

DENIZ AKIN

Discursive Construction of Genuine LGBT Refugees

ABSTRACT

This article discusses the ways in which different discourses construct a genuine LGBT refugee subject in Norway. In doing so, it problematizes the notion of a predetermined/ahistorical/context-free LGBT refugee subject who can be discovered at the national borders as the true claimant of the refugee status. Benefiting from queer theory, the discussion revolves around the performative aspects of refugeeness, arguing that refugeeness is discursively constructed in a particular legal, political, and cultural context and that there is no genuine refugee prior to its recognition. The article also draws on the notion of precarity as a constitutive of the so-called genuine refugee subject, and discusses how precarity for sexual minorities has been constituted within the contemporary cultural politics of immigration and sexual politics in Norway. It concludes by arguing for the need for increasing attentiveness to the reproduction and circulation of discourses around issues such as deserving immigrants, precarity, worthy asylum seekers, healthy sexualities, and good citizens within the field of refugee policies and practices.

Keywords: LGBT asylum, Norway, precarity, queer, refugeeness

IN THE WAKE of the summer of 2015, thousands of refugees began crossing into Europe causing an increased level of anxiety displayed in the political arena of asylum receiver countries in Northwestern Europe. A major trigger of this political unruliness was the tension between the humanitarian moral obligations the states have in respect to various legal agreements and the fear of cultural, ethnic, and religious difference

of the individuals demanding protection (Holmes and Castañeda 2016, 18). The dominant political rhetoric has been revolving around discursive dichotomist framings such as deserving refugee/undeserving migrant, and voluntary/involuntary migration, highlighting a necessity to differentiate between who is a genuine refugee and who is an economic migrant seeking a better livelihood abroad (Holmes and Castañeda 2016, 13; Crawley and Skleparis 2018, 49). This anxiety has manifested itself most apparently within the tighter measurements for state border controls, such as in Denmark (BBC 2015), Norway (Tjelle et al. 2016), and Germany and Hungary (Skleparis 2017), as well as through various policies being taken up to reduce the benefits offered to refugees. In this way, various nation-states hope to come across as undesirable destinations for economic immigrants, something that inevitably effects refugees too.

During the last decades, many scholars have marked the early signs of this political paradigm shift, in which the refugee image embedded in humanitarian discourse has been transformed into a refugee image broadly managed by a political discourse of resistance to migrants and refugees (Zetter 1991; Gibney 2004; Neumayer 2005; Fassin 2013; Spijkerboer 2015). The transformation of the normative ground upon which the refugee label has been based can be observed by looking at “the marked proliferation of new labels which at best nuance interpretation, at worst discriminate and detach claimants from the core attribute of being a refugee” (Zetter 2007, 176). Labels such as “economic migrants,” “bogus refugees,” and “genuine refugees” are among those defining and delimiting the lawfulness of people crossing the borders of nation states (Neumayer 2005, 391). These labels presume the existence of a true refugee subject position, of one occupied by individuals who are genuinely in need of international protection according to the Refugee Convention, whom can be distinguished from those who immigrate in pursuit of an economically better life. Researchers of migration and refugee studies have long problematized the categories used to distinguish people who migrate as “refugees” and “migrants” arguing that these categories simplify and homogenize individuals’ complex mi-

gratory experiences and the fact that some may simultaneously fit in two preexisting categories (Crawley and Skleparis 2018, 50).

This article will contribute to this line of critique by utilizing queer theory and discuss the performative aspects of refugeeness by focusing on the construction of a genuine LGBT refugee subject in Norway. Accordingly, this article will elaborate on how the genuineness of sexual orientation-based refugee claims is constructed before it is recognized in the Norwegian context. The refugee system, which is based on the notion of a predetermined/ahistorical/context-free refugee subject, who can be discovered at the national borders as the true claimant of the refugee status, will be problematized with an argument that there is no genuine refugee prior to its recognition. That is, a genuine refugee is discursively constructed in a particular legal, political, and cultural context. Furthermore, the article will benefit from the notion of precarity and discuss how precarity has become a constitutive of the so-called genuine refugee subject. In doing so, this article aims to contribute research on cultural politics of immigration in Norway by bringing out the norms and exclusionary aspects of the way entitlement to refugee status is distributed among people who seek a safe haven.

The Changing Truth of Asylum

The 1951 UN Convention and its 1967 Protocol relating to the Status of Refugees constitute the fundamental ground for international refugee protection.⁴ In this key document a refugee is described as:

[A person] who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion. (UNHCR 2011, 10)

Asylum seekers on the other hand refer to those whose applications for protection (and eventually a refugee status) is yet to be decided.

