no. 1 (2012): 79-95. https://doi org.proxy.uba.uva.nl/10.1177/1350506811426388; Hertoghs and Schinkel, “The State’s Sexual Desires.”

processes that relate acceptance of the LGBTQ community to national identity, simultaneously functioning to exclude migrants who are considered to stand in opposition to Western liberal values. In the Netherlands in particular, this concept is intrinsically entwined with Islamophobia.[13] A dominant discourse on homosexuality posits Western conceptions of queerness as the norm and marginalizes other forms of "deviant" SOGI.[14]

Despite insights on the prevalence of homonationalism in European political discourses from anthropological and social scientific research, an analysis of their impact on the Dutch legal system remains absent. There is an urgent need to investigate how these perceived contradictions between Muslim and queer identities influence the credibility of queer asylum applicants from majority-Muslim countries in the Netherlands. Therefore, the question I seek to address is the following:

> How does the construction of queerness in Cases A and B display elements of homonationalism in the Netherlands?

Through investigating how the legal terminology itself and its application to individual asylum claims betray reliance on dominant Western conceptions of sexual identity, I seek to examine the importance of challenging this normalized discourse. As shown below, it is imperative to open up administrative decision-making on refugee status to accommodating different definitions of queerness which are more relevant to refugees' personal cultural experiences.

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[13] Paul Mepschen, Jan W. Duyvendak, and Evelien H. Tonkens,(2010). "Sexual Politics, Orientalism and Multicultural Citizenship in the Netherlands," *Sociology* 44, no. 5 (2010): 962-979; Gloria Wekker, (2016). *White Innocence: Paradoxes of Colonialism and Race* (Durham, NC: Duke University Press, 2016).
[14] El-Tayeb, "Gays who Cannot Properly be Gay."

To address the above question, I will firstly elaborate on existing research and its importance with respect to the present topic. Secondly, I will present and justify my case choices, before applying the theoretical framework to the cases at hand. Based on my analysis, I will hold that there are three ways in which homonationalist elements are present in the assessment of individual asylum applications: the “coming out” discourse, becoming aware of one’s sexuality, and speaking out about it. I will conclude by highlighting some limitations of my paper and indicating lacunae to be addressed by future research.

Theoretical Framework

Discourse, Narratives and Performativity in Assessing Individual Claims

Individual asylum applications are assessed in light of the construction of a personalized narrative, the success of which is largely dictated by how the state conceptualizes the grounds for claiming asylum based on SOGI.[15] These accounts substantially build on a Foucauldian and Butlerian conceptualization of discourse and narratives. Following Michel Foucault, discourse describes a complex of ideas which gives meaning to social phenomena and is governed by institutional power relations. Truth thus becomes a discursive product; it is the productive aspect of power which socially and politically constructs sexual identities, rather than those expressing innate instincts.[16] Building on

[15] Hertoghs and Schinkel, “The State’s Sexual Desires.”
[16] Michel Foucault, *The History of Sexuality: Volume I*. New York: Vintage Books, 1980.

Foucault, Judith Butler coined the term performativity, denoting the process whereby the individual (and their gender / sexual identity) comes into being through the reiteration of certain discursive norms.[17] This performativity is largely shaped by dominant institutional structures and therefore frequently conforming rather than voluntary. Following Hertoghs and Schinkel, performativity through everyday iterative practices is however fundamentally different from the performance expected by queer Muslims in the asylum procedure (p. 693):

> The asylum procedure becomes a test of sexual veracity and facticity by means of a truthful performance, and it thus constitutes a particular kind of epistemological practice, which seeks truth and knowledge and assumes that the object of knowledge — sexual identity — is fixed and present, even if prima facie invisible.[18]

The credibility awarded to this performance is contingent on the supply of details which helps interweave the application into a coherent story of self-realization and persecution. Connected to this hurdle of believability is the Western imperative of “coming out”, framed as a crucial point of identity formation and a prerequisite for claiming one’s sexual identity in Western societies.[19] Equally drawing on Foucault, Wekker writes about “speakability” in the context of the Dutch homo-emancipation policy, which epitomizes

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[17] Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (Milton Park, UK: Routledge, 1999).
[18] Hertoghs and Schinkel, The State’s Sexual Desires.”
[19] Gloria Wekker, “What’s Identity got to do with it? Rethinking Identity in Light of the Mati Work in Paramaribo, Suriname,” in *Female Desires: Transgender Practices Across Cultures*, eds. Evelyn Blackwood and Saskia Wieringa (New York: Columbia University Press, 1999): pp. 119-138.