During the last couple of decades, the humanitarian ground upon which the notions of refugee and asylum seeker are based is over-

shadowed by an understanding that issues of refugees and asylum seekers are related to the measurements of immigration prevention (Gibney 2004), as many believe that the refugee system is often misused by those who are not “genuine” refugees. What was the reason of this transformation, one might ask. It is possible to trace the answer to this question by emphasizing the changing “truth of asylum” (Fassin 2013, 40).

In his influential essay “The Precarious Truth of Asylum” (2013), the French anthropologist and sociologist Didier Fassin reflects on the issue of truth in respect to the contemporary refugee question. He states:

What is the truth of asylum? And how are the accounts of asylum seekers recognized to be true? The two raise significantly different issues. The first emphasizes the substance of asylum, the way it is permanently transformed through international debates and national jurisprudence and by the daily work of officers and magistrates confronted with concrete cases. The second focuses on the evidence of the asylum seekers, on the relations between what is told and what really occurred and between these alleged facts and the legal definition of the refugee. (Fassin 2013, 40)

As Fassin eloquently describes, the contemporary refugee question bears both the moral imperative of asylum, described extensively in the Refugee Convention, and the political aspects that constraints this moral imperative for only those who fulfills the legal definitions of a refugee. The *truth* of asylum defines and delimits what accounts are regarded as *true* when presented by asylum seekers. Fassin (2013, 40) argues that the truth of asylum is a historical construct rather than an immutable reality. The genuineness of refugees, arguably, is subject to an everlasting process of definition and redefinition following the changing truth of asylum. That is, a genuine refugee, who is the rightful claimant of the refugee status, is constructed within the changing sociopolitical context of asylum.

The truth of asylum has been shaped by various factors during the last couple of decades. When the Refugee Convention was first drafted, in the aftermath of World War II, the Convention’s primary concern and target group was people who were fleeing their country subsequent to

the events emanated within Europe, whereas the contemporary refugee situation has its roots in civil and international wars, various conflicts, famine and poverty occurring outside of Europe (Gibney 2004, 4). That does not mean that there were no displaced people in the continental boundaries of Asia and Africa in the early 1950s, however, these people were at a significant geographical distance to Western countries, and therefore could be dealt through overseas aid. However, the contemporary means of transportation and communication technologies enable displaced people from all over the world to make their way to the West and claim admittance at the national borders of Western countries, which requires immediate response (Gibney 2004, 9–10).

Another important aspect that has altered the perception of the refugee situation is economic. As Fassin (2013, 52) points out, post-war Europe was in need of labor for reconstruction and North America needed immigrants for economic growth. This economic incentive made Europe and North America pursue a generous refugee policy until the 1970s. This period, however, is followed by a perception of immigrants as a burden on welfare states rather than economic contributors. As a result, asylum has become an issue in which the principles of universal protection compete with the interests of national sovereignty (Fassin 2013, 44). This political conjuncture gives rise to the increasing suspicion that economically motivated immigrants may apply for entry, pretending to be refugees (Gibney 2004). In other words, refugees have become widely considered as individuals who seek to improve their living standards by pretending to need protection against persecution. As a result, one can say that there is a tendency toward perceiving asylum “as subsidiary to immigration and human rights as secondary to policing logics” (Fassin 2013, 53).

In this changing sociopolitical context, it is possible to notice how the discursive framing of a genuine refugee has also been transformed. For instance, at one point the genuine refugee was considered to be a heroic masculine figure and war dissident, whereas today’s genuine refugee is considered to be vulnerable and therefore constructed as feminine (Spijkerboer 2015, 9). A feminized image, lacking autonomy is attached to the perception of a genuine refugee subject as somebody who would

not misuse and take advantage of the asylum receiver country (Akin and Svendsen 2017, 49). Consequently, asylum seekers who do not appear as vulnerable or feminine are rendered fake refugees who are not genuinely in need of international protection. Pointing at the flow of people fleeing from the civil war in Syria, for instance, the President of the Czech Republic Miloš Zeman stated that only children, the old and the sick deserve compassion, whereas single young men should remain in their home country and fight (Khan 2015).

In this context of the changing truth of asylum, in which asylum seekers are rendered guilty of misusing the asylum system until they prove their genuineness, the question of how understandings of a genuine refugee are discursively constructed gains significant importance.

In what follows, I will discuss the discursive construction of a genuine refugee subject by utilizing queer theoretical lenses and the notion of precarity.