the coming-into-being of sexual identity through articulating (homo)sexual desire.[20] Put differently, the dominant Western discourse conceptualizes sexuality as identity rather than behaviour. The universalization of this narrative marginalizes non-Western queer identities which do not attach a specific sexual behaviour to a defined sexual identity. The pressure to subscribe to a particular SOGI label obscures other forms of queerness centred around doing rather than being, thereby eliminating possibilities for non-white sexual minorities like queer Muslims to inhabit their sexuality in non-Western ways.[21] Criticism on the normalization of Western discourses with respect to sex and gender is also present in the academic work of Oyèronké Oyěwùmí, who advocates against the imposition of Western conceptual categories of sexuality and gender on non-Western societies which are structured differently. Equally, the importance of sexuality may vary between communities.[22]

Homonationalism in the Dutch Asylum Procedure

The narrativization of individual accounts of persecution in the Dutch asylum procedure is inextricably linked to the conformity with and reproduction of Western liberal

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[20] Wekker, “White Innocence”; Suhraiya Jivraj and Anisa de Jong, “The Dutch Homo-emancipation Policy and its Silencing Effects on Queer Muslims,” *Feminist Legal Studies* 19 (2011): 143-158. https://doiorg.proxy.uba.uva.nl/10.1007/s10691-011-9182-5. The Dutch homo-emancipation policy was pursued by the Dutch government for the period from 2008 to 2011. Its two central goals were increasing the social acceptance of homosexuality and the freedom to “be out.” A number of scholars have criticized it for its universalization of the experiences of white gay men in the Netherlands and its failure to address issues faced by non-white queer individuals.

[21] Jivraj and de Jong, “The Dutch Homo-emancipation Policy.”

[22] Oyèronké Oyěwùmí, “Visualising the Body: Western Theories and African Subjects,” In *African Gender Studies: A Reader*, ed. Oyèronké Oyěwùmí (London: Palgrave Macmillan, 2005): 3-22). It must be noted that Oyěwùmí primarily makes this argument with respect to gender and not sexuality. Nevertheless, there is no reason to assume why it may not also hold for the latter.

discourses. The nexus of queer and religious identities in the asylum procedure both challenges and confirms homonationalist narratives of Western saviourism: European governments use the “liberation” of oppressed queer Muslim refugees as a tool for justifying Islamophobia and affirming liberal nationalist narratives.[23] Homonationalism thereby distinguishes “accepting” Western societies from “backward” Muslim ones.

This dual mechanism is particularly apparent in a Dutch cultural context.[24] Dutch sexual liberty and tolerance towards white gay men is juxtaposed with the alleged homophobia of Muslim minorities within the Netherlands and abroad.[25] With Dutch queer identities being synonymous with idealized narratives of sexual inclusivity, queer-friendly policy in the Netherlands has historically been both inclusive and exclusive: inclusive of white gay (male) identities, exclusive of queers of colour and gender variance.[26] Correspondingly, racial and religious markers have helped to marginalize, amongst others, queer Muslims from a non-Western background.[27] This frequently constructs an anti-Muslim discourse through depicting Islamic belief as inherently homophobic and therefore at odds with Dutch national identity.[28]

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[23] Puar, “ Terrorist Assemblages”; Jivraj and de Jong, “The Dutch Homo-emancipation Policy,” 146. Following Puar, Jivraj and de Jong define homonationalism as “forms of lesbian and gay politics or governmental discourse that invoke a distinction between the ‘West’ and Islam.”
[24] Jivraj and de Jong, “The Dutch Homo-emancipation Policy”; Mepschen, Duyvendak, and Tonkens, “Sexual Politics”; Wekker, *White Innocence*.
[25] Jivraj and de Jong, “The Dutch Homo-emancipation Policy”; Babacar M’Baye, “The Origins of Senegalese Homophobia: Discourses on Homosexuals and Transgender People in Colonial and Postcolonial Senegal,” *African Studies Review* 56, no. 2 (2013): 109-128. https://doi.org/10.1017/asr.2013.44 The term homophobia serves as an umbrella term for antipathies towards homosexual individuals. Following M’Baye, homophobia is linked to processes whereby one social group establishes dominance over another through reliance on ideologies which perceive the marginalized group as alien and incapable of conforming to the dominant group’s value system.
[26] Wekker, “White Innocence.”
[27] El-Tayeb, “Gays who Cannot Properly be Gay.”
[28] Mepschen, Duyvendak, and Tonkens, “Sexual politics.”

Islamophobic and homonationalist discourses also translate into the asylum procedure, in particular by informing the presumption that every applicant is heterosexual until proven otherwise.[29] Against the Dutch state’s strong desire to prevent “impostors” (i.e., those asserting queerness as a pretext to obtain refugeehood) from being granted asylum, applicants who are unable to present a legible Western queer identity have greater difficulty in asserting their SOGI and thereby their basis for asylum. This process is mediated by heteronormativity, which denotes the “privileging of heterosexuality through its normalization”.[30] Heterosexuality thereby becomes the organizing structure of public and private life which informs both institutional arrangements and social interactions.[31] Nevertheless, homosexuality is not inevitably a threat to heteronormativity, as long as it stays within the confines of heterosexual values and life structures: Dutch gay identity thereby simultaneously reproduces the dominant heteronormative order.[32] This corresponds to the term homonormativity, coined by Duggan and describing “a mainstreamed gay discourse that attempts to expand rather than dismantle heteronormativity by internalizing a conceptualization of LGBT identity that constructs legitimacy and rights along established lines […].”[33] Homonormativity thus fulfills an essential function: through the conformism of homosexuality with (white

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[29] Hertoghs and Schinkel, “The State’s Sexual Desires.”
[30] Stevi Jackson, “Gender, Sexuality and Heterosexuality: The Complexity (and Limits) of Heteronormativity,” *Feminist Theory* 7, no. 1 (2006): 109.
[31] Jackson, 109.
[32] Mepschen, Duyvendak, and Tonkens, “Sexual politics.”
[33] See El-Tayeb, “Gays who Cannot Properly be Gay.”

Western) heteronormative ideals, inequalities stemming for example from race, class or ethnicity remain obscure.[34]

Whilst non-conforming queer Muslims are thereby excluded from the Western conceptualization of LGBTQ identity, their exclusion is precisely what is required for this homonationalist discourse to come into being.[35] Parallels can here be drawn to Simone de Beauvoir’s idea of the construction of the female Other vis-à-vis the male subject.[36] Following de Beauvoir, the framing of womanhood in opposition to manhood is required in order for the latter to be normalized, i.e. to be considered as universal personhood. Equally, the framing of queer Muslims as “the Other” is essential for constructing Dutch homonationalism.[37]

Case study

The present section introduces two cases discussing asylum applications of queer individuals from Muslim-majority countries before Dutch regional courts. Below, I will examine how homonationalist argumentations manifest themselves in legal discourse, using these two examples.

Justification of the case study choice

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[34] Tschalaer, “Between Queer Liberalisms and Muslim Masculinities.”
[35] El-Tayeb, “Gays who Cannot Properly be Gay.”
[36] Simone De Beauvoir, “Introduction to The Second Sex,” in *The Second Sex* (New York: Vintage Books, 2011[1949]), 11-18.
[37] El-Tayeb, “Gays who Cannot Properly be Gay.”

Discerning the political implications of the assessment of individual applications requires extracting personal experiences and investigating them in a comparative context.[38] I have selected two cases before the Rechtbank Den Haag for reasons of accessibility. I filtered existing decisions by date, using only those after the Qualification Directive was implemented and selecting individuals from a Muslim-majority background. I will cross-reference these insights with testimonies of queer Muslim asylum applicants in the Netherlands recounted in the report “Krassen op je Ziel” (Scratches on your Soul) by the Dutch NGO LGBT Asylum Support.[39] Additionally, unlike prior research, I examine these discourses during the legal asylum procedure, omitting both prior motives of migration and integration into the host society following successful claims.

I restrict my analysis to applications by cisgender non-heterosexual men for two reasons. The experiences of transgender versus cisgender queer migrants during the asylum procedure vary significantly, with transgender individuals being, for example, more vulnerable to violence in asylum centres due to easier visibility of their gender nonconformity.[40] The distinctness of the experiences of these two groups makes it imperative to examine them separately. Furthermore, prior research suggests differences in how queer men and women experience persecution in their countries of origin, with lesbian women who inhabit mostly private spaces having difficulty generating proof

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[38] Kate Millett, “Sexual Politics,” The CWLU Herstory Website Archive, Chicago Women’s Liberation Union, 2016, https://www.cwluherstory.org/classic-feminist-writings-articles/sexual-politics
[39] LGBT Asylum Support,“Krassen op je ziel: #Nietgaygenoeg, de werkinstructie en de beoordeling van LHBTI-asielzoekers in LHBTI-zaken,” 2018, https://lgbtasylumsupport.nl/nl/krassen-op-je-ziel/
[40] Alessi, Kahn, Greenfield, Woolner, and Manning, “A Qualitative Exploration of the Integration Experiences of LGBTQ Refugees.”

alleging their homosexuality.[41] To ensure comparability, I therefore omit discussions of applications by queer women.