A Queer Approach to the Refugee Subject As Precarious

My use of the term queer draws on the theoretical and scholarly project that engages in contesting and destabilizing anything that is presented and perceived as normal and natural (Warner 1993; Jagose 1996; Eng et al. 2005). To many, queer is a word charged with a sense of discomfort caused by or resulting in unruliness, ambiguity or disorientation because “to make things queer is certainly to disturb the order of things” (Ahmed 2006, 161). Queer emerged into public and political consciousness in 1990s as a term used to interrogate what is normal, and who is excluded by the construction of normal in respect to the features of life informed by sexuality. A queer critique meant challenging “the normalizing mechanisms of state power to name its sexual subjects: male or female, married or single, heterosexual or homosexual, natural or perverse” (Eng et al. 2005, 1). A queer critique is heavily informed by the poststructuralist understandings of human subject as discursively constructed. Poststructuralist perspectives consider the subject to be an effect rather than cause of action, desires, and motivations. This kind of approach is particularly suspicious of any natural or core identity claim.

One of the most influential thinkers of queer theory and activism has been Judith Butler. In her work *Gender Trouble: Feminism and the Subversion of Identity* (1990), Butler gives an account of the performative character of gender. According to Butler, gender is neither neutral nor innate; instead gender is the performative effect of repetitive acts:

[T]here is no gender identity behind the expressions of gender; that identity is performatively constituted by the very “expressions” that are said to be its results. (Butler 1990, 25)

Repeated acts, gestures, desires produce the effect of a presumed internal identity that is further normalized and governed by regulatory regimes and structures of meaning. Through these processes some notions and performances of identity become culturally intelligible, while others are rendered invisible, unnamable (Butler 1990, 16–7). Such a de-essentialized approach to identity categories is disturbing to political establishments organized around a unitary subject, which is assumed as a necessary prerequisite for recognition.

A unitary subject, however, continues to constitute the fundamental ground upon which universalistic international refugee law, as well as international human rights law, have been built.

Challenging the universalistic tone underlying rights discourse, Pheng Cheah (2006) scrutinizes the purported universality of a pure, atemporal and context-independent human dignity as the basis of rights. Drawing upon the inherent complexities of the distribution of rights and people’s entitlement to them, Cheah (2006, 172) famously states that rights are violent gifts – “the necessary nexuses within imminent global force relations that produce the identities of their claimants.” Accordingly, a particular conceptualization of refugeeness is to be constructed prior to the distribution of the right to refugee status. Once one is qualified as the subject of refugeeness, then one might be recognized as a refugee. As Butler (1999, 342) reminds us, “the qualifications for being a subject must first be met before representation can be extended.” In this sense, the notion of a genuine refugee subject would

only encompass those who become intelligible through their conformity with recognizable standards of refugeeness. These standards are hard to spot, however, as the norms of recognizability for a genuine refugee is prone to perpetual change following the changing truth of asylum as discussed above.

In order to understand how the frames of intelligibility are being constructed, we may think of the politics of precarious lives and the notion of precarity. Precarious lives are those that are defined in relation to those who have power over them, and they are brought into existence by practices and agents that aim to protect and save them (Fassin 2011, 1). In this sense, people who are to be saved as refugees come into existence once they are provided visibility as objects of humanitarianism prior to their recognition as genuine refugees.

In her renowned essay “Precarious Life, Grievable Life” (Butler 2009), Butler raises critical epistemological and ontological questions relating to what a life is and which mechanisms of power constitute, apprehend and render a life precarious. Butler starts by scrutinizing the recognizability of lives, which she considers a prerequisite for recognition. The recognizability of lives is bound to the schemes of intelligibility that produce the norms of recognizability; that is, “a life has to be intelligible as a life, has to conform to certain conceptions of what life is, in order to become recognizable” (Butler 2009, 7).

The politics of precarious lives, along with queer theoretical lenses, provide powerful insight to understand when asylum seekers become refugees. One can say that somewhere between being an asylum seeker and being labeled a genuine refugee some lives are apprehended as grievable and worthy of protection while others go unrecognized or are disposed of as bogus refugees or economic migrants. Sima Shakhsari (2014, 1008) describes this in-between time and place as the one where “rightfulness and rightlessness come together in a temporal standstill, and where ‘protection’ of [queer and trans refugees] under the rhetoric of rights is tied to the management of life and death of different populations.” In other words, an asylum seeker becomes a refugee when her life is considered losable, when the person is rendered precarious.

However, this precarity is never given, but instead produced before it is recognized.

For instance, there are asylum seekers who are denied refugee status because their persecution ground is not compatible with the Convention's definition of a refugee. In other words, their persecution ground does not neatly fit to the Convention grounds of race, religion, nationality, membership of a particular social group, or political opinion. Falling outside of the frame of Convention does not mean that one will remain unrecognized. There is a constant battle for the production and recognition of precarity within the existing legal framework. From here, I move to rethinking asylum claims based on sexual orientation as an example of this politics of precarious lives.