On a further note, the present conclusions should be evaluated with care given my limited personal knowledge of what it means to be a male queer Muslim refugee in a largely xenophobic and Islamophobic society.[42]

Case A: AWB 17/8268

Case A concerns the application of a Senegalese national for a temporary asylum residence permit before the Rechtbank Den Haag, in which he sought to overturn the decision of a lower court which had denied the permit. A (non-practising) Muslim, the claimant had lived in Spain for a period of ten years and experienced difficulty upon his return to Senegal due to suspicions as to his sexual orientation, manifesting in verbal insults, threats from a religious group and physical attacks.[43] The court agreed with the Dutch asylum authorities that the applicant had not credibly demonstrated his bisexual orientation and the alleged problems caused thereby.[44] In particular, it focused on the fact that the claimant had made contradictory statements regarding how and when he

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[41] Jenni Millbank, “Imagining Otherness: Refugee Claims on the Basis of Sexuality in Canada and Australia (Lesbian and Gay Asylum-seekers),” *Melbourne University Law Review* 26, no. 1 (2002): 144-177.
[42] Dhoest, “Learning to be Gay,” 179-80. The challenges surrounding research on LGBTQ refugees from a Western perspective have been succinctly summarized by Jordan: “How to write about persecution without othering cultures or countries as monolithically homophobic; how to write about the shifts and realignments in identity that occur with migration, without reproducing a transnational version of the coming out story; how to ensure access to refugee protection for those facing homophobic or transphobic persecution, without reifying Western identity categories; how to represent the traumas that occur under persecution and precarious migration without fuelling a politics of rescue.”
[43] RB Den Haag, ([eiser]/de Staatssecretaris van Veiligheid en Justitie), Paragraph 1, AWB 17/8268 m.nt (NJ 2017, 19 May 2017).
[44] RB Den Haag, Paragraph 13.

perceived his own bisexuality, for example with respect to his first sexual experiences with a man and the fact that he did not speak about his homosexuality with his best friend who was visibly gay.[45]

Case B: NL21.515

The Iranian national concerned in Case B initially applied for asylum based on religious persecution (having converted to Christianity).[46] Following the failure of this application, the applicant invoked his homosexuality as grounds for claiming asylum upon appeal. The court deemed the applicant’s alleged homosexuality implausible. Following the court, the plaintiff’s statements failed to unequivocally indicate the moment when he became aware of his sexual orientation and did not provide a proper reflection on how he viewed his homosexuality vis-à-vis his immediate environment and Iranian society.[47] The court dismissed the applicant’s argument that he had been unable to consistently declare his homosexuality in the proceedings on grounds of mental health issues and also classified his claims regarding his prior relationships as general and superficial.[48] Consequently, it agreed that the Dutch administration had been correct in rejecting his application for asylum.

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[45] RB Den Haag, Paragraph 13.
[46] RB Den Haag, ([eiser]/Staatssecretaris van Justitie en Veiligheid), Paragraph 2, NL21.515 m.nt., NJ 2021, 6 April 2021.
[47] RB Den Haag, Paragraph 7.2.
[48] RB Den Haag, Paragraph 7.2.

Analysis

“Coming out” as an imperative

The reliance on the imperative of “coming out” in the assessment of individual asylum applications posits queer Muslims who have not successfully mastered this stage of accepting their sexuality as “less gay”. This manifests a discourse of deservingness of protection which does not take account of the realities of their prior experiences. “Coming out” as understood in Western Europe is a central theme in creating a linear storyline about one’s sexuality and thus in assessing the credibility of individual asylum applications.[49] This is highly problematic, considering that it is frequently at odds with the lived experiences of queer Muslim applicants: many do not go through a “coming-out” like Dutch queer men as this is not considered an obligatory step to affirm one’s sexual orientation.[50] The “coming out”, which is celebrated in Dutch contexts, may be connected to significant hurdles for queer Muslims, given that it will often be seen as shameful in traditional families to have a gay son.[51] Correspondingly, homophobic impressions on societal and political structures which may be justified in reference to orthodox Islamic teaching impose very different constraints on queer individuals in Muslim-majority countries. The struggle which can result from the obligation or urge to “come out” even in oppressive homophobic contexts plays a present role in the account of Sercan, a queer refugee from Turkey, reproduced in “Krassen op je Ziel.”

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[49] Hertoghs and Schinkel, “The State’s Sexual Desires.”
[50] Wekker,“What’s Identity got to do with it?”
[51] To prevent falling into a dichotomous narrative, it must be stressed that the experiences of LGBTQ individuals cannot be universalized, either within a Dutch or non-Western cultural context. For example, in the Netherlands, issues of homophobia are equally present but are silenced by the creation of the homonationalist discourse of the Netherlands as an LGBTQ-friendly country.

> As a human being, I wanted nothing more than to “be myself,” instead I was forced to "hide" from my sexual orientation. […] I could no longer bear all this and had no other choice but to come out for my sexual orientation, with all the risks that entailed. Once I had come out, my family violated me. They threatened me with death and literally tried to kill me. If I had stayed any longer in Turkey, I would certainly have been killed, and if not, my violent family would have taken my own life.[52]

Even when seeking to challenge many of the Western discourses surrounding the assessment of applications by queer non-Western individuals, it is therefore imperative to remain cognisant of the challenges described in this paragraph.

His adoption of the “coming out” discourse in speaking about sexual orientation makes his narrative not only legible from a Western lens but also highlights the drastic consequences which “coming out” entailed for him in Turkey. The focus on “coming out” during the asylum procedure often exacerbates the pressure which queer Muslim are subject to by equating “coming out” with “true gayness.” Through this, Dutch asylum authorities invoke a binary discourse of a normative Western “freed” queer identity against an underdeveloped and oppressed Muslim who has yet to achieve the position of a proper gay person.[53]

The imperative of “coming out” and the associated discourse of individual emancipation from one’s “backward” Muslim country of origin not only constitutes a barrier to being granted protection but also relies on ideas of societal emancipation and progress. The identification of an individual with non-heterosexual norms and the communication thereof to others is seen as a means to improve societal acceptance of

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[52] LGBT Asylum Support, “Krassen op je ziel,” 16, translated by the author.
[53] El-Tayeb, “Gays who cannot Properly be Gay.”

homosexuality.[54] This exacerbates pressure on queer Muslims by tasking them with the impossibility of adopting liberal Western standards on speaking about homosexuality in a homophobic environment (despite the persecution that they will experience therefrom), turning individual applicants into “ambassadors of progress” without acknowledging the precarious position they are placed in. The discussion of individual asylum experiences before the courts therefore has political dimensions.[55]

Becoming aware of one’s sexuality

Closely linked to the “coming out”-discourse is the idea of a fixed point in time when one becomes aware of one’s sexuality which individuals are expected to cite in their application for asylum. This requirement is particularly problematic in that it makes the believability of a claim contingent on the applicant’s capacity to formulate a coherent narrative of their sexuality. Its success thus hinges on what Butler has termed “narrative accounts of the self,” in that asylum authorities rely on the performance of a particular narrative in trying to ascertain the legitimacy of an application.[56] Underlying this assessment is an innate belief in sexuality as a fixed identity, which an individual “discovers” themself in the process of self-acceptance and sexual exploration.[57] This stands in contrast to the lived realities of applicants, who may have experienced their

[54] Jivraj and de Jong, “The Dutch Homo-emancipation Policy.”
[55] Millett, *Sexual politics*.
[56] Hertoghs and Schinkel, “The State’s Sexual Desires.”
[57] Hertoghs and Schinkel; Wekker, “What’s identity got to do with it?”

sexuality in a more fluid manner, further exacerbating difficulties in presenting a consistent account thereof.

Becoming aware of one’s sexuality is a recurrent theme in all examined accounts. In Case B for example, a central reason for why the court deemed the plaintiff’s alleged homosexuality implausible was his failure to unequivocally state the moment when he became aware of his sexual orientation.[58] Similarly, in Case A, the Court ruled that the applicant’s allegations regarding his bisexuality lacked credibility for a failure to coherently outline his becoming aware of his queerness.[59] The reliance on Western conceptions of discovering one’s sexuality is problematic for two reasons. Firstly, not only does it negate the non-fixedness of sexuality but it also rejects possibilities of nonlinear developments in becoming cognisant of one’s sexuality. This is particularly apparent from the argumentation of the Dutch asylum authorities in Case A, pointing to temporal inconsistencies in the claimant’s realization process. According to the authorities, the fact that the applicant had first sexual contact with a man whilst residing in Spain without having demonstrated a prior process of becoming aware of his sexuality made his claim less credible. His behaviour was thus deemed at odds with the alleged inner process of “self accepting” which the applicant had failed to adequately trace.[60]