Constructing the Lives of Sexual Minorities As Precarious

The Refugee Convention had long been ignorant of sexual orientation as a reason for which one can claim protection because sexuality was designated as private, personal and extra judicial (Moran 2011, 274). Let alone not being able to seek for international protection, LGBT immigrants were risking deportation on the grounds of sexual deviance until the 1990s in, for example, the United States (Randazzo 2005; Cantú 2009). Moving from being entirely unfit to the Refugee Convention, sexual orientation has been accepted as a reasonable ground upon which one can claim a refugee status since 1981² (Spijkerboer 1998; 2013). In this sense, the process that brought the precarious lives of sexual minorities into existence gains importance. As one can argue, the plight of sexual minorities in many countries is not a contemporary fact, however, the formation of a LGBT refugee subject is rather novel.

The expansion of refugee status to those seeking asylum, based on their sexual orientation, needs to be considered in connection to the recognition of LGBT lives as precarious in Northwestern countries. In this respect, it is hard to deny the role played by LGBT lobbying efforts and equal-rights advocacy and relevant activism, as well as homonationalist politics that utilized sexual rights as a constitutive feature of Western

nationalities (Puar 2007). Granting recognition to sexual minorities through, for example, anti-discrimination and marriage equality laws, homotolerance is gradually presented as an inherent feature of Western countries who brand themselves as what Éric Fassin (2010, 512) refers as “sexual democracies.” This image is further utilized to achieve political goals such as setting a symbolic border to fence off the homophobic *other*, often designated as a person of color with or without a history of migration (Fassin 2010; Mepschen et al. 2010; El-Tayeb 2012). It is also used to establish a new unilineal sexual developmental and modernization framework aiming to rehabilitate and correct the so-called homophobic rest (Klapeer 2017, 51), and to provide protectorship to those sexual minorities who are persecuted in their country of origin. This political conjuncture has not only established the lives of sexual minorities as precarious, and worthy of saving, but also defined the frames of their intelligibility.

Overview of the Legal Framework for LGBT Refugees Worldwide

Sexual orientation-based claims are evaluated under the Convention ground “membership of a particular social group” (UNHCR 2008, 6). That is, for a LGBT person to be qualified as a refugee, she needs to prove her membership to a particular social group and that her well-founded fear of persecution is related to this membership, as stipulated in the UN Refugee Convention. This requirement involves various legal and cultural complexities for both the claimants and the asylum adjudicators.

First, UNHCR states that the members of a particular social group,

share a common characteristic other than their risk of being persecuted, or who are perceived as a group by society. The characteristic will often be one which is innate, unchangeable, or which is otherwise fundamental to identity, conscience or the exercise of one’s human rights. (UNHCR 2002, 3)

Following this definition, sexual orientation becomes fixed, timeless, and unchangeable, features that critical queer scholars have long criticized rigorously. Approaching sexual orientation as an unchangeable truth results in, for example, rejecting asylum to claimants who have previously engaged in a heterosexual relationship, such as when a lesbian claimant is discovered to have a child (Lewis 2010, 430). Since there is no checklist for a genuine sexual orientation, LGBT claimants are often “burdened by proof” (Dauvergne and Millbank 2003, 299) and have their credibility checked against the adjudicators’ cultural understandings of sexuality.

Furthermore, several studies showed that LGBT asylum seekers are often pathologized as suffering from depression and trauma because of an assumed repressed sexuality, which is ready to be liberated in the host country, and that asylum seekers lose credibility when they fail to display signs of victimhood (Giametta 2014, 138; Murray 2014, 452; Shakhsari 2014, 1007; Akin 2015, 35).

In addition to the complexities inherent in proving someone’s sexual orientation, LGBT asylum seekers are also troubled in providing evidence of their well-founded fear persecution. The less favorable treatment sexual minorities receive in many countries is often regarded as discrimination rather than persecution. Yet, there are instances when discrimination and harassment amounts to persecution on cumulative grounds (LaViolette 2009). However, it is hard for LGBT asylum seekers to document their plight especially when their persecution takes place by non-state actors in private realm of social and family contacts.

In what follows, I will illustrate how the frames of intelligibility for LGBT refugees has been defined and negotiated in Norway. In doing so, I will discuss the discursive construction of a genuine LGBT refugee subject in Norway. I will argue that asylum caseworkers, law, and the asylum seekers constitute and fix the frames of recognizability for LGBT refugees collaboratively by defining and delimiting the asylum accounts that are to be rendered true.

Researching the Truth of Asylum and LGBT Refugees in Norway

The research material used in this article was collected in Norway between 2013 and 2015 for my PhD research project: “Queer Challenges to the Norwegian Policies and Practices of Immigration: Asylum Seeking in Norway on the Grounds of Sexual Orientation-Based Persecution.” The empirical data consists of ten semi-structured interviews with LGBT asylum seekers, six semi-structured expert interviews with the asylum caseworkers of Utlendingsdirektoratet (UDI), the Norwegian Directorate of Immigration, and participant observation in numerous social gatherings organized by Skeiv Verden, an organization that assists and supports LGBT people with a minority background in Norway. A supplementary corpus of knowledge, information, and understanding resulted from analysis of instructions and guidelines used by asylum caseworkers, a selection of court decisions that had been published on the UDI’s webpage and various formal and informal encounters with staff at the Norwegian Organization for Asylum Seekers (NOAS) and Self-Help for Immigrants and Refugees (SEIF).

All the LGBT asylum seekers who were interviewed in this research were recruited via Skeiv Verden. The organization has a wide network in Norway as they have made various visits to asylum reception centers and Norwegian immigration offices to disseminate information about the particular needs of LGBT asylum seekers. The organization is also listed on UDI’s (2018) website as a support group for sexual minorities and the asylum caseworkers are acquainted with the association, which allow them to pass the information to the claimants when they mention that they are LGBT. In this regard, it is important to acknowledge certain methodological limitations caused by my recruitment strategy given that I could only speak to people who are affiliated with Skeiv Verden. It means that I could only talk to asylum seekers who have the vocabulary to identify as LGBT and who could become part of the organization, which certainly requires particular means of communication. This recruitment strategy, however, runs the risk of excluding individuals who have come to Norway primarily because of sexual orientation-based risk

of persecution but lack the resources to know that their sexual orientation is a legitimate reason upon which they can seek protection, or that there is an LGBT support group they could get assistance from.

In what follows, I briefly discuss the sexual and cultural politics of immigration in Norway by introducing the legal framework and procedures that are employed for the assessment of LGBT asylum seekers' protection claims. I will then discuss how a genuine LGBT refugee subject is constructed in Norway drawing upon the data material collected.

Sexual and Cultural Politics of Immigration in Norway

Norway is generally considered to be among the leading countries in respect to legislations for equality in matters of sexual orientation and LGBT rights. Formal and juridical recognition of sexual minorities, however, is embedded in a fashion of homotolerance where heterosexuality is primarily and self-evidently valued while other configurations of sexualities should be tolerated (Røthing and Svendsen 2010). The homotolerant heteronormativity is so pervasive that the sense of marginalization experienced among, for example, queer youth, whose sexual practices and subjectivities are not homonormative, can hardly be adequately conceptualized and challenged (Svendsen et al. 2018, 275). In other words, the culture of tolerance toward sexual minorities in Norway mainly encompasses those whose identities fit into culturally, racially, and economically accepted scripts of a citizen that has exclusionary effects for anyone who fails to reproduce these particular norms.

In terms of cultural politics, the country markets sexual freedom and homotolerance as a defining feature of the nation and culture across several arenas, such as in its "homodevelopmentalist" (Klapeer 2017, 51) agendas abroad (Sæteraas Stoum 2012), and in its national education curricula (Svendsen 2014) where Norwegians are pitted against those depicted as backward and traditional (Mühleisen and Røthing 2009; Røthing and Svendsen 2010; Sæteraas Stoum 2012; Svendsen 2014).

Norway has been granting asylum on the basis of sexual orientation since 1997 (Lindstad 1997). The majority of applications are issued by gay identifying men, making up approximately 75 percent of all claimants;

lesbian identified claimants made up 13 percent (Gustafsson 2016, 25). There are researchers who have also noticed a similar gap between the number of lesbian and gay identifying asylum seekers in Canada and Australia (Dauvergne and Millbank 2003, Rehaag 2017). There is not any systematic study conducted on the reasons of this gendered disparity. In this regard, one can only speculate and suggest that the general invisibility of lesbian women in the public space makes it less likely for them to engage in practices that would attract persecution (Keenan 2012), and makes it difficult for lesbian women to envisage fleeing as a form of resistance (Akin 2017a).