Secondly, the request for detailed accounts of awareness and acceptance of an applicant’s orientation fails to acknowledge the sheer complexity of internal and external

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[58] RB Den Haag, 6 April 2021, Paragraph 7.2.
[59] RB Den Haag, 19 May 2017, Paragraph 6.2.
[60] RB Den Haag, Paragraphs 6.1-.2

realities. Rian, an Iraqi applicant cited in “Krassen op je Ziel,” succinctly captures this dilemma with respect to his own application:

> When did I accept that I was gay? I didn't. I was in Iraq, you don't think about that. I just thought: “They will kill me.” […] Of course, during my interview [with the asylum authorities] I couldn't explain very well when I accepted my sexuality and when I became aware of being gay because I never thought about it because everyone said I was sick and they wanted to kill me.[61]

Rian’s account also exemplifies the socially constructed nature of the process of “becoming aware” of one’s sexuality. Speaking of his own experiences as a child (wearing women’s clothes and using make-up), he questions the utility of these “arguments” for establishing the credibility of his own claim regarding sexual orientation as grounds of persecution.[62] His testimony therefore corroborates the argument by Wekker and Oyěwùmí that the reliance on Western stereotypes is at odds with alternative forms of sexuality.[63] The above described instances hence highlight how the reliance on the Western discourse of becoming aware of one’s sexuality misjudges the lived experiences of persecuted individuals in Muslim-majority countries.

Speaking out about one’s sexuality

Whilst becoming aware of one’s sexuality is very much related to the internal process a queer individual goes through, the Dutch asylum authorities also rely on the extent to which an applicant speaks about his sexual orientation. This relates not only to an

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[61] LGBT Asylum Support, “Krassen op je ziel.”
[62] LGBT Asylum Support.
[63] Wekker, “What’s Identity got to do with it?”; Oyěwùmí, “Visualising the Body.”

applicant’s prior experiences but also their presentation during the asylum procedure itself.[64] Correspondingly, in Case B, the claimant (unsuccessfully) alleged that he was unable to consistently declare his homosexuality in reply to the authority’s questions due to his mental health issues.[65] This again relates to the possibility of creating a narrative of self-realization and persecution, from which unverifiable subjective experiences or those that do not conform to heterosexual norms of desire and love must be absent.[66] The subscription to a particular narrative dictated by the asylum authorities is thus pivotal, as the legitimacy of an application is contingent thereon.[67]

Speaking out however plays an equally important role with respect to the prior experiences of queer Muslim asylum applicants. In fact, the production of a normative “out” and “visible” queer identity in a Dutch national context can, paradoxically, serve to mute non Dutch queer identities.[68] Following the Foucauldian analysis of Wekker, the “speakability” model advocated in the Netherlands (as for example by the Dutch homo-emancipation policy in the late 2000s) inextricably links sexuality to the articulation thereof.[69] This marginalizes for example Muslim queer identities, in that it fails to attend

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[64] Butler, *Gender Trouble*; Alessi, Kahn, Greenfield, Woolner, and Manning, “A Qualitative Exploration of the Integration Experiences of LGBTQ Refugees”; de Beauvoir, “Introduction to The Second Sex.” In Butlerian terms, assessing the legitimacy of an individual claim thus hinges on performance as much as on performativity. This is particularly apparent in the account of Saad, a gay Muslim refugee in Amsterdam, recounted in Alessi et al.. Saad deliberately gave up going to the gym in the belief that presenting as “tough” would prevent him from being read as gay in the courtroom. For him, this constituted giving up part of his personality to fit into what Dutch asylum authorities would perceive as queer. This highlights the importance of self-presentation and conformity to Western conceptions of queerness to achieve subjecthood.
[65] RB Den Haag, 6 April 2021, Paragraphs 4;5.1.
[66] Hertoghs and Schinkel, The State’s Sexual Desires.”
[67] See Butler, *Gender Trouble*.
[68] Jivraj and de Jong, “The Dutch Homo-emancipation Policy.”
[69] Wekker, *White Innocence*.

to the ways in which their sexuality and religious background intersect.[70] Additionally, it makes queer sexuality a tool for reaffirming heteronormativity by presenting it as divergence from the norm, as something which needs to be acknowledged as “the Other,” without consideration of the consequences that doing so would entail in applicants’ countries of origin.[71]

The line of reasoning whereby “speakability” becomes something paradigmatic is particularly present in the submissions by the Dutch asylum authorities in Case A. In support of their decision to deny the grant of a temporary residence permit for failure by the applicant to credibly demonstrate his sexual orientation, the authorities cited the fact that the claimant in the case did not speak about his sexuality with a Senegalese friend who visited him for an extended period, despite the latter more or less openly presenting as homosexual.[72] In attaching particular importance to this detail, the authorities implied that queer sexuality was something which should be spoken about and that a failure to do so can raise questions as to the validity of a claim for asylum based on sexual orientation. The asylum authorities thereby also demonstrated a lack of understanding for the lived realities of queer Muslim applicants, failing to recognize the restrictions which are placed on queer individuals in homophobic environments and the dangers attached to speaking about sexuality in those contexts. As put by Rian, entering into a relationship in such a context is of a primarily physical nature – the dangers attached to speaking about sexuality place a taboo on expressing feelings or love for another person

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[70] Jivraj and de Jong, “The Dutch Homo-emancipation Policy.”
[71] De Beauvoir, “Introduction to The Second Sex”; Jackson, “Gender, Sexuality and Heterosexuality.”
[72] RB Den Haag, 19 May 2017, Paragraph 2.

of the same gender.[73] Furthermore, he highlights the mental inhibitions which many queer Muslims experience in being asked to speak out about their sexuality during the asylum procedure within the first few months of arrival in the Netherlands, given their extended prior experiences with keeping their sexuality to themselves for fear of persecution.[74] Given the strong societal stigma attached to speaking about one’s sexuality which many applicants have grown up with, it is questionable to what extent they can simply dispel with their internalized mechanisms upon arrival in the Netherlands.[75] Characterizing non-heterosexual identity in reference to its public presentation (to be gay means to be “out and proud”) therefore does not account for less visible or outspoken expressions of sexuality.[76] It creates an imperative of speaking out about one’s sexual orientation which does not cater to the realities of queer Muslims, thereby obscuring the complex identities of those applicants.

Discussion, Limitations & Conclusion

In the present paper, I have traced several dominant narratives on which Dutch asylum authorities rely in the assessment of applications by queer Muslim refugees. I have done so by investigating how Western discourses around queer sexuality feature in the

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[73] LGBT Asylum Support, “Krassen op je ziel.”
[74] LGBT Asylum Support.
[75] Alessi, Kahn, Greenfield, Woolner, and Manning, “A Qualitative Exploration of the Integration Experiences of LGBTQ Refugees.” In fact, given the frequency of homophobic violence in asylum centres in the Netherlands, applicants may still be required to keep their sexual orientation a secret even after having fled their country of origin. Queer Muslim refugees may thus experience discrimination from different sources even in the Netherlands, making it even less likely that they will open up during their asylum interviews.
[76] Jivraj and de Jong, “The Dutch Homo-emancipation Policy.”

argumentation before Dutch courts and cross-referencing this with the experiences of two Muslim applicants retold in the report “Krassen op je Ziel” by Dutch NGO LGBT Asylum Support. I have detected several recurring themes between those accounts which play a prominent role in the credibility assessment conducted by Dutch asylum authorities and courts: an obligation to “come out”, becoming aware of one’s sexual orientation, and speaking out about it. The reliance on these discourses indicates that little account is taken of the lived experiences of queer Muslims, who have grown up in a homophobic environment which has denied them possibilities of subscribing to liberal Western ideas of being gay. It is therefore adequate to conclude that elements of homonationalism infuse the assessment of individual asylum applications as seen by the examples of Cases A and B.

There are several limitations to my research. Firstly, my reliance on data collected by other scholars may constitute an obstacle to extracting my conclusions to other contexts. Whilst time constraints eliminated the possibility of conducting interviews myself, under the present circumstances I had no possibility of checking which questions were asked and how the interviewer themselves may have impacted the answers given. I have further not awarded sufficient attention to the implications of the intersectional identities which queer Muslims hold, something to be elaborated on by future research. Most importantly, my own positionality likely restricts the validity of my conclusions. Whilst I have tried to not base my observations exclusively on Western literature, I am aware that I am still drawing on Western assumptions in my discussion of this topic.

To take matters further, future research should focus exclusively on the intersections between performativity and performance with respect to how queer Muslim applicants adopt stereotypes of Western queerness to fulfill the expectations of the authorities regarding presentation as LGBTQ. Additionally, there is an urgent need for more practice based analyses of this matter, functioning as a true basis for a new European legislative framework which replaces the Qualification Directive and, if interpreted correctly, provides equal protection to refugees applying based on SOGI.