A central issue within the Norwegian public has been the way the Norwegian Directorate of Immigration (UDI) evaluates the asylum applications of those who are allegedly risking persecution on the grounds of their sexual orientation. In this respect, a prominent matter of concern had been the application of what is known as the discretion requirement, which is based on the argument that sexual minorities can safely be returned to their country of origin as long as they practice their sexuality discreetly. Discretion requirement was widespread in many countries across Europe (Spijkerboer 2013) and North America (LaViolette 2009). The utilization of discretion reasoning to deny sexual minorities asylum was abolished in Norway in 2012, following a precedent set by the Supreme Court of the United Kingdom in 2010 ruling that individuals cannot be compelled to hide their sexual orientation because that would be to deny that person the fundamental right to be who he/she is.³ Liberating sexual minorities from being deported back to their closeted lives, the abolishment of the discretion requirement has left sexual minorities with another trouble: the burden to prove their genuineness. In this new phase of the battle, LGBT asylum seekers encounter what Jenni Millbank (2009, 391) calls “from discretion to disbelief” – that is, a tendency to not believe that the applicant is, in fact, queer.

Credibility assessment lies at the heart of asylum evaluation in Norway, similar to other countries, in deciding whether an applicant is a genuine refugee to be given protection. The credibility assessment of

LGBT asylum seekers, however, possesses particular challenges, given that applicants often lack material evidence of their sexual orientation and/or their well-founded risk of persecution. In addition to these set of legal challenges, there are also cultural challenges brought forward by LGBT asylum seekers. As mentioned before, Norway is a country branded for its sexual freedom and acceptance of the civil rights of sexual minorities, however, resistance to immigration is increasingly vocalized within the discourse of immigrants' cultural unfitness to Norwegian society (Mühleisen et al. 2009, 29). During the last couple of years, one can also observe a sexual turn in the rhetoric that describes immigrants as intolerant of sexual diversity (Akin and Svendsen 2017; Svendsen et al. 2018). A good indicator of this political stance can be illustrated by a quote from Solveig Horne, Norway's previous minister of children and equality, in her call to the public about the Pride Parade of 2016:

I encourage everyone to be out in the streets next Saturday [the day of the Pride Parade], especially people from immigrant communities.
(Tjernshaugen 2016)

This quote powerfully demonstrates that Horne either assumes that LGBT immigrants are oppressed by default due to their non-normative sexual orientation, or that immigrants are intolerant by default. In either case, her wordings make a sharp distinction between the ethnic Norwegians and immigrants with respect to sexual diversity. Amid this kind of political rhetoric, in which racialized and culturalized immigrants are defined as a threat to white Western people, to white LGBT people as well as to LGBT people of color (El-Tayeb 2012), LGBT refugees stand out as a paradoxical figure. On the one hand, LGBT refugees appear as being void of agency, and waiting for protectorship of Western democracies, following their self-claimed inherent tolerance of sexual diversity.⁴ On the other hand, the non-whiteness of LGBT refugees provokes political anxiety and prompts questions about the credibility of their protection claim: Are they really LGBT or are they misusing the asylum system (Akin 2017b, 15)?

As discussed earlier, the understanding of who a genuine refugee is, is subject to change dependent on the altering of the truth of asylum. The genuine refugee is not a predetermined figure to be disclosed at the borders; rather she is constructed discursively in a particular sociopolitical conjuncture, shaped by discourses, such as who a deserving migrant is.

Similarly, the genuineness of a LGBT refugee is prone to constant negotiation and renegotiation dependent on ongoing developments occurring within the wider cultural politics of immigration and global sexual politics.

The Genuine LGBT Refugee in Norway

Based on the data material collected it is possible to state that UDI caseworkers demonstrate a broad and liberal understanding of sexual orientation in terms of cross-cultural variations of sexuality and the scope of activities and experiences related to being LGBT. As one of the informants said, “someone can be one hundred percent gay or straight, but then someone else might be twenty percent gay” (Akin 2015, 27). This quote indicates a move away from thinking sexual orientation as a fixed inner identity. UDI caseworkers, instead, assess whether their claimants are able to articulate reflections around being LGBT during an asylum interview. A genuine LGBT refugee, accordingly, is agreed to be the one who is able to express a sense of stigmatization and/or vulnerability. The kind of expressions can be, but not limited to, display of shyness, embarrassment, and a self-assessment of being different (Akin 2015, 33–4). On the contrary, those, who fail to demonstrate this kind of self-reflection, and speak exclusively about sexual practice, run the risk of being perceived as someone who is not genuine (Akin 2015, 27). Before 2010, when the discretion requirement was still applied in Norway, Norwegian immigration authorities used to question their claimant in respect to their practice of sexual orientation to evaluate “how this has been done, and whether this has caused any problems for the applicant” (Mühleisen et al. 2012, 147) to decide whether it is risky to send the applicant back to their country of origin. The shift of focus from conduct to the so-called right kind of

identity is perhaps one of the most salient indicators of the temporality of frames of intelligibility.

Norwegian immigration authorities' changing approach to a genuine refugee becomes most apparent in a case Stine H. Bang Svendsen and I have analyzed elsewhere (Akin and Svendsen 2017). We studied the case of an Iranian claimant whose claim for a refugee status was rejected by both UDI and the Immigration Appeals Board (UNE). He was later granted asylum by a Norwegian district court (Tingrett). During the time between these decisions, the claimant had undergone a set of aesthetic and cultural adjustments that we argued was influential for the final outcome of the case. The period was marked by his active engagement in a local queer organization, participating in a pride parade, changes in the style of clothing, and finally a video depicting him and his Norwegian partner asking for support for his upcoming court proceedings. In the video, the claimant's Norwegian boyfriend explains in tears the dangers that are waiting for his partner in case of deportation, and asks for public support for their love union, while the claimant himself remains silent. We argued that all of these aspects reinforced the applicant's recognizability as a gay person by demonstrating his similarity with the local gay and lesbian community. The impact of the video, as we read it, was particularly important in generating a visual depiction of the claimant's vulnerability and lack of agency (given that the boyfriend was speaking), as a means of symbolically detaching his Muslim masculine agency, which might appear as threatening in the contemporary politics. Needless to say, emphasis on his commitment to a long-term relationship was also crucial in presenting a normative image. Subsequently, the district court ruled in favor of the claimant, finding his well-founded fear of persecution on the grounds of sexual orientation credible. Once again, it was the display of vulnerability and victimization – characteristics attributed to a genuine LGBT refugee – that presented the claimant as a person worthy of protection.

Similar to the case above, the interviews conducted with other LGBT asylum seekers revealed that the informants actively search for strategies and mobilize resources to support their cases and appear as genuine as

possible to the adjudicators. They all engage in a process of what I call “rainbow splash” (Akin 2017a, 463), which refers to the fashion in which informants translate their sexuality with reference to the Western style of loud and proud identities, characterized by high visibility and linear stories of liberation, which is a pattern observed by other researchers as well (Giametta 2014; Murray 2014). One can hardly overlook the benefits of narrating a univocal stories of sexual self-realization, as several studies have demonstrated that asylum adjudicators often rely on over-generalizations about sexual minorities and look for a presentation of a linear sexual identity, starting with shame, guilt, and a feeling of stigmatization before self-acceptance, during the validation of queer asylum seekers’ testimonies (Berg and Millbank 2009; Lewis 2010; 2014; Akin 2015). In addition to that, building a testimony based on a sexual identity which is out of closet is of great importance not only for the intelligibility of the claimant within the Norwegian context but also due to the assumption that someone who is openly gay is more likely to face persecution than someone who lives in the closet. Such a presumption often leads to unfavorable treatment of masculine gay man in the asylum tribunals because adjudicators assume that effeminate men stand out easily in public by their obvious breaching of gender norms (Hanna 2004, 915). The same logic tends to disfavor lesbians on the grounds that female same-sex sexuality is often rendered invisible in public and legal arenas which makes the likelihood of their persecution less conceivable for asylum decision makers (Keenan 2012).

The recurrence of similar narratives of being LGBT contributes to a monolithic portrayal of sexualized and racialized asylum seekers, producing an exclusionary effect for those whose claim is based on unrecognizable configurations of sexuality. For instance, asylum seekers who reside in a remote asylum reception often lack the means of appropriating a visible and political queer identity due to not having access to or awareness about a queer solidarity group that would *facilitate* the translation of their sexual orientation in a public realm (Akin 2017a, 465). The closet is a social construct and so is being *out of the closet*. However, when used repeatedly as a sign of genuineness, being out of the closet

(or willing to be out of the closet) and pursuing social visibility in various arenas creates the illusion that that is the only genuine way to be a LGBT individual. The effects of being out of the closet as a mandate to support LGBT-related asylum claims is quite obvious in the words of an informant who said that he would go back to living tacitly after receiving his residence permit:

I will be out of sight for a while. My brother and my mother are on the same boat with me. They don't approve my homosexuality, but they wish me the best. If I keep appearing on the news, on internet, it would nurture the enemy. Maybe in the future I go to Kuwait or Turkey to work. I don't want more troubles. (Akin 2017a, 463)

Such a frame of intelligibility, when used in practice, causes the exclusion of those who do not fit in. For example, in 2014, Norwegian appeals board denied asylum to a gay identified, asylum seeker man from Iran. In support of the decision, the adjudicators emphasized that during the time that the applicant had been in Norway he had not expressed his sexual orientation in the Norwegian gay community, and he had engaged in sexual intercourse only in the privacy of his room (UDI 2014).