The present paper provides important insights into the application of European discourses in the context of the Dutch asylum procedure. It conforms with prior research, in that it questions the possibilities of the Dutch legal and administrative framework to evaluate the claims of queer Muslim applicants without negating their lived experiences. As long as homosexual acts remain criminalized in a substantial number of countries, it is important to ensure the protection of queer refugees without falling into a binary discourse of the sexually liberal West versus backwards Muslim-majority countries. Questioning the universality of Western normative discourses around what it means to be queer, this analysis therefore provides an impetus for change for policy-makers and members of the Dutch LGBTQ community alike.

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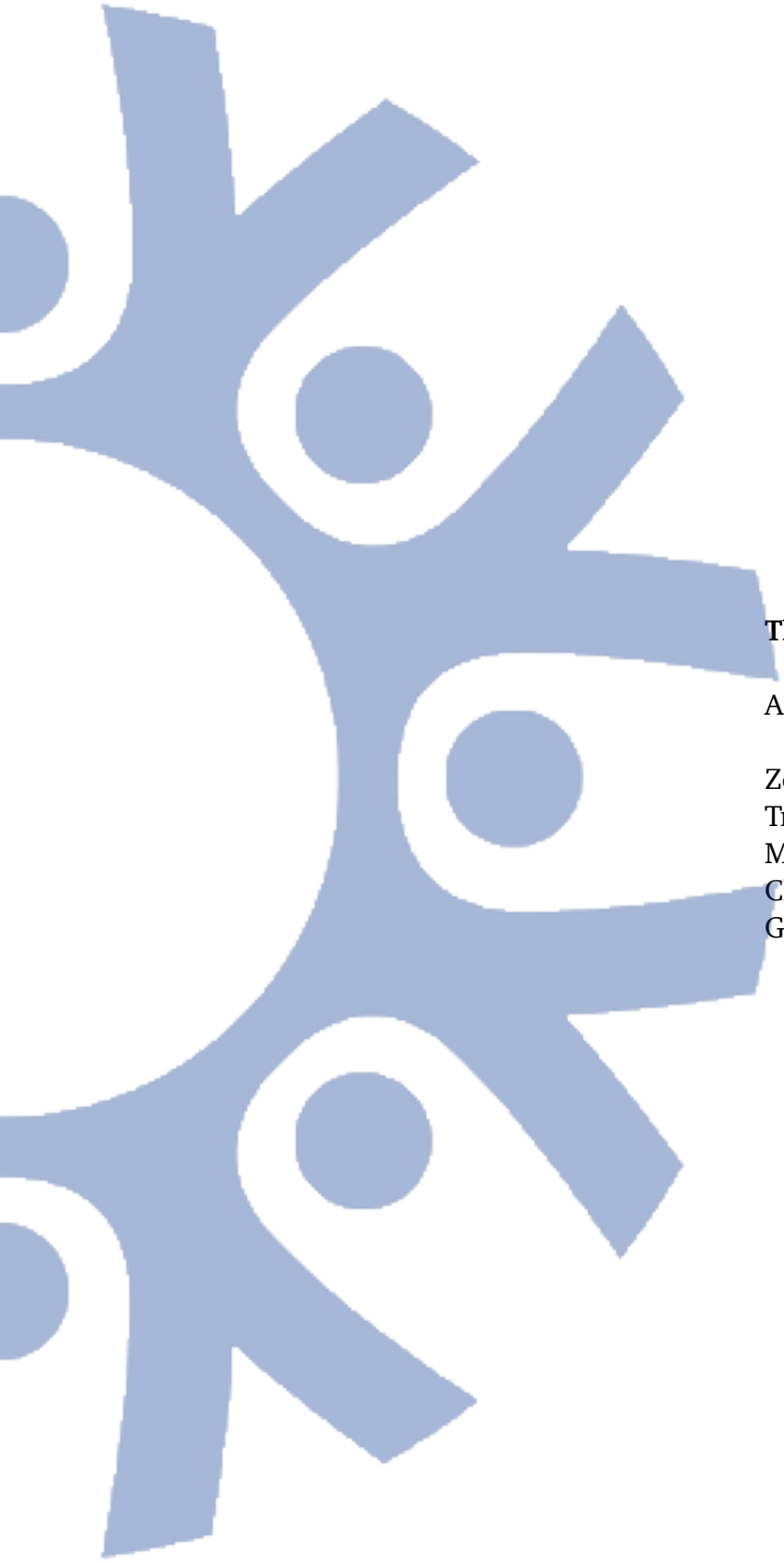

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