Construction of a Genuine LGBT Refugee: A Collaborative Practice

There has been growing research on various legal and bureaucratic challenges LGBT asylum seekers encounter that successfully draw attention to how normative configurations of sexualities impact the adjudicators' evaluation of the credibility of the applicants. This is often discussed as the main cause of trouble for LGBT asylum seekers along with the absence of evidence regarding their risk of persecution. Aiming to complement this field of research, this article focused on the cultural politics of immigration that, as it is argued, shape and influence the practice of law by shaping the broader understandings of refugeeness and thereby constructing the recognizable standards for a genuine refugee subject. In this sense, the discussion above calls for a necessity to

contextualize the cases of LGBT asylum seekers within the contemporary politics of immigration, that is, organized around an increasing suspicion that people with no legitimate way of entry pretend to be refugees. Through this contextualizing, traits that are affiliated with the image of a genuine refugee subject, including genuine LGBT subjects, become meaningful.

Using queer theoretical lenses, the examples above demonstrate how the schemes of intelligibility and norms of recognizability are produced for LGBT asylum seekers. The more LGBT asylum seekers put effort into establishing recognizable accounts of genuine LGBT refugeehood, the more they appear as *true* (Fassin 2013, 40). In other words, there is a *truth* being constructed around the idea that a genuine LGBT refugee is the one who is willing to be publicly visible, vulnerable by default and possesses no agency that would come off as a threat to the host society. This truth, as shown, is not given but constituted and fixed by asylum caseworkers, law, and the asylum seekers collaboratively, defining and delimiting the accounts that are to be rendered true, and subsequently constructing the genuineness of the refugees. Arguing that genuineness is discursively constructed does not mean to underestimate or overlook the various kinds of human rights abuses sexual minorities encounter every day. Rather, it is an attempt to reveal and challenge the norms and exclusionary aspects of the way the recognition of genuineness is distributed among people who seek a safe haven. This requires increasing attentiveness to the reproduction and circulation of discourses around issues such as deserving immigrants, precarity, worthy asylum seekers, healthy sexualities, and good citizens within the field of refugee policies and practices. In this respect, as scholars and activists, one should keep up the continuous critique revealing norms and exclusionary aspects of the refugee system that will always render some invisible, underrepresented and wrongly translated.

DENIZ AKIN is currently a postdoctoral research fellow at the Department of Interdisciplinary Studies of Culture, Norwegian University of Science and Technology. In 2017, she defended her doctoral

thesis “Queer Challenges to the Norwegian Policies and Practices of Immigration: Asylum-Seeking in Norway on the Grounds of Sexual Orientation-Based Persecution.” Her research interests include sexuality, migration, and queer studies.

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NOTES

1. The 1951 Refugee Convention covers those who have become refugees as a result of events occurring before 1 January 1951. With the adoption of the 1967 Protocol, this time limit was removed. See UNHCR (2010).
2. In 1981, the Dutch Judicial Department of the Council of State stated that persecution on the grounds of sexual orientation should entitle refugee status (Spijkerboer 1998, 189).
3. https://www.supremecourt.uk/decided-cases/docs/UKSC_2009_0054_Judgment.pdf.
4. Read also Norwegian Prime Minister Erna Solberg's opening speech for Oslo Pride in 2014 (Government.no. 2014).

SAMMANFATTNING

Nyare studier av rättsliga och byråkratiska hinder som LHBTQ asylsökanden ställs inför belyser hur normativa sexualitetskonfigurationer påverkar asylhandläggarnas bedömning av sökandes trovärdighet. Detta, tillsammans med brist på bevis för att de riskerar att utsättas för förföljelse, framhålls oftast som det största problemet för LHBTQ asylsökanden. I syfte att utvidga forskningsfältet både empiriskt och teoretiskt granskar artikeln hur immigrationens kulturpolitiska aspekter påverkar rättsstillämpningen genom att utgöra grunden för den bredare förståelsen av flyktingskap [*refugeeness*], vilken skapar tydliga normer för vem som kan räknas som äkta flyktingssubjekt i Norge. Med queerteoretiskt stöd diskuteras flyktingskapets performativa aspekter och det betonas att flyktingskap är diskursivt konstruerat i en specifik rättslig, politisk och kulturell kontext och att det inte finns någon genuin flyktning före dess erkännande. Artikeln använder även begreppet prekaritet, vilket utgör en grundläggande del av det så kallade genuina flyktingssubjektet och diskuterar hur prekaritet för sexuella minoriteter har kon-

struerats inom samtida norsk kultur- och sexualpolitik runt immigration. Artikeln avslutar med ett framhålla behovet av ökad uppmärksamhet på reproduktionen och cirkulerandet av diskurser runt frågor om berättigade immigranter, prekaritet, om vilka sökande som är värda asyl, samt om sund sexualitet och goda medborgare inom fältet för flyktingpolitik och -praktik.